



# **Brazos Transit District**

## **Request for Proposals RFP # MT812023**

**Mobile Ticketing**

**Submitted By  
Brazos Transit District  
2117 Nuches Ln.  
Bryan, Texas 77803**

**Deadline for Submittals  
September 12, 2023**

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# Section 1 Request for Proposals

## 1.1 Introduction

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Brazos Transit District (BTD) is a political subdivision of the State of Texas, created pursuant Chapter 452, Transportation Code of Texas. BTD provides general public transportation in 21 counties in Central and East Texas that include fixed bus routes, ADA Paratransit and demand and response service. BTD is the recipient of Federal Transit Administration (FTA) and Texas Department of Transportation (TxDOT) funding. This project may be financed jointly by federal, state and local authorities, including FTA and TxDOT.

The Request for Proposals (RFP) process and the performance of the requested services will be in accordance with the guidelines and regulations of the FTA “Third Party Contracting Guidelines”, FTA Circular 4220.1F and all other applicable federal, state and local laws and regulations. BTD is a tax-exempt organization and is free from all state and federal taxes. No such taxes shall be included in the Offeror's charges to BTD. All costs incurred in the preparation of the proposal responding to this RFP will be the responsibility of the Offeror and will not be reimbursed by BTD. Issuance of this RFP and receipt of proposals does not commit BTD to award a contract. BTD reserves the right to postpone the proposal opening for its own convenience, to accept or reject any or all proposals received in response to this RFP, or to cancel all or part of this RFP for sound business reasons, at any time before the Contract is fully executed and approved on behalf of BTD.

BTD is soliciting bids for a Mobile Ticketing/ticket validator system to be installed on all revenue vehicles, approximately 110 vehicles. Current fare media includes paper tickets/passes and currency. BTD is looking to move toward a modern mobile ticketing system that offers contactless fare media such as a mobile phone app, smart cards/fobs to work in conjunction with the current cash fareboxes. Additional capabilities would include, but not be limited to, a web portal for passengers to purchase fare media and manage their account.

## 1.2 Vendor Registration

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Prospective Offerors must be registered with BTD and must complete a registration form online by visiting our website at [www.btd.org](http://www.btd.org)

## 1.3 Solicitation Data

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### Solicitation Schedule

|   |                                     |
|---|-------------------------------------|
| RFP Release Date .....                              | August 1, 2023                      |
| Questions or Request for Deviation due to BTD.....  | August 15, 2023 by 5:00 p.m. CST    |
| BTD Responses to Questions and Deviations due ..... | August 22, 2026 by 5:00 p.m. CST    |
| Proposals Due .....                                 | September 12, 2023 by 4:00 p.m. CST |
| Contract Award .....                                | September 26, 2023                  |

BTD reserves the right to make changes to the above-mentioned schedule. All such changes shall be made by an amendment to the solicitation or a letter to all the firms.

### Procuring Agency:

Brazos Transit District  
2117 Nuches Ln.  
Bryan, Texas 77803

### Contracting Officer:

Wendy Weedon, Deputy CEO & General Manager  
Phone: (979)778-0607 Fax: (979)778-3606  
E-Mail: [procurement@btd.org](mailto:procurement@btd.org)

### Scope

BTD is seeking a qualified firm to install a mobile-ticketing system/validators on all revenue vehicles with the ability to validate mobile tickets and other modern fare media. BTD's goals of the project include providing customers a convenient option to easily purchase, and seamlessly pay, for fare media that will allow for greater mobility throughout the service area. BTD endeavors to offer a contactless fare collection system with modern technologies and payment standards.

Contractor will be responsible for obtaining all required permits and must be licensed, bonded, an authorized to do business within the State of Texas.

Offerors should not submit a proposal unless they can provide at least three references for similar work done within the past five years.

Where two or more Offerors desire to submit a single bid in response to this RFP, they should do so on a Prime/Subcontractor basis rather than on a joint venture basis. BTD intends to contract with a single Offeror and not with multiple Offerors doing business as a joint venture.

The selected Offeror will NOT be allowed to utilize a finance company for the purpose of factoring invoices. Payment for services will be in the form of check made out to the company indicated in the contract terms.

#### **1.4 Offeror Communications and Requests**

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Communication or correspondence in regard to any aspect of this solicitation or offers will only be with the Contracting Officer or her designated representative. Offerors shall not make any contact with or communicate with any other members of BTD, its employees and consultants.

All questions and communication in regard to any aspect of this RFP # MT812023 must be in writing and directed to Wendy Weedon at [procurement@btd.org](mailto:procurement@btd.org). Offerors may request a clarification or interpretation of any aspect, a deviation or a change to any requirement of the RFP or any addendum to the RFP up to August 15, 2023 at 5:00 p.m. CST. Deviation requests are to be submitted on the deviation form.

Responses to written requests will be provided by BTD in the form of addendum only. Only written responses provided as addendum shall be official and all other forms of communication with any officer, employee or agent of BTD shall not be binding by BTD. Any clarifications or further instructions to Offerors, whether as a result of questions raised by Offerors or initiated by BTD itself, will be sent to all Offerors in written addendum form.

#### **Addendum to RFP**

BTB reserves the right to amend the RFP at any time. Any amendments to or interpretations of the RFP will be in written addendum. Prospective Offerors officially known to have received the RFP will be emailed or mailed the addendum. Offerors are responsible to collect the addendum from the Contracting Officer. Failure of any prospective Offeror to receive any addendum will not relieve the Offeror from any obligation under its proposal as submitted or under the RFP, as clarified, interpreted or modified. All addendum issued will become part of the RFP. Prospective Offerors must acknowledge the receipt of each individual addendum in their proposal. Failure to acknowledge any addendum in the submitted proposals may at BTB's sole option disqualify the proposal.

If BTB determines that the addendum may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed to allow Offerors sufficient time to revise their proposals and the new due date shall be included in the addendum.

#### **Conditions, Exceptions, Reservations or Understandings**

Proposals stating conditions, exceptions, reservations or understandings (hereinafter "deviations") relating to the RFP may be rejected. Offerors may submit an alternate proposal that states deviations so long as a basic proposal not containing deviations is submitted. Offerors may propose alternates either within one overall proposal or by submitting more than one proposal.

Any and all deviations must be explicitly, fully and separately stated in the proposal by completing the Proposal Deviation Form, setting forth at a minimum the specific reasons for each deviation so that it can be fully considered and, if appropriate, evaluated by BTB. All deviations not found by BTB to be unacceptable shall be evaluated in accordance with the appropriate evaluation criteria and procedures, and may result in the Offeror receiving a less favorable evaluation than without the deviation.

## 1.5 Instruction to Offerors

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### Submission Requirements

Sealed proposals in one original and two copies must be received by September 12, 2023 by 4:00 p.m. CST. Proposals and subsequent offers shall be valid for a period of 90 days. Late proposals will be returned to Offeror unopened and will not be considered under any circumstances. Faxed or emailed proposal are not acceptable and will not be considered for award.

The sealed envelope will be addressed as below and must contain the Offerors name and address and be clearly marked: "Brazos Transit District Mobile Ticketing System RFP # MT812023". All proposals are to be submitted to:

Brazos Transit District  
Wendy Weedon, Deputy CEO & General Manager  
2117 Nuches Ln.  
Bryan, Texas 77803

### Proposal Format and Contents Requirements

Failure to provide the required information with the Proposal may automatically disqualify the Proposal from consideration for award.

Proposals must be submitted on 8.5 x 11" white paper, using a simple method of fastening. They should be typed and a lengthy narrative is discouraged. To provide for comparability between proposals, all proposals **must be submitted in the following order separated by tabs**. Vendors not addressing these topics or not using the prescribed order may be judged non-responsive and disqualified from the RFP process.

**Tab 1 Business Organization.** State the full name, address, and phone number of the Offeror and, if applicable, the branch office or division that will perform or assist in performing the work. The capacity of the person submitting the proposal should also be provided. Indicate whether the Offeror is licensed to operate in the State of Texas, Brazos County, Texas, and the City of Bryan, Texas.

If the Offeror is a partnership, limited liability company, limited partnership, or joint venture, the proposal should state the full names and addresses of all partners, members, or joint ventures' who own at least a ten percent interest in the Offeror.

The person signing the proposal must initial any erasures, corrections, or other changes appearing on the proposal form.

**Tab 2 Required Forms and Certifications:** (Required Forms Section)

- Acknowledgment of Addendum – If addendums have been released
- Request for Change or Approved Equal
- Proposal Deviation – (Only if Offeror requested deviation)
- Buy America
- Conflict of Interest
- Lobbying Certification
- References- Vendor
- Pricing Schedule
- Suspension and Debarment Certification Form
- Delinquent State Business Tax Certification
- Offer
- Certification and Authorization

**Tab 3 Purpose of Proposal.** State in precise terms the means by which the Scope of Services will be fulfilled.

- Tab 4      Statement of Qualifications.** The Offerors' experience and history relevant to BTB's needs should be discussed, including a description of the Offeror's direct experience where services comparable in size and scope has been performed in the last five years. Offeror shall provide the name, address and telephone numbers of persons who may be contacted as references. Offeror shall also include dates, locations, costs and project managers for these previous projects.
- Tab 5      Criminal Background.** For all persons and entities mentioned in any of the foregoing responses, indicate whether they (1) have ever been convicted of, (2) have an indictment pending for, or (3) have during the last five years been investigated for a criminal offense that is not related to the operation of an automobile. Convictions, indictments or investigations for the crime of driving while intoxicated shall be disclosed. Convictions indictments, or investigations shall be disclosed regardless of whether for a violation of federal, state, local or non-U.S. laws.
- Tab 6      Willingness to Contract:** State that the Offeror is willing to enter into a Contract consistent with the terms herein.
- Tab 7      Project Scope.** Please provide a detailed scope of the project, which includes specific feature and functionality items that will be integrated into the solution.
- Tab 8      Project Timeline.** Please provide a detailed project timeline including estimated start dates, schedule of activities, deliverables and resources to be used.
- Tab 9      Pricing Model.** Please provide an estimated price based on your project scope. Please include a fee breakdown.
- Tab 10     Warranty Information.** If applicable to any work performed or equipment installed.
- Tab 11     Maintenance/ Support Plan.** Please provide a summary of the types of service level support plans that are offered and breakdown of services and costs.
- Tab 12     Insurance:**

**Liability Insurance.** Attach Certificate of Liability insurance

**Workman's Compensation.** Attach Information Page from Worker's Compensation policy

**Employee Dishonesty Bond.** Attach proof of Dishonesty Bond

If Offeror does not have the above insurances in the minimum amounts required, a letter from an underwriter confirming that the Offeror can be insured for the required minimum amounts is to be submitted.

**Tab 13     Qualification Requirements**

- Financial Statements must be made available upon request. Offeror's Financial Statements must be prepared in accordance with the United States Generally Accepted Accounting Principles (GAAP) and audited by an independent certified public accountant authorized to practice in the jurisdiction of either BTB or the Offeror OR Financial statements that have been reviewed or compiled by an accountant.
- Financial Guaranty: Willingness of any parent company to provide the required financial guaranty evidenced by a letter of commitment signed by an officer of the parent company having the authority to execute the parent company guaranty.

## **Equipment & Supplies**

All equipment and supplies should be supplied by the contractor.

## **Tax Exempt**

The Offeror recognizes that BTD is exempt from the payment of certain Federal, State and local taxes, and that such taxes are not to be included in the proposal price. BTD will furnish a Contractor with the necessary tax-exempt certificates.

## **Warranty**

The agreement will include a multi-year, up to 5-year, warranty to BTD. There should be a labor warranty as well.

## **Modification or Withdrawal of Proposals**

A modification of a proposal already received will be accepted by BTD only if the modification is received prior to the proposal due date or is specifically requested by BTD. All modifications shall be made in writing and executed and submitted in the same form and manner as the original proposal.

An Offeror may withdraw a proposal prior to the proposal due date by submitting a written request for withdrawal executed by the Offeror's authorized representative. The Offeror may submit another proposal within the time set for receipt of proposals. This provision for modification and withdrawal of proposals may not be utilized by an Offeror as a means to submit a late proposal and as such, will not alter BTD's right to reject a proposal.

## **Confidentiality of Proposals**

When the award is made and an agreement is executed proposals are subject to review under the "Public Information Act". To the extent permitted by law, Offerors may designate those portions of the offer which contain proprietary information, trade secrets or confidential commercial and financial information that an Offeror believes should be exempted from disclosure are to remain confidential. Such information shall accompany the proposal, be readily separable from the proposal and shall be clearly marked "CONFIDENTIAL". Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not assure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

## **1.6 Evaluation Criteria and Procedures**

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Proposals will be evaluated and ranked on the basis of the following factors, the weights of which are:

|  |     |
|--|-----|
| System Features & Capabilities.....                      | 25% |
| Prior Experience, Qualifications & Company History ..... | 20% |
| References .....   | 20% |
| Delivery/Construction Timeline .....                     | 15% |
| Pricing Structure .....                                  | 15% |
| Quality/Completeness/Adhering to Instructions.....       | 5%  |

All aspects of the evaluations of the proposals and any discussions/negotiations, including documentation, correspondence and meetings, will be kept confidential during the evaluation and negotiation process.

Proposals will be analyzed for conformance with the instructions and requirements of the RFP and Contract documents. Proposals that do not comply with these instructions and do not include the required information may be rejected as insufficient or not be considered for the competitive range. BTD reserves the right to request an Offeror to provide any missing information and to make corrections. Offerors are advised that the detailed evaluation forms and procedures will follow the same proposal format and organization specified in the Instructions to Offerors. Therefore, Offerors shall pay close attention to and strictly follow all instructions. Submittal of a proposal will signify that the Offeror has accepted the whole of the Contract documents, except such conditions, exceptions, reservations or understandings explicitly, fully



and separately stated on the forms and according to the instructions of Form for Proposal Deviation. Any such conditions, exceptions, reservations or understandings which do not result in the rejection of the proposal are subject to evaluation under the criteria of Proposal Evaluation Criteria.

BTD will select for any award the highest ranked proposal from a responsible Offeror, qualified under Qualification Requirements which does not render this procurement financially infeasible and is judged to be most advantageous to BTD based on consideration of the evaluation Proposal Evaluation Criteria.

### **Evaluations of Competitive Proposals**

1. **Qualification of Responsible Offerors.** Proposals will be evaluated to determine the responsibility of Offerors. A final determination of an Offeror's responsibility will be made upon the basis of initial information submitted in the proposal, any information submitted upon request by BTD, information submitted in a BAFO if requested by BTD and information resulting from BTD's inquiry of Offeror's references and its own knowledge of the Offeror.
2. **Detailed Evaluation of Proposals and Determination of Competitive Range.** Each proposal will be evaluated in accordance with the requirements and criteria specified in "Proposal Selection Process".

The following are the minimum requirements that must be met for a proposal to be considered for the competitive range. All of these requirements must be met; therefore, they are not listed by any particular order of importance. Any proposal that BTD finds not to meet these requirements and may not be made to meet these requirements, may be determined by BTD to not be considered for the competitive range. The requirements are as follows:

- a. Offeror is initially evaluated as responsible in accordance with the requirements of "Qualification Requirements", or that BTD finds it is reasonable that said proposal can be modified to meet said requirements. Final determination of responsibility will be made with final evaluations.
- b. Offeror has followed the instructions of the RFP and included sufficient detailed information, such that the proposal can be evaluated. Any deficiencies in this regard must be determined by BTD to be either a defect that BTD will waive in accordance with "Acceptance/Rejection of Proposals" or that the proposal can be sufficiently modified to meet these requirements.
- c. Proposal price would not render this procurement financially infeasible, or it is reasonable that such proposal price might be reduced to render the procurement financially feasible.

BTD will carry out and document its evaluations in accordance with the criteria and procedures of "Proposal Selection Process". Any extreme proposal deficiencies which may render a proposal unacceptable will be documented. BTD will make specific notes of questions, issues, concerns and areas requiring clarification by Offerors and to be discussed in any meetings held with Offerors which BTD finds to be within the competitive range.

Rankings and spreads of the proposals against the evaluation criteria will then be made by BTD as a means of judging the overall relative spread between proposals and of determining which proposals are within the competitive range or may be reasonably made to be within the competitive range.

3. **Proposals not within the Competitive Range.** Offerors of any proposals that have been determined by BTD as not in the competitive range and cannot be reasonably made to be within the competitive range will be notified in writing, including the shortcomings of their proposals.
4. **Discussions with Offerors in the Competitive Range.** The Offerors whose proposals are found by BTD to be within the competitive range or may be reasonably made to be within the competitive range, will be contacted by BTD to answer any questions and/or requests for clarifications. Each such Offeror may be invited for a private interview(s) and discussions with BTD to discuss answers to written or oral questions, clarifications and any facet of its proposal.

In the event that a proposal, which has been included in the competitive range, contains conditions, exceptions, reservations or understandings to any Contract requirements as provided in "Form for

Proposal Deviation”, said conditions, exceptions, reservations or understandings may be negotiated during these meetings. However, BTB shall have the right to reject any and all such conditions and/or exceptions and instruct the Offeror to amend its proposal and remove said conditions and/or exceptions; and any Offeror failing to do so may cause BTB to find such proposal to be outside the competitive range.

No information, financial or otherwise, will be provided to any Offeror about any of the proposals from other Offerors. Offerors will not be given a specific price or specific financial requirements they must meet to gain further consideration, except that proposed prices may be considered to be too high with respect to the marketplace or unacceptable. Offerors will not be told of their rankings among the other Offerors.

5. **Best and Final Offers (BAFO).** Offerors are reminded the BAFO’s may not be requested and therefore their first submission should always be their best possible offer. If BAFO’s are requested, once all interviews have been completed, each of the Offerors in the competitive range will be afforded the opportunity to amend its proposal and make its BAFO. The request for BAFO’s shall include:
  - a. Notice that discussions/negotiations are concluded;
  - b. Notice that this is the opportunity for submission of a BAFO;
  - c. A common date and time for submission of written BAFO’s, allowing a reasonable opportunity for preparation of the written BAFO’s;
  - d. Notice that if any modification to a BAFO is submitted, it must be received by the date and time specified for the receipt of BAFO’s and is subject to the late submissions, modifications and withdrawals of proposals provisions of the Request for Proposal;
  - e. Notice that if Offerors do not submit a BAFO or a notice of withdrawal and another BAFO, their immediate previous offer will be construed as their BAFO.

Any modifications to the initial proposals made by an Offeror in its BAFO shall be identified in its BAFO. BAFO’s will be evaluated by BTB according to the same requirements and criteria as the initial proposals “Proposal Selection Process”. BTB will make appropriate adjustments to the initial scores for any sub-criteria and criteria which have been affected by any proposal modifications made by the BAFO’s. These final scores and rankings within each criterion will again be reviewed by BTB and considered according to the relative degrees of importance of the criteria defined in “Proposal Evaluation Criteria”.

BTB will make the award to the responsible Offeror whose proposal is most advantageous to BTB. Accordingly, BTB may not necessarily make an award to the Offeror with the highest technical ranking nor award to the Offeror with the lowest price proposal if doing so would not be in the overall best interest of BTB.

BTB reserves the right to make an award to an Offeror whose proposal it judges to be most advantageous to BTB based upon the evaluation criteria, without conducting any written or oral discussions with any Offerors or solicitation of any BAFO’s.

## **1.7 Response to Proposals**

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### **Acceptance/Rejection of Proposals**

BTB reserves the right to reject any or all proposals for sound business reasons, to undertake discussions with one or more Offerors and to accept that proposal or modified proposal which, in its judgment, will be most advantageous to BTB, price and other evaluation criteria considered. BTB reserves the right to consider any specific proposal which is conditional or not prepared in accordance with the instructions and requirements of this RFP to be noncompetitive. BTB reserves the right to waive any defects or minor informalities or irregularities in any proposal which do not materially affect the proposal or prejudice other Offerors.

If there is any evidence indicating that two or more Offerors are in collusion to restrict competition or otherwise engaged in anti-competitive practices, the proposals of all such Offerors shall be rejected and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by BTB.

BTB may reject a proposal that includes unacceptable deviations as provided in "Conditions, Exceptions, Reservations or Understandings"

### **Single Proposal Response**

If only one proposal is received in response to this RFP and it is found by BTB to be acceptable, a detailed price/cost proposal may be requested of the single Offeror. A price or cost analysis, or both, possibly including an audit, may be performed by or for BTB of the detailed price/cost proposal in order to determine if the price is fair and reasonable. The Offeror has agreed to such analysis by submitting a proposal in response to this RFP.

Price analysis: An evaluation of a proposed price that does not involve an in-depth evaluation of all the separate cost elements and the profit factors that comprise an Offeror's price proposal. It should be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity, involving similar specifications and in a similar time frame. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto.

Where it is impossible to obtain a valid price analysis, it may be necessary to conduct a cost analysis of the proposed price.

Cost analysis: A more detailed evaluation of the cost elements in the Offeror's offer to perform. It is conducted to form an opinion as to the degree to which the proposed costs represent what the Offeror's performance should cost. A cost analysis is generally conducted to determine whether the Offeror is applying sound management in proposing the application of resources to the contracted effort and whether costs are allowable, allocable and reasonable.

Any such analyses and the results there from shall not obligate BTB to accept such a single proposal; and BTB may reject such proposal at its sole discretion.

### **Appeals**

Appeals to BTB's decision of approved equals or clarifications of specifications must be in writing and received by BTB by the time specified in the schedule. BTB has no obligation to consider appeals not received within the time specified in the Schedule.

### **Protests**

Protests resulting from the award of a contract through the RFP procedure must be made in writing to BTB's Contracting Officer within three working days of the letter of non-selection to the Offeror. The protest must outline the specific portion of the specification or proposal procedure that had been violated.

Protests by an interested party regarding this procurement shall be made in accordance with Chapter 2155 of the Texas Government Code. After such administrative remedies have been exhausted, an interested party may file a protest with the Federal Transit Administration (FTA) or the U.S. Department of Transportation pursuant to the procedures provided in FTA C 4220.1F or the Texas Department of Transportation (TxDOT). Alleged violations of certain federal requirements provide a separate complaint procedure. See, for example, Buy America Requirements, 49 CFR 661 and Participation by Disadvantaged Business Enterprise in Department of Transportation Programs, 49 CFR 23.

Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

## **Conflict of Interest**

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code (House Bill 914) requires that any vendor or person considering doing business with a local government entity disclose the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. The Conflict-of-Interest Questionnaire form is included in the Forms Section. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest may automatically result in the disqualification of the Offeror.

## **Disclosure of Interested Parties**

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295), which is available at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm), to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. BTD require the selected Contractor to file Form 1295 electronically with the Commission at the time of Contract Award.

## **Bid Protest Policy**

Protests resulting from the award of a contract through the RFP procedure must be made in writing to BTD's Contracting Officer within three working days of the letter of non-selection to the Offeror or proposer. The protest must outline the specific portion of the specification or proposal procedure that had been violated.

As an FTA funding recipient, BTD is required to notify and keep FTA updated about the status of the protest when it receives a third-party contract protest to which this circular applies an award given by BTD.

The protester must exhaust its administrative remedies by pursuing the recipient's protest procedures to completion before appealing the recipient's decision to FTA.

Protests by an interested party, as in a party that is an actual or prospective Offeror whose direct economic interest would be affected by the award or failure to award the third-party contract at issue, regarding this procurement shall be made in accordance with Chapter 2155 of the Texas Government Code. After such administrative remedies, have been exhausted, an interested party may file a protest with the Federal Transit Administration (FTA) or the U.S. Department of Transportation pursuant to the procedures provided in FTA C 4220.1F. Alleged violations of certain federal requirements provide a separate complaint procedure. See, for example, Buy America Requirements, 49 CFR 661 and Participation by Disadvantaged Business Enterprise in Department of Transportation Programs, 49 CFR 23.

The protester must deliver its appeal to the FTA Regional Administrator within five working days of the date when the protestor has received actual or constructive notice of the recipient's final decision or when the protestor has identified other grounds for appeal to FTA, such as, the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest.

Failure to comply with the above protest procedures renders a protest untimely and/or inadequate and shall result in its rejection.

In the event of a timely protest received by the Contracting Officer, the following steps are performed:

The Contracting Officer affects a stay of procurement during the protest.

- If the contract has not been awarded, award is delayed until all administrative and judicial remedies have been exhausted. All Offerors or proposers on the vendor mailing list are advised of the protest and of the delay in the procurement.
- The President/CEO may make a determination, in writing, that the award of a contract without delay is necessary to protect the interests of BTD. This written determination is made part of the contract file by the Contracting Officer.

- The Contracting Officer notifies the President/CEO and the affected department head that a bid or proposal protest has been received.
- The Contracting Officer conducts an investigation into the protest with the assistance of BTB staff or other personnel as required.
- The Contracting Officer may meet with the protesting vendor or request additional information from the vendor during the investigation
- The Contracting Officer issues the findings of the investigation in writing to all interested parties and the written report, including the original protest, is made a part of the contract file.
- The Grants and Budget Department acts as the direct liaison with FTA. The Contracting Officer supplies any records or documents requested by the Grants and Budget Department for FTA.
- The Contracting Officer makes any necessary changes to the procurement process, as pertaining to the protested bid/proposal, resulting from FTA's decision.
- The Contracting Officer makes the written report of FTA, including all related correspondence, a part of the contract file.

### **Contractor Status**

Contractor is an independent Contractor of BTB, and all persons employed to furnish services or to perform work hereunder are employees, agents or Subcontractors of Contractor and not of BTB. No provision of this agreement shall be construed to give rise to a partnership, joint venture, agency, employer/employee relationship or any relationship between Contractor and BTB other than that of principal and independent Contractor.

### **Indemnification/Defense of BTB**

Contractor agrees to and does hereby assume full liability and responsibility for and hereby releases and covenants and agrees to indemnify, hold harmless and defend BTB and the members of the Board of Directors and executive committee, officers, principals, agents and employees of each of them (hereinafter collectively "Indemnified Persons") from and against any and all damages, payments, costs, losses, expenses, and liability of every kind whatsoever related to all claims for damages or injuries to persons or property of any nature whatsoever (including any claims which may arise on the part of the Contractor, its officers, agents, principals, employees, and subcontractors) arising out of or incident to this solicitation or the contract(s) resulting from this solicitation, or which are in any way related to such solicitation or contract(s) or to Contractor's activities thereunder, or are incident to the grant or exercises of any of the rights and privileges described in such solicitation or contract(s), other than claims resulting solely from the negligence of one or more of the Indemnified Persons. By way of inclusion and not limitation, the liability and responsibility assumed and the claims, damages, payments and expenses released and indemnified against are specifically agreed to include any growing out of or related to libel, slander, and the like, and infringement of patents, copyrights, trademarks, service marks and the like, including claims arising out of the use by any of the Indemnified Persons of any documentation, publication, appliance, tool, equipment or apparatus supplied under such solicitation or contract(s).

BTB will promptly notify Contractor of any such claim and will cooperate with Contractor in defending against any such claim. In the event any suit or legal proceeding of any kind is brought against any of the Indemnified Persons on account of any claim described in the preceding paragraph, Contractor agrees to assume the defense thereof and to pay all expenses relating thereto and in connection therewith and all judgments and levies that may be obtained against any of the Indemnified Persons as a result of any such suit or proceeding, specifically including fines, penalties, attorney's fees, exemplary damages, and interest; and Contractor agrees to at once cause any such judgments and levies to be dissolved and discharged by paying same, giving bond or otherwise.

Contractor also agrees to pay BTB promptly upon receipt of statements therefore, any and all attorney's fees and other expenses reasonably incurred by them directly or indirectly related to any claims.

### **No Assignment**

Any contract resulting from or related to this solicitation and all rights and obligations thereunder are non-assignable in whole or in part by Contractor without the prior express written consent of BTB, and any attempted assignment without such consent shall constitute a material default of Contractor under the underlying contract, and may be considered void for all purposes at the election of BTB.

### **1.8 Type and Term of Contract**

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BTB shall negotiate and enter into a fixed contract cost for all work to be performed.

### **1.9 Invoicing and Payment**

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Invoices are to be submitted to BTB's Administrative Office located at 2117 Nuches Ln, Bryan, Texas 77803. BTB is tax exempt therefore, invoices cannot include any sales taxes.

BTB agrees to pay all invoices on a net 30-day payment cycle or three days after the receipt of State and Federal funds, whichever is later. This Agreement is contingent upon the receipt of State and Federal funds. Loss of such funds will nullify this contract.

### **1.10 Disadvantaged Business Enterprises**

---

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 5.37%. No contract goal has been established for this contract. As a result, all race-neutral DBE utilization should be reported to the agency.

The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as BTB deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

## Section 2 Project Specifications

### 2.1 Purpose

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The purpose of BTB's RFP # MT812023 is to solicit and retain a qualified firm to modernize BTB's current fare media and fare collection system, while increasing passenger convenience. BTB endeavors to implement a user-friendly account-based mobile ticketing system to easily purchase, and seamlessly pay, transit fares, while decreasing boarding time.

### 2.2 Warranty

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The agreement should be a multi-year, up to five (5) year warranty to BTB. The agreement should include software and hardware maintenance, supplies and installation with configuration.

### 2.3 Scope of Work

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#### **Fare Collection System Components and Capabilities at a minimum**

- Electronic validation of all fare payments using fare media validators installed on BTB vehicles.
- Options for the purchase of fare products online and at physical locations
- Use of contactless smart cards/fobs to pay/validate fares
- Use of a mobile app or digital media to pay/validate fares
- Provide staff with an administrative portal to create and modify fare types and adjust passenger accounts
- Provide customers with an account management portal for customer self-service
- Be completely ADA accessible
- Provide staff real-time monitoring of ticket sales, status/location of validators (vehicles)
- Allow staff to assist customers, troubleshoot
- Staff should be able to manage the system, including account management, fare product management, report management and system monitoring.
- System
- Fare products will be presented using BTB-specific branding
- System will support multiple payment options including Visa, MasterCard, Discover and American Express credit cards, debit cards, pre-paid cards, mobile payment options such as Apple Pay, Google Pay and PayPal.
- All payment processing and data storage will be Payment Card Industry Data Security Standard (PCI DSS) compliant.

Professional recommendations, suggestions and considerations are encouraged.

#### **Support**

- Vendor will provide 24-7 support when needed in case of severe emergencies, natural disasters, etc.
- Vendor should be accessible via phone, web and e-mail, at a bare minimum.
- Turnaround response time of vendor for any for any mission critical component of the system should not exceed 4 hours.
- Vendor shall provide training for all appropriate staff prior to deployment of System.
- Support shall be available during normal business hours. Standby support shall be available at all other times, including nights, weekends and holidays.

#### **Spare Parts**

The Contractor shall submit a recommended list of spare components, quantities and pricing to support the fleet. Pricing for the spare parts shall not be considered as part of the cost proposal, but separate if BTB decides to order spares.



**Damage or Defect:** Any supplies, material or equipment damaged or defective at the time of delivery or installation or prior to Final Acceptance shall be repaired, replaced or corrected by the Contractor at the Contractor's cost without additional cost to BTB. If the Contractor shall fail to comply promptly with any order of the Contract Administrator to repair, replace or correct damaged or defective work, then the Contract Administrator shall, upon written notice to the Contractor, have the authority to deduct the cost thereof together with any costs reasonably related thereto, from any compensation due, or to become due to the Contractor (including, but not limited to retainage). Nothing in this section shall limit or restrict the provisions of the warranties as set forth herein, or any warranties that may arise by implication or by law.

**System-wide Replacement**

If at least 25% of a given component requires repair or replacement within the first two years of the warranty period, the component shall be deemed to warrant system-wide replacement. System-wide replacement shall require the Contractor to replace all units of the suspect component throughout the system, whether or not they have exhibited any fault.



## Section 3 Required Forms

**ALL FORMS BELOW MUST BE SUBMITTED WITH PROPOSAL**

- ☐ 1. Acknowledgment of Addendum
- ☐ 2. Request for Change or Approved Equal
- ☐ 3. Proposal Deviation Form
- ☐ 4. Buy America
- ☐ 5. Conflict of Interest
- ☐ 6. Lobbying Certification
- ☐ 7. References - Vendor
- ☐ 8. Pricing Schedule
- ☐ 9. Suspension and Debarment Certification Form
- ☐ 10. Delinquent State Business Tax Certification
- ☐ 11. Offer
- ☐ 12. Certificate and Authorization

**Failure to submit ALL of the above items properly completed may be cause for disqualification of your bid. All forms must be signed by the person authorized to bind the offering Offeror to the terms of the proposal.**

**RFP # MT812023**

## ACKNOWLEDGMENT OF ADDENDUM

[illegible]

Authorized Signature \_\_\_\_\_

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Company Name (print)

Name and Title (print)

Date \_\_\_\_\_

3.2 Request for Change or Approved Equal

RFP # MT812023

This form must be used for requested clarifications, changes, substitutes or approval of items equal to items specified with a brand name, and must be submitted as far in advance of the Due Date as specified in “Solicitation Schedule”.

Deviation #: Solicitation Ref: Page: Section:

Questions/Clarification or Approved Equal:

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Authorized Signature

Company Name (print)

Name and Title (print)

Date

Brazos Transit District:

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**RFP # MT812023**

Deviation #: \_\_\_\_\_ Page: \_\_\_\_\_ Section: \_\_\_\_\_

### Rational (Pros & Cons)

Date

3.4 Buy America

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RFP # MT812023

**Certificate of Compliance**

The Offeror hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Company Name (print)

\_\_\_\_\_  
Name and Title (print)

\_\_\_\_\_  
Date

Or

**Certificate of Non-Compliance**

The Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Company Name (print)

\_\_\_\_\_  
Name and Title (print)

\_\_\_\_\_  
Date

### 3.5 Conflict of Interest Acknowledgment and Certification

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#### RFP # MT812023

Policy: A conflict of interest may occur if outside activities or personal interests influence or appear to influence objective decision making in the course of BTD-related responsibilities and duties. A conflict may also exist if the demands of any outside activities hinder or distract your job performance or cause you to use BTD resources for other than BTD purposes. Employees are expected to exhibit professional loyalty to the BTD. Employees are expected to avoid conflicts of interest and opportunities for personal gain for themselves individually, members of their immediate families and others which may impede their best judgment.

The following are guidelines for Board of Directors and employees regarding interests outside of the business conducted by Brazos Transit District:

- A. Employees, or members of their respective families should not have substantial financial or business interest with a competitor, customer or supplier of Brazos Transit District without first reviewing the nature of activity with BTD's legal counsel.
- B. Each employee's employment should be his/her first business priority. Any other employment or business activity will be considered secondary and should not interfere with individual employee job performance and responsibilities. Approval for secondary employment requires the approval of the BTD's President/CEO.

Disclosures: Your obligation, as a prospective Contractor under this solicitation, is to disclose fully all information you have or may acquire which has to do with any such Benefit, which may come to any Related Person or Other Related Person. In considering the possibility of the existence of such benefit, you also need to consider each person and firm you believe may be involved as a joint venturer, or Subcontractor, or other similar role in carrying out and performing a contract with BTD pursuant to the solicitation. In other words, if you are aware of any business, financial, or other interest, or actual or potential employment relationship between any Related Person or any Other Related Person, on the one hand, and yourself or any other person or firm you believe may be involved in carrying out the contract to be awarded pursuant to this solicitation, on the other hand, you have an affirmative obligation to fully disclose that information to BTD. You are encouraged to contact BTD Director of Administration or the Executive Vice President prior to the deadline for submitting your Response (defined as a bid, proposal or other response to this solicitation), make such disclosure, and request a ruling as to whether any prohibited conflict of interest does in fact exist.

In order for your Response to be considered RESPONSIVE to this solicitation, it is mandatory that you complete and execute the Acknowledgment and Certification below, and include with your Response, written disclosure of all information relative to any potential conflict of interest which may be known to you, and which you have not disclosed to BTD in writing prior to the submission of your Response.

#### (POTENTIAL CONTRACTOR)

The undersigned potential Contractor of BTD hereby acknowledges receipt and understanding of the Conflict of Interest provisions set out above; and hereby certifies that, except as heretofore or herewith fully disclosed in writing, to the best of potential Contractor's knowledge and belief, no such conflict exists, or is likely to exist in the future pertaining to this procurement should the contract be awarded to potential Contractor; and potential Contractor further hereby promises to promptly notify BTD in writing if such knowledge or belief changes in the future.

By: \_\_\_\_\_

**Signature and Title of Authorized Official of Potential Contractor**

\_\_\_\_\_  
**Name of Potential Contractor (print)**

#### (RECOMMENDED SUBCONTRACTOR)

The undersigned potential subcontractor of BTD hereby acknowledges receipt and understanding of the Conflict of Interest provisions set out above; and hereby certifies that, except as heretofore or herewith fully disclosed in writing, to the best of potential Subcontractor's knowledge and belief, no such conflict exists, or is likely to exist in the future pertaining to this procurement should the contract be awarded to potential Subcontractor; and potential Subcontractor further hereby promises to promptly notify BTD in writing if such knowledge or belief changes in the future.

By: \_\_\_\_\_

**Signature and Title of Authorized Official of Recommended Subcontractor**

\_\_\_\_\_  
**Name of Recommended Subcontractor (print)**

Note: Offeror shall make copies of the Conflict-of-Interest document and Acknowledgment and Certification form and provide same to each Subcontractor Offeror recommends for the contract. Offeror is required to secure an acknowledgment and certification from each Subcontractor Offeror recommends and submit such certification to BTD prior to a Subcontractor beginning any work under this contract.

### 3.6 Lobbying Certification

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**RFP # MT812023**

The Contractor certifies, certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Company Name (print)

\_\_\_\_\_

\_\_\_\_\_

3.7 References - Vendor

RFP # MT812023

Provide a minimum of three references within the past five years in which a similar service was provided. Provide company name, address, contact person, phone, fax, and email. **Be sure to include a valid email as references are check via email.**

|                 |  |      |
|-----------------|--|------|
| Company Name:   |  |      |
| Address:        |  |      |
| Contact Person: |  |      |
| Email:          |  |      |
| Phone:          |  | Fax: |
|                 |  |      |
| Company Name:   |  |      |
| Address:        |  |      |
| Contact Person: |  |      |
| Email:          |  |      |
| Phone:          |  | Fax: |
|                 |  |      |
| Company Name:   |  |      |
| Address:        |  |      |
| Contact Person: |  |      |
| Email:          |  |      |
| Phone:          |  | Fax: |



3.8 Pricing Schedule

RFP # MT812023

| Item Description | Services/Labor | Components | Fees | Total |
|------------------|----------------|------------|------|-------|
|                  |                |            |      |       |
|                  |                |            |      |       |
|                  |                |            |      |       |
|                  |                |            |      |       |
|                  |                |            |      |       |
|                  |                |            |      |       |
|                  |                |            |      |       |
|                  |                |            |      |       |
|                  |                |            |      |       |
|                  |                |            |      |       |
|                  |                |            |      |       |
| TOTAL            |                |            |      |       |

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Company Name (print)

\_\_\_\_\_  
Name and Title (print)

\_\_\_\_\_  
Date

### 3.9 Suspension and Debarment Certification Form

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**CERTIFICATION REGARDING  
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS  
PRIMARY COVERED TRANSACTIONS**

*This certification is required by the regulations implementing Executive Order 12549 and 12689, Debarment and Suspension, 2 C.F.R. part 180, 2 C.F.R part 1200, 2 C.F.R. § 200.213, and 2 C.F.R. part 200 Appendix II (I).*

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT PAGE)**

The prospective primary Respondent/Contractor certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective primary Respondent/Contractor is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME / TITLE: \_\_\_\_\_  
RESPONDENT/  
CONTRACTOR: \_\_\_\_\_

## INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this proposal, the Respondent/Contractor is providing the certification set out below.

1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Respondent/Contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Owner's determination whether to enter into this transaction. However, failure of the Respondent/Contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
2. The certification in this clause is a material representation of fact upon which reliance was placed when the Owner determined to enter into this transaction. If it is later determined that the Respondent/Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Owner may terminate this transaction for cause or default.
3. The Respondent/Contractor shall provide immediate written notice to the Owner to which this proposal is submitted if at any time the Respondent/Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "bid," "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549 and 12689. You may contact the Owner to which this proposal is submitted for assistance in obtaining a copy of those regulations (2 C.F.R. part 180, 2 C.F.R part 1200, 2 C.F.R. § 200.213 and 2 C.F.R. part 200 Appendix II (I)).
5. The Respondent/Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a Subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Owner entering into this transaction.
6. The Respondent/Contractor further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transactions," provided by the Owner entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Respondent/Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under paragraph 6 of these instructions, if a Respondent/Contractor in a covered transaction knowingly enters into a lower tier covered transaction with a Subcontractor who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Owner may terminate this transaction for cause or default.
9. The Respondent/Contractor also agrees to include these requirements in each subcontract, or a lower tier covered transaction, exceeding \$25,000 financed in whole or in part with Federal assistance provided by FTA.

### 3.10 Delinquent State Business Tax Certification

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All Offerors shall certify that Offerors is not delinquent in a tax owed the state under Chapter 171, Tax Code, pursuant to the Texas Business Corporation Act, Texas Statutes, Article 2.45.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Respondent/  
Contractor: \_\_\_\_\_

**3.11 Offer**

---

**RFP # MT812023**

By execution below Offeror hereby offers to furnish equipment and services as specified in BTB’s RFP # MT812023 including any addendums that have been issued, and guarantees that the product offered will meet or exceed specifications in this RFP.

Offeror certifies that it has read all of the offer documents and agrees to abide by all of the federal clauses, terms, certifications, and conditions thereof.

The Offeror agrees that the bid pricing will remain valid for a period of not less than ninety (90) days from the date of submission; and

The submitted bid includes all pricing needed for award and that no further options will be needed upon award.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Legal Company Name (print)

\_\_\_\_\_  
Name and Title (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
E-mail

\_\_\_\_\_  
Tax ID # or SSN

### 3.12 Certification and Authorization

---

**RFP # MT812023**

The undersigned vendor certifies that it has fully read and understands this Request for Proposal and has full knowledge of the scope, quantity, and quality of the services to be furnished and intends to adhere to the provisions described herein. The undersigned vendor certifies that the manufactured good(s) furnished will meet or exceed the specifications, and/or that the services rendered will comply with the terms of the solicitation or contract. The undersign also affirms that they are duly authorized to submit this proposal, that this proposal has not been prepared in collusion with any other Offeror, and that the contents of this proposal have not been communicated to any other Offeror prior to the official opening of this proposal. Additionally, the undersigned affirms that the firm is willing to sign the enclosed Standard Form of Contract.

Representative's Name: \_\_\_\_\_  
(Please print or type)

Representative's Title: \_\_\_\_\_

Offeror's Company Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Firm Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Representative's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Section 4 Required Federal Clauses

### 4.1 Access

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Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5325(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Where any Purchaser which is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

The Recipient agrees to require its third-party contractors and third-party Subcontractors, at as many tiers of the Project as required, to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third-party contract records to the extent required by 49 U.S.C. § 5325(g). The Recipient further agrees to require its third-party Contractors and third-party Subcontractors, at as many tiers of the Project as required, to provide sufficient access to third party procurement records as needed for compliance with Federal regulations or to assure proper Project management as determined by FTA.

### 4.2 Clean Air Act and Federal Water Pollution Control Act

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The Contractor agrees to comply with all applicable standards and to comply with the inspection and other applicable requirements of:

- (1) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and
- (2) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### 4.3 Civil Rights

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Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to

Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. Section 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53 prohibits discrimination on the basis of race, color, religion, creed, national origin, sex, sexual orientation, gender, gender identity, disability or age, and prohibits discrimination in employment or business opportunity.

Prohibition Against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended by Executive Order No. 11375, October 13, 1967, that prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. Sections 1681 *et seq.* and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25 prohibit discrimination on the basis of sex.

Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1974, as amended, 42 U.S.C. Sections 6101 *et seq.*, and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 CFR Part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. Sections 621 *et seq.*, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625, also prohibit employment discrimination against individuals on the basis of age.

Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Equal Opportunity. The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

### 4.4 Equal Employment Opportunity

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During the performance of this contract, the contractor agrees as follows

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including



apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **4.5 Americans with Disabilities Act (ADA)**

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The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

## **4.6 Disadvantaged Business Enterprises**

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This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 5.37%. A separate contract goal has not been established for this procurement.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as BTB deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/Offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The Contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 10 days after the Contractor's receipt of payment for that work from BTB. In addition, the Contractor may not hold retainage from its Subcontractors.

The Contractor must promptly notify BTB, whenever a DBE Subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of BTB.

BTB requires prime Contractors to send to BTB copies of checks payable from our Contractors to their vendors. The purpose of our receiving copies of their vendor checks is to verify they are adhering to our contract which stipulates payment to their vendors within 10 days of receipt of payment from us. In order for us to be able to confirm our contractor's receipt of our payment, we will also need to include that our payments to Contractors will either be sent via Fed-X or wired directly to the Contractor.

## **4.7 Prompt Payment**

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The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

#### **4.8 Government-Wide Debarment and Suspension**

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The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or Offeror certifies as follows:

The certification in this clause is a material representation of fact relied upon by BTDD. If it is later determined by BTDD that the bidder or Offeror knowingly rendered an erroneous certification, in addition to remedies available to BTDD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Offeror or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The Offeror or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **4.9 Third Parties**

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The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

#### **4.10 Program Fraud and False or Fraudulent Statements or Related Acts**

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The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

#### **4.11 False or Fraudulent Statements or Claims**

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A. Civil Fraud. The Recipient acknowledges and agrees that:

- I. Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31.
- II. By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
- III. The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.

B. Criminal Fraud. The Recipient acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

#### **4.12 Federal Tax and Recent Felony Convictions**

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(1) The contractor certifies that it:

- (a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third-Party Agreement with the Third-Party Participant without FTA's written approval.

(2) Flow Down- The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any sub-agreement.

#### **4.13 Special Notification Requirements for States**

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A. Types of Information. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- I. The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- II. The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- III. The amount of federal assistance FTA has provided for a State Program or Project.

B. Documents. The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

#### **4.14 Never Contract with the Enemy**

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The Recipient agrees to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

#### **4.15 Buy America**

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The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 70 percent domestic content.

A Contractor must submit to the FTA recipient the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Responses, bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

With the implementation of the Fixing America's Surface Transportation (FAST) Act, new requirements for domestic content are phased in based on the date of delivery of the rolling stock. The increased domestic content percentage requirement for rolling stock for FY20 & beyond is more than 70% domestic content.

For rolling stock purchases for which the average cost of the vehicle is more than \$300,000, the FAST Act allows the cost of steel or iron produced in the U.S. and used in the rolling stock frames or car shells to be included in the domestic content calculation, regardless of whether the frame or car shell is produced in the U.S.

FTA does not require the inclusion of these requirements in subcontracts.

#### **4.16 Fly America**

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a) Definitions as used in this clause-

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

**Statement of Unavailability of U.S-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

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#### **4.17 Cargo Preference**

Shipments by Ocean Vessel- The Common Grant Rules require third party contract provisions to ensure compliance with 46 U.S.C. Section 55303 and Maritime Administration regulations, "Cargo Preference-U.S. Flag Vessels," 46 CFR Part 381, implementing the codified Cargo Preference Act. With few exceptions, the regulations require that U.S. Flag vessels be used to transport at least 50 percent of any federally assisted property.

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#### **4.18 Lobbying**

Contractors who apply for an award of \$100,000 or more shall file the Certification Regarding Lobbying, required by 49 CFR Part 20, New Restrictions on Lobbying, with the Owner. Each Subcontractor shall file the Certification Regarding Lobbying with the Contractor that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

The Contractor and Subcontractors shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from Subcontractors to Contractor to BTB. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

The certification regarding Lobbying to be completed by the Contractor and Subcontractor(s) is provided herein under Certifications and Forms Section.

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#### **4.19 Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

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#### **4.20 Solid Wastes**

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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#### **4.21 Recycled Products**

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C 6962), including but not limited to the regulatory provisions of 40 CFR



Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

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#### **4.22 Interest of Members of, or Delegates to, Congress**

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No member of, or delegate to, the Congress of the United States will be admitted to any share or part of this Contract or to any benefit arising there from. (41 U.S.C. §22.)

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#### **4.23 Prohibited Interest**

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No member, officer, or employee of BTD or of a local public body during his tenure or one year thereafter will have any interest, direct or indirect, in this Contract or the proceeds thereof.

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#### **4.24 Policies for all Tiers**

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Contractor agrees to comply with the subsections of this Section and agrees to include the following clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that these clauses will not be modified, except to identify the Subcontractor who will be subject to its provisions.

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#### **4.25 Federal Changes**

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Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

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#### **4.26 Incorporation of FTA Terms**

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Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any BTD requests which would cause BTD to be in violation of the FTA terms and conditions.

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#### **4.27 Privacy Act**

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Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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#### **4.28 Trafficking in Persons**

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The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or

(c) Use forced labor in the performance of the Recipient's Award or sub-agreements thereunder.

#### **4.29 Safe Operation of Motor Vehicles**

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##### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

##### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately owned vehicle when on official business in connection with the work performed under this Contract.

#### **4.30 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

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a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

ii. Telecommunications or video surveillance services provided by such entities or using such equipment.

iii. Telecommunications or video surveillance equipment or services procured or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

b. In implementing the prohibition under Public Law 115232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c. See Public Law 115232, section 889 for additional information.

d. See also § 200.471.



## **4.31 Violation and Breach of Contract**

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### **Rights and Remedies of the Agency**

The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the contract:

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel the Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy, and;
4. The right to money damages.

### **Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Agency, the Contractor expressly agrees that no default, act or omission of the Agency shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Agency directs Contractor to do so) or to suspend or abandon performance.

### **Remedies**

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the Agency will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the Agency takes action contemplated herein, the Agency will provide the Contractor with sixty (60) days written notice that the Agency considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

### **Disputes**

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of BTB's President/CEO. This decision shall be final and conclusive unless within 10 days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the President/CEO. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the President/CEO shall be binding upon the Contractor and the Contractor shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Agency's direction or decisions made thereof.

**Performance during Dispute:**

Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.

**Claims for Damages:**

Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Rights and Remedies:**

Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**FTA Interest:**

FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

**Notification to FTA; Flow Down Requirement:**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its sub-agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) Additional Notice to U.S. DOT Inspector General- The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable

cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

**Federal Interest in Recovery:**

The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA’s prior written concurrence.

**Enforcement:**

The Recipient must pursue its legal rights and remedies available under any third-party agreement or any federal, state, or local law or regulation.

## **4.32 Severability**

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The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

## **4.33 Termination**

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**Termination for Convenience (General Provision)**

BTD may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to BTD to be paid the Contractor. If the Contractor has any property in its possession belonging to BTD, the Contractor will account for the same, and dispose of it in the manner BTD directs.

**Termination for Default (Breach or Cause)**

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

**Opportunity to Cure**

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor (an appropriately short period of time) in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within 10 days after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**Waiver of Remedies for any Breach**

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Upon written notice, the Offeror agrees that the Federal Government may suspend or terminate all or any part of Federal assistance if terms of the project agreement are violated, if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project, if reasonable progress on the Project is not made, if there is a violation of the project agreement that endangers substantial performance of the Project, or if the Federal Government determines that Federal assistance has been willfully misused by failing to make appropriate use of Project property. Termination of Federal assistance for the Project will not typically invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled. The Federal Government reserves the right to require the refund of the entire amount of Federal assistance provided for the Project or a lesser amount.

## Section 5 Required State Clauses

### 5.1 Debarment

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The Recipient agrees that The State of Texas, in order to protect the interests of the state may:

- A. Conduct an investigation upon a complaint regarding a contractor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment;
- B. Cancel one or more of the contractor's active or pending contracts upon a complaint regarding the contractor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment;
- C. Assess actual damages and costs incurred due to contractor's failure to perform as specified in the contract;
- D. Debar a contractor for a specified period of time; and
- E. Take any other action authorized by law.

### 5.2 Family Code Child Support Obligation Certification

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Under Section 231.006(d) of the Texas Family Code, the Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified GRANT and acknowledges that this Agreement may be terminated and payment or grant funds may be withheld if this certification is inaccurate.

### 5.3 Debts and Delinquencies Affirmations

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Sub-recipient agrees that any payments due it under the Agreement shall be applied toward any debt or delinquency that is owed to the State of Texas.

### 5.4 Disaster Recovery Plan

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In accordance with 13 TAC (Texas Administrative Code) §6.94(a)(9), Sub-recipient shall provide descriptions of its business continuity and disaster recovery plans.

### 5.5 Disclosure of Prior State Employment

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In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, RESPONDENT certifies that it does not employ an individual who has been employed by TxDOT or another agency at any time during the two years preceding the submission of the Response or, in the alternative, RESPONDENT has disclosed in its Response the following:

- A. The nature of the previous employment with TxDOT or the other agency;
- B. The date the employment was terminated; and
- C. The annual rate of compensation for the employment at the time of its termination.

### 5.6 Entities that Boycott Israel

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Pursuant to Section 2271.001 of the Texas Government Code, Sub-recipient certifies that either:

- A. It meets an exception criterion under Section 2271.002, or
- B. It does not boycott Israel and will not boycott Israel during the term of this Agreement. Sub-recipient shall in a writing to TxDOT state any fact(s) that make it exempt from the boycott certification.

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## **5.7 Excluded Parties**

Sub-recipient certifies that it is not listed on the prohibited vendors list authorized by Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”, published by the United States Department of the Treasury, Office of Foreign Assets Control.

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## **5.8 False Statements**

Sub-recipient represents and warrants that all statements and information prepared and submitted in this document are current, complete, true and accurate. Submitting a false statement or material misrepresentation made during the performance of a contract is a material breach of contract and may void this agreement.

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## **5.9 Financial Participation Prohibited Affirmation**

Under Section 2155.004(b) of the Texas Government Code, Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified agreement/GRANT and acknowledges that this agreement may be terminated, and payment withheld if this certification is inaccurate.

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## **5.10 Foreign Terrorist Organizations**

Sub-recipient represents and warrants that is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code.

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## **5.11 Prior Disaster Relief Contract Violation**

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified agreement/GRANT and acknowledges that this agreement may be terminated and payment withheld if this certification is inaccurate.

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## **5.12 Public Information Act**

Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the “Public Information Act”). In accordance with Section 2252.907 of the Texas Government Code, the Sub-recipient is required to make any information created or exchanged with the State pursuant to the Agreement and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

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## **5.13 Signature Authority**

The Sub-recipient represents and warrants that the individual executing this Agreement is authorized to sign this Agreement on behalf of the Sub-recipient and to bind the Sub-recipient.

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## **5.14 State Auditor's Right to Audit**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

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### **5.15 Suspension and Debarment**

Sub-recipient certifies that it and its principals are not suspended or debarred from doing business with the State of Texas or federal government as listed on the State of Texas Debarred Vendor List as maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

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### **5.16 Assignment**

Sub-recipient shall not assign its rights under the Agreement or delegate the performance of its duties under the Agreement without prior written approval from the TxDOT. Any attempted assignment in violation of this provision is void and without effect.

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### **5.17 Contracting Information Responsibilities**

In accordance with Section 552.372 of the Texas Government Code, Sub-recipient agrees to:

- A. preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to TxDOT for the duration of the Agreement,
- B. promptly provide to TxDOT any contracting information related to the Agreement that is in the custody or possession of the Sub-recipient on request of TxDOT, and
- C. on termination or expiration of the contract, either provide at no cost to TxDOT all contracting information related to the Agreement that is in the custody or possession of the Sub-recipient or preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to TxDOT. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Agreement and the Sub-recipient agrees that the Agreement can be terminated if the Sub-recipient knowingly or intentionally fails to comply with a requirement of that subchapter.

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### **5.18 Human Trafficking Prohibition**

Under Section 2155.0061 of the Texas Government Code, the Sub-recipient certifies that the individual or business entity named in the Agreement is not ineligible to receive the specified Agreement/GRANT and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

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### **5.19 Energy Company Boycotts**

If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.

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### **5.20 Firearm Entities and Trade Association Discrimination**

If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.

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### **5.21 No Conflict of Interest**

Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.