Texas Department of Transportation

Procurement Division

Solicitation Terms and Conditions

Revised: 09/07/2026

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SOLICITATION TERMS AND CONDITIONS

ARTICLE I. GENERAL

Section I.01 REVIEW OF SOLICITATION.

Respondent must carefully examine the Solicitation. Respondent is responsible for securing any additional information needed to gain a clear and full understanding of TxDOT's requirements from the Purchasing Contacts.

Section I.02 ADA CONSIDERATIONS AND NOTIFICATION.

Persons with special needs or disabilities who plan to attend any pre-response conference and who require auxiliary aids or service should contact a Purchasing Contact a minimum of three (3) Business Days prior to the meeting so arrangements may be made.

Section I.03 CHANGES TO THE SOLICITATION.

a) Any revision, clarification, or interpretation of the Solicitation must be made in an Addendum. Any change to or interpretation of the Solicitation which is not included in an Addendum will have no legal effect, including a change or interpretation made by a TxDOT employee or agent.

b) TxDOT will not be bound by any statement or representation contrary to the written specifications of the Solicitation.

Section I.04 NO MINIMUM.

TxDOT will order only the Goods and Services necessary to satisfy operating requirements up to the total Contract amount. TxDOT makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the Contract.

ARTICLE II. SPECIFICATIONS

Section II.01 COMPLIANCE.

Respondent must perform the Work in accordance with the Statement of Work and the Contract. TxDOT will provide clarification of the specifications and determine the quality

and acceptability of Goods furnished or Services performed. If the Solicitation is for a Service, TxDOT will determine the manner of performance, the rate of progress of the Work, and whether performance of the Service is acceptable.

Section II.02 BRANDS AND MANUFACTURERS.

Except for purchases advertised as proprietary or sole source under Government Code §2155.067 ("Proprietary Purchases"), any catalog, product number, brand name, or manufacturer referenced in the Solicitation is descriptive only and is used solely to indicate the type and quality of the product desired. Responses offering brands of like nature and quality will be considered unless the purchase is a Proprietary Purchase. Respondent must include the manufacturer, brand or trade name, product number, and other identifying information for any product offered in the Response. If the Response proposes a product other than the examples shown in the Solicitation, the Response must include illustrations and a complete description of the product. If the Response does not propose an alternative product, Respondent will be required to furnish the product exactly as specified.

Section II.03 NEW GOODS.

Unless otherwise specified, offered Goods must be new, the latest model in current production, and in first-class condition, including shipping and storage containers.

Section II.04 WARRANTY.

Any manufacturer's standard warranty applicable to the Goods must extend to TxDOT, unless otherwise stated in this Solicitation.

Section II.05 PERSONNEL.

Personnel (as that term is defined in the Statement of Work) must be competent, knowledgeable, and experienced in the types of Services to be provided and perform such Services in a professional and workmanlike manner consistent with industry standards.

ARTICLE III. RESPONSE

Section III.01 OFFER TO CONTRACT.

a) A Response is an irrevocable offer to enter into a Contract with TxDOT in the format of the Form of Contract (including all Exhibits to the Contract) under the terms, conditions, and specifications set forth in the Solicitation. Upon receipt of the Contract from TxDOT, Respondent shall promptly sign and return the Contract to TxDOT. No Response shall be deemed accepted until a Contract has been signed by a duly authorized representative of TxDOT and transmitted to Respondent.

b) By submitting the Response, Respondent binds itself, its successors, and assignees to the faithful performance of the Contract including, without limitation, the Contract Terms and Conditions.

c) The Response, including price, is irrevocable for 120 calendar days following the date and time specified for the Response Due Date. TxDOT may extend this period with Respondent's written consent.

Section III.02 Submittal of Response.

a) The Response must be submitted in accordance with the requirements of the Solicitation.

b) Documentation provided with the Response should be complete and comprehensive. TxDOT will not be responsible for locating or securing information not included in the Response. Failure to furnish required documentation with the Response may result in the Response being deemed incomplete and non-responsive, resulting in rejection. TxDOT will not be responsible for any expenses relating to Responses or development of documentation that may result from the Solicitation.

c) Failure to sign the Execution of Response will disqualify the Response. The person signing the Execution of Response must have authorization to contractually bind the company. By submitting the Response, Respondent represents and warrants that the individual submitting the Execution of Response

is authorized to sign such document on behalf of the Respondent and to bind the Respondent under any Contract that may result from the submission of the Response.

d) The Response must include an Employer Identification Number (EIN) and full firm name and address. The EIN should be entered in the Execution of Response.

e) Respondent certifies that if a Texas address is shown as the address of Respondent in the Execution of Response, Respondent qualifies as a Texas Bidder as defined in Government Code 2155.444(c).

f) The Response must be submitted in accordance with the Solicitation. Late Responses will not be considered under any circumstances.

g) Samples must not be enclosed or attached to a Response unless specified in the Solicitation. Samples, when requested, must be furnished at no cost to TxDOT. TxDOT may perform tests on samples. If not destroyed in testing, samples will be returned upon request at Respondent's expense. Each sample must be marked with Respondent's name and address and the TxDOT Solicitation number.

Section III.03 PRICING.

a) All prices included in the Price Schedule (the "Response Prices") must be firm, all-inclusive, fixed prices unless otherwise stated in the Solicitation.

b) TxDOT's automated purchasing system requires Response Prices to be submitted per unit (the "Unit Price") and then extended by multiplying the Unit Price by the quantity (the "Extended Price"). If the Extended Price is calculated incorrectly, the Unit Price will govern.

c) Unit Prices must include delivery of Goods by FOB Destination. "FOB Destination" means Vendor retains ownership and bears the risk of loss until the Goods are delivered to TxDOT in accordance with the Contract. Vendor is responsible for all shipping costs and liabilities. Vendor must prepay all freight charges (including, without limitation, shipping, handling, delivery fees, and fuel surcharges), and such charges shall not be billed separately or passed through to TxDOT.

d) Purchases made for state use are exempt from state and local sales tax and federal excise tax. Respondent may not include tax in Response Prices unless otherwise specified in the Solicitation. State Sales Tax and Federal Excise Tax Exemption Certificates will be furnished by TxDOT on request.

e) Consistent and continued tie Response Prices may lead to rejection of a Response by TxDOT and investigation for antitrust violations.

Section III.04 PREFERENCES.

Respondent may claim a preference under Government Code Chapter 2155 and 34 TAC §20.306 (a "Preference") by identifying the Preference in the Preferences Schedule. If a Preference is not identified on the Preferences Schedule, a Preference will not be applied unless TxDOT determines that other documents included in the Response show a right to the Preference.

Section III.05 INFORMATION.

Information submitted in an accepted Response will not be returned to Respondent. Government Code Chapter 552 (the "Public Information Act") allows the public to have access to information in the possession of a governmental body through an open records request. Respondent must clearly identify in the Response any confidential or proprietary information. Proprietary information identified by Respondent in the Response will be kept confidential by TxDOT to the extent permitted by state law. TxDOT will use reasonable efforts to give Respondent an opportunity to present to the Office of the Attorney General its arguments for non-disclosure of its identified confidential or proprietary information.

Section III.06 RESPONDENT TERMS AND CONDITIONS, EXCEPTIONS, OR CONDITIONED RESPONSES.

a) Respondent should request any clarifications or modifications to the Solicitation through the question-and-answer process.

b) Respondent may not submit its own terms and conditions or other ancillary documents with its Response except as an Exception set forth in the Exceptions Schedule. If such terms and conditions or other ancillary documents are included

with the Response but are not clearly identified and submitted as Exceptions, such terms and conditions or other ancillary documents shall not be considered.

c) Exceptions taken by Respondent to the Solicitation including, without limitation, to the Form of Contract or the Contract Terms and Conditions, will not be considered unless clearly set forth in the Exceptions Schedule, including, without limitations, exceptions related to software maintenance and usage or equipment maintenance services. TxDOT may reject a Response that takes an Exception to the Solicitation including, without limitation, to the Form of Contract or the Contract Terms and Conditions.

d) By submitting a Response, Respondent acknowledges and agrees that any attempt by Respondent to submit or require execution of any agreement or document other than the Contract that would affect the Work including, without limitation, a license, maintenance or service agreement, additional terms and conditions, or an order form, shall be deemed a violation of the terms of this Solicitation and may result in disqualification and removal of the Response from consideration, rescission of an award, or termination of the Contract, unless such document is clearly identified and submitted as an Exception in accordance with this Solicitation. This provision shall survive award of the Contract.

Section III.07 ALTERATIONS OR WITHDRAWAL OF RESPONSES.

a) Any alterations to a Response made before the Response Due Date must be initialed by Respondent. The Response cannot be altered or amended after the Response Due Date.

b) A Response may be withdrawn if requested in writing prior to the Response Due Date. A Response may be withdrawn from consideration after the Response Due Date with the approval of TxDOT based on Respondent's written, acceptable reason. The Response will not be considered for award but will be retained by TxDOT.

Section III.08 REVIEW OF RESPONSES.

a) Nonconformance.

(1) TxDOT reserves the right to waive minor technicalities in the submission process.

(2) TxDOT will disqualify and remove from consideration any Response that does not conform in any material respect to the Solicitation requirements.

b) Risk of Non-performance. TxDOT may disqualify a Response and remove it from further consideration if TxDOT determines there is an unacceptable risk that Respondent will fail to perform the Contract. In making this determination, TxDOT may consider any source of information that it deems reliable. Respondent bears the burden of establishing in its Response:

(1) ability, capacity, and skill to perform the Work;

(2) ability to perform the Work promptly, or in the time required, without delay or interference;

(3) character, responsibility, and integrity;

(4) current compliance with laws relating to the Work;

(5) sufficient financial resources to perform the Work; and

(6) conformity to all material specifications required in this Solicitation.

c) Past Performance.

(1) TxDOT reserves the right to reject and remove from further consideration a Response from a Respondent whose past performance under contracts with TxDOT or other customers has been reported as unsatisfactory at any time prior to award of Contract.

(2) TxDOT will consider Respondent's past performance in compliance with applicable provisions of Government Code §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Any of the following will be considered to be an indication of poor performance:

(a) A letter grade score below 'C' in the Vendor Performance Tracking System or a score of "legacy unsatisfactory" for

historic reports submitted prior to the implementation of the current rating system;

(b) Being currently under a corrective action plan for a TxDOT or other State contract;

(c) Having repeated negative Vendor Performance Reports in the CPA Vendor Performance Tracking System ("Vendor Performance Reports") for the same reason;

(d) Having a record of repeated non-responsiveness to vendor performance issues; and

(e) Having purchase orders that have been cancelled or terminated in the previous 12 months for non-performance, such as late delivery.

(3) TxDOT may conduct reference checks with other entities regarding Respondent's past performance in addition to evaluating Respondent's Vendor Performance Reports.

(4) Respondent's past performance may also be used to determine whether a Respondent has sufficient resources and ability to perform the Work.

ARTICLE IV. EVALUATION AND AWARD

Section IV.01 DETERMINATION OF AWARD.

TxDOT intends to make an award to the Respondent offering the best value to the State. In determining the best value for the State, the purchase price and whether the Goods or Services meet specifications are the most important considerations, unless otherwise stated in the Solicitation.

Section IV.02 TIE RESPONSES.

In case of tie Responses, one or more Preferences will be used to make an award. Tie Responses, which cannot be resolved by application of one or more Preferences, will be made by drawing lots.

Section IV.03 NON-AWARD.

TxDOT may reject all Responses at its discretion. Submission of a Response confers no legal rights upon any Respondent.

ARTICLE V. CONTRACT

Section V.01 ASSIGNMENT.

If awarded a Contract, Respondent shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from TxDOT. Any attempted assignment in violation of this provision will be void and without effect.

Section V.02 STATE FUNDS.

Any Contract resulting from the Solicitation is subject to termination or cancellation, without penalty to TxDOT, either in whole or in part, subject to the availability of state funds.

ARTICLE VI. INSPECTIONS AND TESTS

Section VI.01 INSPECTIONS AND TESTS.

TxDOT may test and inspect Goods before award of the Contract to ensure compliance with the Statement of Work. Goods may be inspected and tested by TxDOT at Respondent's place of business or a TxDOT specified location. The cost of the sample and any third-party testing required by TxDOT shall be borne by Respondent.

ARTICLE VII. RESPONDENT AFFIRMATIONS

Section VII.01 MISREPRESENTATIONS.

Respondent agrees and acknowledges that submitting false information or making material misrepresentations in connection with the Response may void the Response and any resulting Contract and may result in removal of Respondent from the Centralized Master Bidders List.

Section VII.02 REPRESENTATIONS, WARRANTIES, COVENANTS, AND CERTIFICATIONS.

a) Respondent represents, warrants, covenants, and certifies that:

(1) FALSE STATEMENTS: all information contained in the Response or provided to TxDOT in connection with the Solicitation is accurate and complete.

(2) GRATUITIES: Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Response.

(3) PARTICIPATION IN SOLICITATION: under Section 2155.004(b) of the Government Code, the individual or business entity named in the Response is not ineligible to receive a Contract.

(4) ANTITRUST LAWS: in accordance with §2155.005 of the Government Code, neither Respondent nor any representative of Respondent has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15, of the Texas Business and Commerce Code or the federal antitrust laws, or (2) communicated directly or indirectly the contents of the Response to any competitor or any other person engaged in the same line of business as Respondent.

(5) UNFAIR BUSINESS PRACTICES: Respondent:

(a) has not been the subject of allegations of deceptive trade practice violations under Business & Commerce Code Chapter 17 or the subject of allegations of any unfair business practice in any administrative hearing or court suit, nor has Respondent been found to be liable for such practices in such proceedings; and

(b) has no officers who have served as officers of other entities who have been the subject of allegations of deceptive trade practice violations or the subject of allegations of any unfair business practices in an administrative hearing or court suit and such officers have not been found to be liable for such practices in such proceedings.

(6) CHILD SUPPORT: under Section 231.006 of the Family Code, the individual or business entity named in the Response is not ineligible to receive the specified payment.

(7) CONTRACTING WITH EX-TXDOT EXECUTIVE DIRECTOR: under Government Code §669.003, Respondent does not employ, or disclose in its Response, the current or any former executive director of TxDOT.

(8) SUSPENSION AND DEBARMENT: neither Respondent nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.

(9) NEPOTISM DISCLOSURE:

(a) Respondent does not have any knowledge that any of its employees or any employees of a subcontractor who are expected to perform the Work under the Contract has a relative who is employed by TxDOT unless Respondent has notified TxDOT otherwise in its Response.

(b) In this section, the term "relative" means:

(i) A person's great grandparent, grandparent, parent, aunt or uncle, sibling, sibling's spouse, niece or nephew, spouse, child, child's spouse, grandchild, or great grandchild.

(ii) The grandparent, parent, sibling, child, or grandchild of the person's spouse.

(10) EXCLUDED PARTIES: Respondent is not listed in the prohibited vendors list authorized by Executive Order No. 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.

(11) PRIOR DISASTER RELIEF CONTRACT VIOLATION: the individual or business entity named in the Response is not ineligible to receive the Contract under Government Code §§2155.006 and 2261.053.

(12) ABORTION PROVIDER: Respondent is not an abortion provider or an affiliate of an abortion provider under Government Code §2273.003.

(13) LOBBYING: TxDOT's payments to Respondent and Respondent's receipt of appropriated funds under a Contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.

(14) ENTITIES THAT BOYCOTT ISRAEL: pursuant to Government Code §2271.002, Respondent either:

(a) meets an exemption criterion under §2271.002 and has described the facts that establish the exemption in its Response, or

(b) does not boycott Israel and will not boycott Israel during the Contract Term.

(15) FOREIGN TERRORIST ORGANIZATIONS: Respondent is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Government Code §2252.152.

(16) CRITICAL INFRASTRUCTURE: pursuant to Government Code §2275.0102, neither Respondent nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code §2275.0103, or (2) headquartered in any of those countries.

(17) CONTRACTING INFORMATION RESPONSIBILITIES: Respondent will comply with the requirements of §552.372(a) of the Government Code and any other applicable requirements of Subchapter J, Chapter 552 of the Government Code. Respondent acknowledges that the requirements

of Subchapter J, Chapter 552 of the Government Code may apply to the Solicitation.

(18) HUMAN TRAFFICKING PROHIBITION: the individual or business entity named in the Response is not ineligible to receive the Contract under Government Code §2155.0061.

(19) NO CONFLICTS OF INTEREST: 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.

(20) DISCLOSURE OF INTERESTED PARTIES: if selected for award of a Contract, Respondent will submit to the Agency a Certificate of Interested Parties in the form prescribed in the Texas Ethics Commission prior to Contract execution in accordance with Government Code §2252.908, if applicable.

(21) FINANCIAL CONDITION: Respondent is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital and resources to perform the Work.

(22) BANKRUPTCY: Respondent is not the subject of any pending bankruptcy petition.

(23) AUTHORIZATION TO CONDUCT BUSINESS IN TEXAS: Respondent is legally authorized to conduct business in Texas and, if required, is registered with the Texas Secretary of State.

(24) TAXES: Respondent is current on all taxes and fees applicable to Respondent including, without limitation, income, and franchise taxes.

(25) COVID VACCINE PASSPORTS: the individual or business entity named in the Response is not ineligible to receive the Contract under Health and Safety Code §161.0085(c).

(26) FIREARM AND AMMUNITION DISCRIMINATION: pursuant to Government Code §2274.002, to the extent applicable to Respondent and the Solicitation. Respondent:

(a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and

(b) will not discriminate during the term of the Contract against a firearm entity or firearm trade association.

(27) E-VERIFY: pursuant to Executive Order RP-80, if the Work includes the performance of Services, Respondent shall, to the extent permitted by law, utilize the United States Department of Homeland Security's E-Verify system during the Contract Term to determine the eligibility of:

(a) All persons employed by Respondent during the term of the Contract to perform duties within the state of Texas, and

(b) All persons, including subcontractors, assigned by Respondent to perform the Work pursuant to the Contract within the United States of America.

(28) ENERGY COMPANIES BOYCOTTS: either (1) Respondent does not, and will not for the duration of the Contract, boycott energy companies or (2) the verification required by Government Code §2276.002 does not apply to the Contract.

(29) STATE OFFICERS AND EMPLOYEES: pursuant to Government Code §572.069, Respondent has not employed and will not employ a former state officer or employee who, during the period of state service or employment, participated in a procurement or contract negotiation involving Respondent within two (2) years after the date the Contract was signed or the procurement was terminated or withdrawn.

(30) INSURANCE: if selected for award of a Contract, Respondent will obtain and maintain for the Contract Term the insurance coverages described

in the Insurance Requirements and will provide proof of insurance in the form and with the content set forth in the Insurance Requirements to TxDOT within five (5) Business Days of request by TxDOT.

(31) NO FELONY CRIMINAL CONVICTIONS: neither Respondent nor any of Respondent's employees, agents, representatives, Subcontractors or Subcontractors' employees have been convicted of a felony criminal offense or, if such a conviction has occurred, Respondent has fully advised TxDOT in writing of the facts and circumstances surrounding the conviction.

(32) NO INFRINGEMENT: use or sale of any Goods, except (with respect to patents) Goods produced to TxDOT's detailed design, will not infringe any adverse valid patent, copyright, trademark, or other intellectual property rights.

(33) SURVEILLANCE TARGETING: Respondent will not directly or indirectly:

(a) engage in surveillance targeting:

(i) a member of the State legislature or a person employed to support the State legislature in any capacity;

(ii) a family member of a person described in subsection (1);

(iii) a state agency employee; or

(iv) an individual making a complaint or raising concerns regarding State agency operations or contracting;

(b) engage in an act of intimidation, coercion, extortion, undue influence, or other similar conduct intended to influence, silence, or retaliate against a person described in subsection (i) above, or;

(c) use private or confidential information to manipulate or influence a State contracting decision or proceeding.

(34) EXECUTIVE ORDER GA-48: pursuant to Executive Order GA-48, neither it, nor its holding companies or subsidiaries, is:

(a) Listed in Section 889 of the 2019 National Defense Authorization Act;

(b) Listed in Section 1260H of the 2021 National Defense Authorization Act; or

(c) Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. Section 791.4; or

(d) Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. Section 791.4.

Section VII.03 INACCURACIES.

a) During the Solicitation process, Respondent must promptly notify TxDOT if any representation, warranty, covenant, or certification in this Article was inaccurate when made, has become inaccurate, or is otherwise no longer true or complete.

b) Respondent acknowledges that TxDOT may disqualify the Response, refuse to award a Contract, terminate the Contract, withhold payment, and exercise any other remedy if any representation, warranty, covenant, or certification in this Article is, now or at any time during the Solicitation process, untrue, inaccurate, or breached.

Section VII.04 SURVIVAL.

This Article shall survive the conclusion of the Solicitation process and shall remain enforceable against Respondent, irrespective of whether a Contract is awarded.

ARTICLE VIII. RIGHT TO AUDIT

Section VIII.01 STATE AUDITOR.

The state auditor may conduct an audit or investigation of Respondent or any other entity or person 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, Respondent or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor access to any information the state auditor considers relevant to the investigation or audit.

Section VIII.02 TXDOT AUDITOR.

TxDOT's internal auditors may conduct an audit or investigation of Respondent or any other person receiving funds directly under the Contract or indirectly through a subcontract under the Contract. TxDOT has the right to audit Respondent's books and records during normal work hours. Respondent or any other entity that is the subject of an audit or investigation by TxDOT must provide TxDOT's internal auditor access to any information TxDOT considers relevant to the investigation or audit.

Section VIII.03 SUBCONTRACTS.

Respondent will ensure that this Article concerning the authority of the state auditor and TxDOT to audit funds received indirectly by subcontractors through Respondent and the requirement to cooperate is included in any subcontract it awards.

ARTICLE IX. MISCELLANEOUS

Section IX.01 VENUE AND JURISDICTION; APPLICABLE LAW.

The venue of any suit concerning the Solicitation and any resulting Contract is fixed in any court of competent jurisdiction of Travis County, Texas. The Solicitation and any resulting Contract shall be governed by and construed in accordance with the laws of the state of Texas, without regard to the conflict of law provisions.

Section IX.02 DEBT TO STATE.

Respondent agrees that any payments due under the Contract will be applied toward any debt or delinquency that is owed to the state of Texas.

Section IX.03 TITLE VI ASSURANCE.

TxDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and 49 C.F.R. Part 21 and 28 CFR §50.3 (for purposes of this section and §6.10 only, the "Acts" and the "Regulations," respectively), hereby notifies all bidders that it will affirmatively ensure that in any Contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award. Nondiscrimination programs require that federal-aid recipients, sub-recipients, and contractors prevent discrimination and ensure nondiscrimination in all their programs and activities, whether those programs and activities are federally funded or not.

Section IX.04 PUBLIC INFORMATION ACT.

Respondent understands that TxDOT will comply with the Public Information Act as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Solicitation or any resulting Contract may be subject to public disclosure pursuant to the Public Information Act. In accordance with §2252.907 of the Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the Contract and not otherwise excepted from disclosure under the Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

Section IX.05 DISASTER RECOVERY PLAN.

Within five (5) Business Days of a request of TxDOT, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.

Section IX.06 BUY TEXAS AFFIRMATION.

In accordance with Government Code §2155.4441, Respondent agrees that if the Contract includes the provision of Services, then during the performance of the Contract Respondent will purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

Section IX.07 DISPUTE RESOLUTION.

Disputes arising under the Contract shall be resolved in accordance with the dispute resolution process provided in Government Code Chapter 2260 and 43 TAC §§9.1 and 9.2.

Section IX.08 INDEMNIFICATION.

RESPONDENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS OR OMISSIONS OF RESPONDENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT IS NAMED AS A DEFENDANT IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Section IX.09 INFRINGEMENT.

a) RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND TXDOT AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL CLAIMS INVOLVING VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE AND SERVICE MARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF RESPONDENT PURSUANT TO THE CONTRACT; (2) ANY DELIVERABLE WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED UNDER THE CONTRACT;

AND/OR (3) TXDOT'S AND/OR RESPONDENT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TXDOT BY RESPONDENT OR OTHERWISE TO WHICH TXDOT HAS ACCESS AS A RESULT OF RESPONDENT'S PERFORMANCE UNDER THE CONTRACT. RESPONDENT AND TXDOT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN THE STATE OF TEXAS OR TXDOT ARE NAMED AS A DEFENDANT IN ANY LAWSUIT, AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM TXDOT AND THE OFFICE OF THE TEXAS ATTORNEY GENERAL. IN ADDITION, RESPONDENT WILL REIMBURSE TXDOT AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES, OR OTHER AMOUNTS, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF TXDOT DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF RESPONDENT OR IF TXDOT IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TXDOT WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND RESPONDENT WILL PAY ALL REASONABLE COSTS OF TXDOT'S COUNSEL.

b) RESPONDENT WILL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED BY:

(1) INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TXDOT FROM A THIRD PARTY UNRELATED TO THE RESPONDENT OR THE PRODUCTS PROVIDED OR THE SERVICES PERFORMED UNDER THE CONTRACT, OR

(2) USE OF THE PRODUCT OR SERVICE BY TXDOT THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT BETWEEN RESPONDENT AND TXDOT.

c) IF RESPONDENT BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TXDOT PROVIDES RESPONDENT WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, RESPONDENT MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TXDOT, MUST), AT RESPONDENT'S SOLE OPTION AND EXPENSE:

(1) PROCURE FOR TXDOT THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR

(2) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH A FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TXDOT'S USE IS NON-INFRINGING.