



Brazos Transit District

Request for Proposals

RFP # 08022021

General Contractor for Bryan Maintenance Shop Rehabilitation

August 2, 2021

Table of Contents

Section 1 Request for Proposals	3
1.1 Introduction.....	3
1.2 Vendor Registration	3
1.3 Solicitation Data	3
1.4 Offeror Communications and Requests	4
1.5 Instruction to Offerors	5
1.6 Evaluation Criteria and Procedures.....	7
1.7 Response to Proposals	9
1.8 Type and Term of Contract.....	13
1.9 Invoicing and Payment	13
1.10 Bonding and Insurance.....	13
1.11 Disadvantaged Business Enterprises	13
Section 2 Project Specifications	15
2.1 Purpose	15
2.2 Warranty	15
2.3 Scope of Work	15
Section 3 Required Forms	18
3.1 Acknowledgment of Addendum	19
3.2 Request for Change or Approved Equal	20
3.3 Proposal Deviation Form	21
3.4 Buy America	22
3.5 DBE Compliance Statement	23
3.6 DBE Schedule of Utilization	24
3.7 DBE Good Faith Effort Documentation	25
3.8 Conflict of Interest Acknowledgment and Certification.....	27
3.9 References - Vendor.....	28
3.10 Pricing Schedule	29
3.11 Suspension and Debarment Certification Form	30
3.12 Delinquent State Business Tax Certification.....	32
3.13 Offer	33
3.14 PTN-130.....	34
3.15 Lobbying Certification	35
Section 4 Required Federal Clauses	36

Section 1 Request for Proposals

1.1 Introduction

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 16 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 the rehabilitation of the Maintenance facility located at 1759 N. Earl Rudder Frwy Bryan Texas 77803. BTD has the right to award to multiple contractors as needed and the right to award all, part or none of the projects listed in this RFP.

1.2 Vendor Registration

Prospective Offerors must be registered with BTD and must complete a registration form online by visiting our website at www.btd.org

1.3 Solicitation Data

Solicitation Schedule

RFP Release Date	August 2, 2021
Questions or Request for Deviation due to BTD.....	August 16, 2021 at 4:00 p.m. CST
BTD Responses to Questions and Deviations due	August 26, 2021 by 4:00 p.m. CST
Proposals Due	September 3, 2021 by 4:00 p.m. CST
Contract Award.....	September 24, 2021

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.

Pre-Proposal Site Visits

Offerors are encouraged to visit the maintenance facility at 1761 N. Earl Rudder Frwy Bryan, Texas 77803. The Point of Contact for site visits is Alivia Youree, you may contact her at procurement@btd.org or (979)778-4495.

Procuring Agency:

Brazos Transit District
2117 Nuches Lane
Bryan, Texas 77803

Contracting Officer:

Wendy Weedon, Deputy CEO/General Manager
Phone: (979)778-4495 Fax: (979)778-3606
E-Mail: procurement@btd.org

Scope

BTD is seeking a licensed general contractor to remodel/demo/construct a new maintenance office and parts area. The demo and rebuilding of the offices and parts room are to include engineering if needed for the removal/reconstruction. The transforming of the existing generator shelter into a storage building. BTD has the right to award to multiple contractors as needed and the right to award all, part or none of the projects listed in this RFP.

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

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 #080221 must be in writing and directed to Alivia Youree at 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 16, 2021 at 4:00 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

BTD 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 BTD's sole option disqualify the proposal.

If BTD 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 BTD. All deviations not found by BTD 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

Submission Requirements

Sealed proposals in one original and three copies must be received by September 3, 2021 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 General Contractor for Bryan Maintenance Shop Rehabilitation RFP #080221". All proposals are to be submitted to:

Brazos Transit District
Wendy Weedon, Deputy CEO/General Manager
2117 Nuches Lane
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
- DBE Compliance Statement
- DBE Schedule of Utilization
- DBE Good Faith Effort

- Conflict of Interest
- References- Vendor
- Pricing Schedule
- Suspension and Debarment Certification Form
- Delinquent State Business Tax Certification
- Offer
- PTN-130
- Lobbying Certification

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 Timeline. Please provide a detailed project timeline including estimated start dates, schedule of activities, deliverables and resources to be used.

Tab 8 Pricing Model. Please provide an estimated price based on your project scope. Please include a fee breakdown.

Tab 9 Warranty Information. If applicable to any work performed or equipment installed.

Tab 10 Insurance: (Section 2.6)

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 11 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 5-year warranty to BTD. There should be a labor warranty as well.

Modification or Withdrawal or 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

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

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

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

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, 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 BTD

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 BTM, 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 BTM.

Fraud, Waste or Abuse

BTM must promptly notify the U.S. DOT Inspector General and the FTA Chief Counsel or Region VI if BTM has knowledge of potential fraud, waste or abuse accruing 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, 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.

1.8 Type and Term of Contract

BTM shall negotiate and enter into a fixed contract cost for all work to be performed. BTM has the right to award to multiple contractors as needed and also the right to award all, part or none of the projects listed in this RFP.

1.9 Invoicing and Payment

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

BTM 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 Bonding and Insurance

General Liability Insurance. Contractor will be required to carry liability insurance for the length of the contract in of amount of \$1 million for the length of the contract.

Workman's Compensation. Contractor will be required to carry Workers Compensation Insurance for the length of the contract.

Employee Dishonesty Bond. Contractor will be required to carry an employee Dishonesty bond in the amount of \$20,000 for the length of the contract.

After award, proof of the required insurance will be required prior to contract signing.

BTM is to be named as additional insured on the General Liability Insurance. The General Liability and Workers Compensation policies must include a Waiver of Subrogation in favor of BTM. The insurance policies provided by Contractor shall also be endorsed to provide BTM with 60 days advance written notice prior to any cancellation or reduction in coverage, and 10 days' notice for non-payment of premium.

1.11 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%.

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 BTD deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying sealed bid:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the Offerors commitment to use a DBE Subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime Contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

Offerors must present the information required above as a matter of responsiveness with initial proposals.

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 from BTD. 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 BTD, 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.

Section 2 Project Specifications

2.1 Purpose

The purpose of this RFP is to solicit and retain a licensed general contractor to remodel/demo/construct a new maintenance office and parts area. The demo and rebuilding of the offices and parts room are to include engineering if needed for the removal/reconstruction. The transforming of the existing generator shelter into a storage building. BTD has the right to award to multiple contractors as needed and the right to award all, part or none of the projects listed in this RFP.

BTB has the right to award to multiple contractors as needed and the right to award all, part or none of the projects listed in this RFP.

2.2 Warranty

The painting must have a minimum of 20 years.

One (1) Year Warranty Period: In addition to any warranties contained elsewhere in this Contract or implied by law, the Contractor and each subcontractor warrant that, for a period of one year from the date of Final Acceptance, the work performed by this Contract conforms to the contract requirements and is free of any defect of equipment, material, and workmanship performed by the Contractor or any of the subcontractors or suppliers. The Contractor or any subcontractor shall remedy, at their own expense, any such failure to conform or any such defect.

2.3 Scope of Work

Office, Parts Room, Restrooms, and Breakroom

Approximately 3,000 SF of remodeled or new office/parts area. Included is:

- Demolition with asbestos survey and remediation of ducts, if they are found to be hot.
- Demolition of second floor
- All ceiling heights to be a finished height of 10'.
- Expand Assistant General Manager's (AGM's) office to include a bathroom with sink and toilet, eliminating the hallway directly outside so that there is no access from the restrooms/break area. Add exterior facing window and exit door with awning. The walls/ceiling also need to be insulated to cut down on noise intrusion from the shop. The existing air-conditioning duct work, ceiling and lighting will also need to be redone along with communication and electrical plugs. Replacing the existing entry door with a solid door instead of glass.
- Divide existing parts office into an office-file room with an interior door connecting AGM office and parts offices to the file room. Replace the existing entry door with a solid door instead of glass. The walls/ceiling need to be insulated to cut down on noise intrusion from the shop area. The ceiling, duct work and lighting will need to be done along with communication lines and electrical plugs.
- Narrow the women's restroom down to one ADA accessible stall (second stall to be walled off and added to in the AGM office expansion). Convert one of the men's stalls to be ADA accessible and add an additional urinal. Functional exhaust fans to be added in all 3 restrooms.
- Enclose the area immediately inside rear main-entry door and remove the existing staircase to make room for a break area/lunch room/meeting area. Will need to expand the existing cabinets and relocate the eyewash station. Add a walk-through door on the West end of break room exit/entry from the main shop.
- Enclose the entire parts room area, walling off the West end turning it into an office for the maintenance staff. Add windows along the West, North and South sides of the maintenance office, and windows looking out into the shop, break area and parts room. Move parts room counter/window down to the South/West corner so that it can be accessed from the break area/entry door for part drop offs. The main mechanical access door to parts room needs to

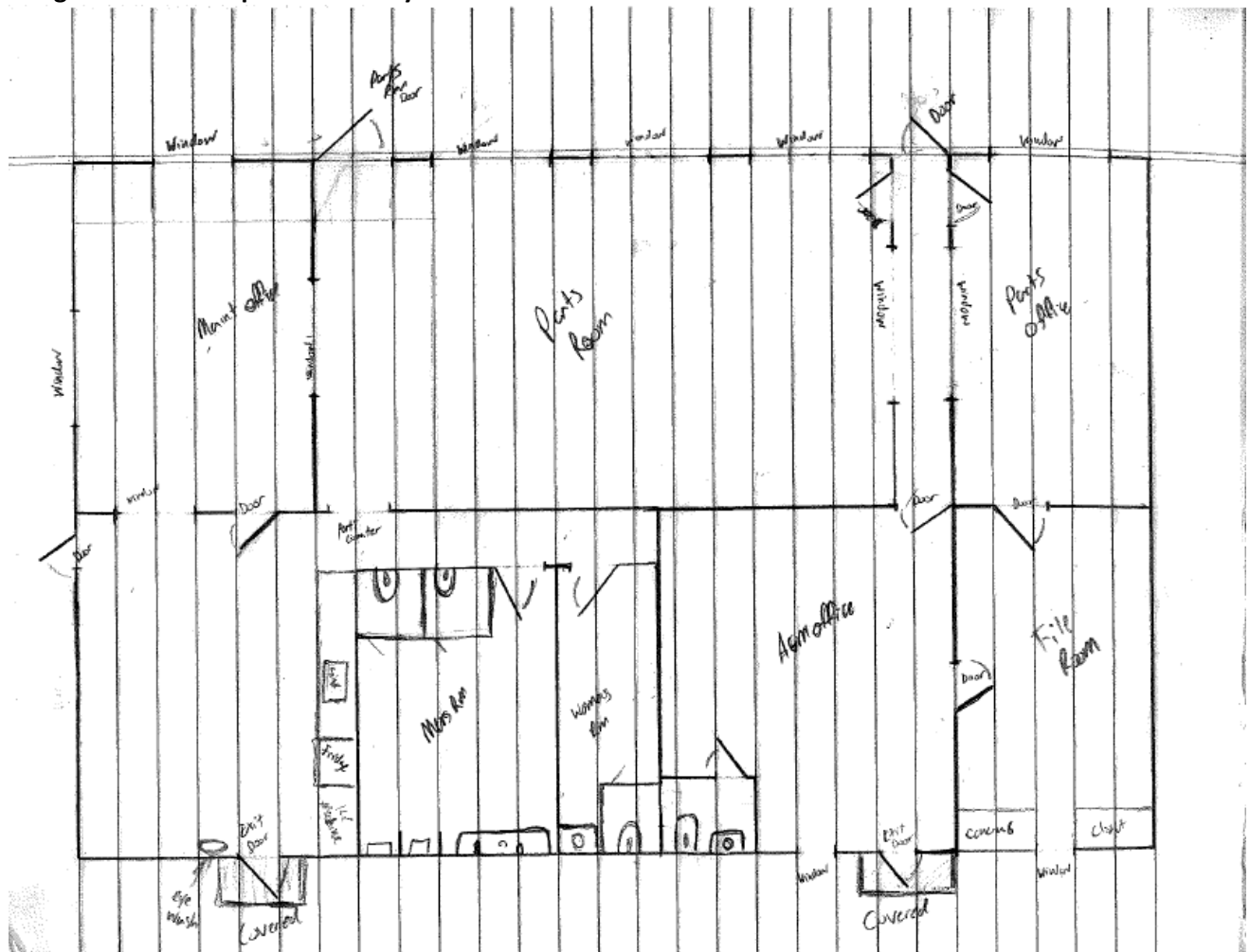
be moved down to the North/West corner of the parts room. An additional door accessible directly from the parts office hallway, this hallway needs to also have a door separating it from the shop area.

- Remove existing storage decking above office. (Existing air conditioning equipment/water heater will need to be relocated).
- Add additional air conditioning to include the now enclosed parts room, break area and mechanic office. Make sure that the AGM/parts offices are on a shared system separated from the rest. Each space needs its own return air with the exception of the rest rooms.
- Move existing and add any additional lighting, plumbing and electrical and communications wiring as needed. This will include the current sprinkler system in the offices and under existing staircase.
- New plumbing fixtures.
- New millwork in bathrooms and breakroom.
- New flooring or polished concrete.
- New doors and window including one new exterior door and one new exterior window.
- 2 new awnings, 1 for existing door and one for the new door.
- Lay in acoustical ceiling throughout except for restrooms, the restrooms will have a hard lid.
- Electrical package with all new LED lighting throughout.
- Fire sprinkler modifications.
- New monitoring panel for fire sprinklers to bring it to code.
- 2 new HVAC systems to cover the three offices and the remaining areas.

Transformation of Existing Generator Shelter

- New masonry block wall to enclose the structure and fill with concrete to match the existing structure.
- Exterior paint.
- New 12'x12' manually operated overhead door.
- New man door.
- New metal roof with gutters.
- New large vent fan.
- New lights and receptacles.
- New concrete to level the existing floors.
- New concrete ramp for entry at the overhead door.

Rough Sketch of Proposed New Layout:



Coordination:

- a. **Mutual Responsibility of Contractors:** If, through acts of neglect on the part of the Contractor, any other contractors or any subcontractor shall suffer loss or damage to work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractor will so settle. If such other Contractor or subcontractor shall assert any claim against BTD due to any damage alleged to have been sustained, BTD shall notify the Contractor, who shall indemnify and save harmless BTD against any such claim.
- b. **Superintendence by Contractor:**
 1. **Representative on Site:** The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent hereinafter designated his representative, satisfactory to the Contract Administrator, on the work site at all times during progress, with authority to act for the Contractor. Before starting work, the Contractor shall designate in writing the name, title, qualifications, and experience of this proposed representative and scope of his authority for approval by the Contract Administrator. A facsimile of the designated representative's signature shall be submitted to the Contract Administrator.
 2. **Change of Representative:** The Contractor shall notify the Contract Administrator, in writing, when the Contractor desires to change his representative, and shall follow the procedures specified above (see, "Representative on Site") regarding the new proposed representative.

Uses of the Premises

Before beginning work, the contractor must secure approval from BTD for the following.:

1. Areas permitted for personnel parking.
2. Access to the job site.

3. Areas permitted for storage of materials and debris.

Clean Up

- a. Perform daily clean-up to collect all wrappings, empty containers, paper and other debris from the project site. Upon completion, all debris must be disposed of in a legally acceptable manner.
- b. Prior to the final inspection, the contractor must perform a pre-inspection to review all work and to verify the project has been completed and meets all specifications.

Wages- Must follow Davis Bacon for the minimum wages of all laborer's working upon the site--- The County for this project is Polk.

Important Links with more information for Davis Bacon Requirements:

<https://www.dol.gov/whd/regs/compliance/whdfs66.pdf>

<https://www.dol.gov/whd/govcontracts/dbra.htm>

<https://www.wdol.gov/dba.aspx> Wage Determination

<https://www.dol.gov/compliance/guide/dbra.htm#RRN>

Surveys, Permits and Regulations: Unless otherwise expressly provided for in this Contract, the Contractor will be responsible for all surveys necessary for the execution of the Work under the Contract. The Contractor will procure and pay for all permits, licenses and approvals necessary for the execution of the Work under the Contract. The Contractor shall comply with all laws, ordinances, rules, orders and regulations relating to the performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

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.

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. DBE Compliance Statement
- 6. DBE Schedule of Utilization
- 7. DBE Good Faith Effort
- 8. Conflict of Interest
- 9. References - Vendor
- 10. Pricing Schedule
- 11. Suspension and Debarment Certification Form
- 12. Delinquent State Business Tax Certification
- 13. Offer
- 14. PTN-130
- 15. Lobbying Certification

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 # 080221

The undersigned acknowledges receipt of BTM's Request for Proposals and the following addendums to BTM's Solicitation Package.

ACKNOWLEDGMENT OF ADDENDUM

- Addendum No. _____ Dated _____
- Addendum No. _____ Dated _____
- Addendum No. _____ Dated _____
- Addendum No. _____ Dated _____
- Addendum No. _____ Dated _____
- Addendum No. _____ Dated _____

Failure to acknowledge receipt of all amendments may cause Offeror to be considered nonresponsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with bid/proposal.

Authorized Signature

Company Name (print)

Name and Title (print)

Date

RFP # 080221

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: [Multiple horizontal lines for text entry]

Authorized Signature [Line]

Company Name (print) [Line]

Name and Title (print) [Line]

Date [Line]

Brazos Transit District: [Multiple horizontal lines for text entry]

RFP # 080221

The following form shall be completed for each condition, exception, reservation or understanding (i.e., deviation) in the proposal according to "Conditions, Exceptions, Reservations and Understandings".

Deviation #: _____ Page: _____ Section: _____

Complete Description of Deviation:

Rational (Pros & Cons)

Authorized Signature

Company Name (print)

Name and Title (print)

Date

RFP # 080221

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 DBE Compliance Statement

RFP # 080221

Check the statement which applies to your bid.

1. **Bid meets or exceeds DBE percentage participation goal established for this procurement.**
You must submit the Schedule of DBE Utilization (Forms page A36 in the BPPM) along with bid. If you are a certified DBE, complete the first set of questions on Schedule of DBE Utilization for yourself and submit your certification number from certifying agency. Submit certification numbers for each DBE you intend to use.

2. **Bid does not meet the DBE percentage participation goal established for this procurement, but you have made bona fide good faith efforts to reach those goals.**
If this statement applies, you must submit the Schedule of DBE Utilization and the DBE Good Faith Effort Documents (Forms page A-36 in the BPPM) along with bid, together with all other documentation of good faith efforts which you wish BTD to consider in evaluation your bid. Only documentation submitted with bid will be considered. Submit certification numbers for each DBE you intend to use.

3. **Bid does not have any DBE percentage participation for this procurement, BUT you believe this procurement meets the following exception to BTD's DBE Policy:**
"This solicitation is for the procurement of a standard manufactured item or other similar procurement with no subcontracting opportunities."

Firm should check Yes or NO to both questions below and then explain in the exception information area below. Failure to provide an explanation may render the bid non-responsive. (Subcontracting opportunities may include delivery, assembly, installation, painting, supplies etc. Supplies are items purchased specifically for this procurement other than the standard manufactured item requested by the invitation for bid).

a) Will you perform this entire contract without Subcontractors? Yes No

b) Will you perform this entire contract without suppliers? Yes No

(If you answered NO to either question above, please fully explain why you are seeking the exception. The existence of Subcontractor and supplier opportunities, usually indicate that option #2 and the Good Faith Effort Documents apply.)

Explanation:

Authorized Signature

Company Name (print)

Name and Title (print)

Date

(Note: Failure to complete and return the DBE forms as indicated above, will result in rejection of the bid. The making of a material misrepresentation of fact could be a basis of disqualification and may cause a firm to be considered for classification as an irresponsible contractor and barred from BTD work for a period of not exceeding six months).

3.6 DBE Schedule of Utilization

**Information on the DBE program: www.dot.state.tx.us/business/business_outreach/dbe.htm
Certified DBE Vendors: www.dot.state.tx.us/business/tucp/default.htm**

List all DBE's expected to participate in performing the contract resulting from this solicitation. If you have no DBE participation, but you are subcontracting out (i.e. work deliveries, transportation, parts and supplies, etc.) a portion of this procurement, then sign and date this form below and completely and thoroughly fill out and sign the Good Faith Effort Documents.

NOTE: Any firm listed below must be certified by the Texas Unified Certification Program (TUCP) and their corresponding certification number must be listed.

Name of prime Contractor (print) **RFP # 080221**
Bid Number

Note: If Prime Contractor is a certified DBE complete first section below for self.

Name of DBE Subcontractor of DBE Prime Contractor:

Address & Telephone Number:

Specify Subcontracting Tier: Type of Work to be Performed:

Dollar Amount for Work: \$ TUCP Certification#:

Name of DBE Subcontractor of DBE Prime Contractor:

Address & Telephone Number:

Specify Subcontracting Tier: Type of Work to be Performed:

Dollar Amount for Work: \$ TUCP Certification#:

Name of DBE Subcontractor of DBE Prime Contractor:

Address & Telephone Number:

Specify Subcontracting Tier: Type of Work to be Performed:

Dollar Amount for Work: \$ TUCP Certification#:

The undersigned will enter into a formal agreement with DBE Subcontractors for work listed above in this schedule conditioned upon execution of a contract with Brazos Transit District.

Signature Title Date

(Offeror may make additional copies of this schedule as needed to list all DBE Subcontractors that will be used on this contract.)

3.7 DBE Good Faith Effort Documentation (Page 1 of 2)

RFP # 080221

If the Offeror did not meet or exceed BTB's DBE subcontracting goal, then the Offeror must comply with BTB's DBE policy by documenting that good faith efforts were made. Please place a Yes or No in blanks below for items one, two and three to indicate if you have completed the good faith effort form, attached any related support documents, and provided any additional information/ support/clarification beyond that requested in the good faith effort documents. Item number three (providing additional information) is at the Offeror's responsibility to ensure that sufficient information is provided to BTB, so that good faith efforts can be comprehensively evaluated.

I, the Offeror, have (YES or NO):

- Yes No 1) Completely filled out this good faith effort form with signature and date,
 Yes No 2) Attached any related supporting documents, and also
 Yes No 3) Provided any additional information and/or documents that I (the Offeror) deemed necessary to support and/or clarify the good faith efforts that I made.

It is the Offeror's responsibility to correctly, accurately, and substantively provide all necessary information to BTB, at the time of bid submission. The information provided by the Offeror must be sufficient enough for BTB to determine that the efforts made by the Offeror to obtain DBE participation were such efforts that an Offeror actively and aggressively seeking to meet those goals would make. Actions or efforts which are merely "pro forma" or "going through the motions" do not constitute good faith efforts to obtain the participation of DBEs. BTB will look not only at the different kinds of efforts that the Offeror has made, but also the quality and intensity of those efforts.

This information will then be evaluated by BTB's DBE Department or a designee of BTB for good faith effort compliance. Failure to comply will render the bid non-responsive.

Note: The information requested below is not intended to be an inventory or check list. The DOT does not require BTB to insist that any Offeror do any particular one or any combination of the items on this list. It is not intended to be an exclusive or exhaustive list of all actions an Offeror, acting in good faith actively or aggressively seeking to obtain DBE participation would make. Other types of efforts or factors may be relevant in appropriate cases.

1. Please list each and every subcontracting and/or supplier opportunity which will be available in the completion of this project, regardless of whether it is to be provided by a DBE or non-DBE. Use additional sheets, if needed.

Subcontracting Opportunities	Supplier Opportunities
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

2. Did you obtain a list of DBE firms from BTB's DBE Department? A list may or may not have been included with the Invitation for Bid. If one was not included, or if additional lists are needed they can be obtained from the DBE Department upon request. The DBE Department can provide lists, when requested, by subcontracting areas. Yes No
3. Did you attend the pre-bid teleconference scheduled by BTB? **N/A**
Did you request bids from DBEs that also attended the pre-bid conference? Yes No
If Yes, list DBE Firm/Person Contacted.
4. Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number one above by mail? Yes No
5. Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number one above by fax? Yes No

6. Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number one above by telephone? Yes No
7. Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number one above by some other means? Yes No If Yes, please explain. _____
8. Did you advertise in local newspapers? Yes No If yes, then please attach a copy(s) of advertisements, with the date advertised and list the specific newspapers that were used.
9. Please provide the following information for every DBE firm that you contacted by any method or that initiated contact with you, but will NOT be used on this contract:
 - _____ a) Attach a listing of every DBE firm that you solicited a bid from or that initiated contact with you to ask about and/or submit an unsolicited bid to you. Include their mailing address, phone and fax numbers, and the date that solicitations were sent. Also, include the method used for the solicitation (i.e. mail, fax, phone, person contact, etc.). If you have a DBE contact name, include that as well.
 - _____ b) Indicate the subcontracting area(s) that you solicited bids on from each DBE firm and/or the subcontracting areas(s) for which each DBE firm submitted a bid to you, if different from what you solicited.
 - _____ c) If DBE firms submitted bids, but those bids were rejected, provide an explanation for rejecting those bids and attach documentation to support the reason for rejecting the bid (i.e. letters, memos, DBE bid amount, telephone notes, meeting notes, etc.)
 - _____ d) If a DBE firm's bid was rejected because of price, then list the DBE firm's bid price and the name and bid price of the Subcontractor or supplier that you will use in lieu of the rejected DBE firm.
 - _____ e) Indicate the number of times that follow-up contact was made with DBE firms after the initial solicitations of interest.
10. Did you contact all DBE firms that you solicited bids from in a timely manner such that the DBE firms had at least ten days prior to the bid submission date to prepare and submit a bid to you? Yes No If No, please explain.
11. Did you negotiate in good faith with interested DBE firms by, for instance, providing timely information regarding plans and specifications, breaking down subcontracts into economically feasible units to facilitate DBE participation, maintaining accessible lines of communications, etc.? Yes No
12. Did you assist interested DBE firms in obtaining bonding, lines of credit, or insurance required by BTD or by you as prime Contractor? Yes No If Yes, please explain.

ADDITIONAL INFORMATION

Please provide any additional information and/or documents that you (the Offeror) deem necessary to support and/or clarify that you made good faith efforts to meet the DBE subcontracting goal (be sure to attach any support documents).

Note: Failure to complete and return DBE forms as indicated above, will result in rejection of the bid. The making of a material misrepresentation of fact could be a basis for disqualification and may cause a firm to be considered for classification as an irresponsible Contractor and barred from BTD work for a period of not exceeding six months.

Authorized Signature

Company Name (print)

Name and Title (print)

Date

3.8 Conflict of Interest Acknowledgment and Certification

RFP # 080221

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.

3.9 References - Vendor

RFP # 080221

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:

3.11 Suspension and Debarment Certification Form

**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.

3.12 Delinquent State Business Tax Certification

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: _____

3.13 Offer

RFP # 080221

By execution below Offeror hereby offers to furnish equipment and services as specified in BTB's RFP # 080221 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

3.14 PTN-130

RFP # 080221

Please go to the link below and print off the PTN-130 (Vendor Consolidated Certification Form) and complete it.

<https://www.txdot.gov/inside-txdot/forms-publications/forms/public-transportation.html>

3.15 Lobbying Certification

RFP# 080221

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)

Name and Title (print)

Date

Section 4 Required Federal Clauses

4.1 Access to Records and Reports

a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

4.2 Bonding Requirements

A bid guarantee from each Offeror equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the Offeror will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;

A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract; and

A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

4.3 Clean Air Act and Federal Water Pollution Control Act

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

4.4 Civil Rights

BTD is an Equal Opportunity Employer. As such, BTD 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 Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. Prohibition against Employment Discrimination. Prohibits discrimination in employment on the basis of race, color, religion, sex or national origin.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that

amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5. 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.

4.5 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%. 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 BTD 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 BTD. In addition, the Contractor may not hold retainage from its Subcontractors.

The Contractor must promptly notify BTD, 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 BTD.

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 Contractors 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.

4.6 Employee Protections

Construction Activities. BTB agrees to comply, and assures the compliance of Contractor and each subrecipient at any tier of the Project, with the following laws and regulations providing protections for construction employees:

Prevailing Wage and Anti-Kickback

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with

the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Contract Work Hours and Safety Standards

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the

same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

Contract Work Hours and Safety Standards for Awards Not Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

4.7 Government-Wide Debarment and Suspension

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement 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 (Nonprocurement)," 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 BTD. If it is later determined by BTD that the bidder or Offeror knowingly rendered an erroneous certification, in addition to remedies available to BTD, 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.

4.8 Third Parties

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.

4.9 Program Fraud and False or Fraudulent Statements or Related Acts

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.

4.10 Termination

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 (Supplies and Service) 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, BTD may terminate this contract for default. BTD 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 Recipient.

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.

4.11 Buy America

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 60 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:

- i. FY16 & FY17 is more than 60% domestic content;
- ii. FY18 & FY19 is more than 65% domestic content; and
- iii. 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.

4.12 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 BTD. 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.

4.13 Energy Conservation

The Contractor agrees to, and assures that its Subrecipients will, comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

4.14 Interest of Members of, or Delegates to, Congress

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.)

4.15 Prohibited Interest

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.

4.16 Policies for all Tiers

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.

4.17 Federal Changes

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.

4.18 Incorporation of FTA Terms

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 BTM requests which would cause BTM to be in violation of the FTA terms and conditions.

4.19 Violation and Breach of Contract

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 this 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.

For purposes of this Contract, breach shall include.

Rights and Remedies of Contractor

In as much 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 Contract will be a default of this Contract. 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 Contract 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.

Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by an authorized representative of Agency. 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 Agency's authorized representative. 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 Agency's authorized representative 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 Agency, 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 its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the Contractor arising out of or relating to this Contract 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.

Rights and Remedies

The 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.

4.20 Drug and Alcohol Testing/Use

A contractor providing services involving the performance of safety sensitive activities must comply with 49 U.S.C. Section 5331 and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

4.21 Privacy Act

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.

4.22 Byrd Anti-Lobbying

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above 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. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency."

4.23 Equal Employment Opportunity

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.

4.24 Prompt Payment

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.

4.25 Notice to FTA and US DOT

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, 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.

4.26 Patent Rights and Rights in Data

Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or

otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.

a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and A-52

b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

4.27 No Federal Government Commitment or Liability to Third Parties

Except as the Federal Government expressly consents in writing, the recipient address that:

- A. The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third-Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement; and
- B. Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third-Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall no have any commitment or liability to any Third-Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

4.28 Veterans Preference

As provided in 49 U.S.C. § 5325(k), to the extent practicable, the Contractor agrees and assures that each of its Subrecipients:

- A. Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a Third-Party Contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and
- B. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.