



# **Brazos Transit District**

## **Request for Qualifications RFQ # TP02172024**

*Architecture and Design of Bus Station Transfer Point*

**DEADLINE FOR SUBMITTAL:**

May 15, 2024

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# Brazos Transit District (BTD)

## REQUEST FOR ARCHITECTURAL SERVICES

### 1.1 Purpose of RFQ

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Brazos Transit District (BTD) is requesting qualifications for architectural services from firms interested in contracting with BTD for providing professional architectural services for the design of BTD’s urban Transfer Point in Bryan, TX. The firm will provide all services necessary to assess and verify existing conditions; provide specifications for furniture, fixtures and equipment (FF&E); AV Equipment; provide computer-aided design and drafting (CADD) documentation; prepare bidding documents; provide permitting services; estimate construction costs; provide value engineering; assist with bidding and award activities; arranging and conducting meetings; perform construction phase services, including construction management; and assist in the warranty review.

BTD proposes to retain a qualified architectural firm or joint venture firm to provide the services described herein. Firms with significant experience in planning and designing projects with similar characteristics will be given prime consideration for this project. Firms with relevant experience and qualifications are encouraged to submit.

#### **It is the intent of BTD to select a single consultant to accomplish all the services outlined in this Request for Qualifications.**

It is intended that the selected firm or team accomplish and/or supply all services outlined in this Request for Qualifications. BTD has made no promises or representations and cannot offer, promise or guarantee that the selected firm will be awarded any future contracts to provide additional architectural or engineering services to BTD for this project.

### 1.2 Scope of Services

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Project Name:..... Architecture & Design of Urban Transfer Point  
Project Location: ..... 3350 S. Texas Ave, Bryan, Texas 77802  
Schedule: ..... Design in Summer 2024 and Construct in Fall/Winter of 2024

The building will be renovated on the existing BTD site at **3350 S. Texas Ave. Bryan, TX 77802.**

Building will be a modern structure of appropriate square footage to accommodate employees, users of local transit system, as well as users of other alternative forms of transportation. Occupancy will be business occupancy for a passenger waiting area/lobby and transfer point.

Site Work: Site concrete paving for bus parking/passing and site lighting. Landscaping and irrigation; and storm water storage on site.

Building envelope: Steel structure; concrete foundation; insulated roof system; and windows.

Update/develop outdoor area

Building interior finishes: Steel framed interior drywall (acoustically rated)

Remodel of waiting area/lobby, employee area and restrooms.

Upgrade U-shaped driveway to include a rear exit.

Building systems: Multi-zone HVAC system; LED lighting systems with specialized controls; audio/visual systems and energy control systems. Also, the use of solar panels.

Standard code plumbing systems and fire protection sprinkler systems. Intercom speaker system; security monitoring system; electronic door security systems; and emergency power systems (generator).

The building design needs to utilize new age and green materials when possible. It is BTD’s intent that the successful firm will be involved for the full duration of the phases of the project set forth below. Further the firm’s team shall consist of engineering services for civil, mechanical, electrical, plumbing and structural engineering.

The design of the facility shall comply with requirements of all applicable jurisdiction, codes and regulations, including but not limited to City planning, building, public works, fire departments, International Building Codes, State of Texas Building Codes, Americans with Disabilities Act, Federal Transit Administration (FTA) and other applicable agencies.

The following services will be required from the firm selected:

- Site plan phase
- Schematic design phase
- Design development phase
- Construction documents phase
- Bid/negotiations phase
- Construction management phase
- Project closeout phase
- Post construction warranty phase

The firm shall provide drawings and statement of probable cost at the end of Schematic Design, Design Development and Construction Documents phases for approval by BTD staff. BTD staff will review and provide authorization to proceed or modify design at the end of each of the above phases.

Contract documents shall be suitable for the solicitation of competitive bids by multiple General Contractors. The Firm shall submit to the City of Bryan documents for Permits.

Services shall include the Firm assisting BTD with the bidding process. This includes attending pre-bid meetings, answering questions that may arise during the bid process, issuing Addenda regarding clarifications to Bidders, taking appropriate action on equal bidding status or substitutions by the bidders, reviewing and subsequent awarding of a construction contract to a bidder determined to offer the best value to BTD.

The proposed project would accommodate future transit needs in the surrounding growing community.

**1.3 FUNDING**

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Funding for the work described herein will be provided by BTD, which receives funding from FTA and TxDOT.

**1.4 SCHEDULE**

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RFQ Release Date.....	February 17, 2024
Pre-Proposal Meeting .....	March 11, 2024 at 10:00 a.m. CST
Questions or Request for Deviation due to BTD.....	April 1, 2024 at 5:00 p.m. CST
BTB Responses to Questions and Deviations due .....	April 15, 2024 by 5:00 p.m. CST
Proposals Due .....	May 15, 2024 by 4:00 p.m. CST
Contract Award.....	June 3, 2024

**1.5 SELECTION PROCESS**

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From a review of the statements of qualification received, BTD intends to evaluate the proposals and possibly invite one or more firms to be interviewed before making a final selection of a firm for the projects. BTD will notify firms of the date and time of the interview. BTD reserves the right to make a selection based solely on statements of qualifications received.

The selected firm whose selection was based on qualifications will then negotiate with BTD on fee and contract conditions. If a reasonable fee cannot be achieved with the firm of choice, negotiations will proceed with the second most-qualified firm until a mutually agreed contract can be negotiated.

Firms will be screened using a two-step process.

**Step 1 (Statement of Qualifications)** – An evaluation team will rank Firms’ SOQ’s based on the selection criteria and relative weights set out in this RFQ. If decided by the evaluation team it is necessary, a maximum of three firms will be short-listed to participate in Step 2.

**Step 2 (Presentation/Interview)** – Short-listed Firms may be required to participate in an on-site presentation/interview.

The selected Firm will be the Firm that, in the sole opinion of the Selection Committee, offers the best value to BTM based on the SOQ. However, BTM reserves the right to select a Firm without presentation/interview based solely on the information contained in the SOQ.

## **1.6 EVALUATION CRITERIA**

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The criteria used to evaluate the RFQ responses will include, but not be limited to, the following (items listed below are not listed in order of importance):

- A. Qualifications of Firm (20 %)  
Qualifications of firm, specifically as they relate to this Project.
- B. Firms Experience on Similar Projects (20%)  
Related project experience of the firm(s) and the individuals who would be assigned to this Project.
- C. Available Resources to Complete Project (25%)  
This criterion would include the analytical, design tools, personnel, resources or methodologies commonly used by the firm that may be applicable to the project categories. Financial capacity to take on a project of this size.
- D. Responsiveness to the RFQ (15%)  
This would include any documents submitted such as concept plans, space planning, and design concepts and other related items.
- E. Professional References (20%)  
Provide names and contact information for professional references.

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 RFQ 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. BTM reserves the right to request a Firm to provide any missing information and to make corrections. Firms are advised that the detailed evaluation forms and procedures will follow the same proposal format and organization specified in the Instructions to Firms. Therefore, Firms shall pay close attention to and strictly follow all instructions. Submittal of a proposal will signify that the Firm 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.

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

## Evaluations of Competitive Proposals

1. **Qualification of Responsible Firms.** Proposals will be evaluated to determine the responsibility of Firms. A final determination of a Firm's responsibility will be made upon the basis of initial information submitted in the proposal, any information submitted upon request by BTM, information submitted in a BAFO if requested by BTM and information resulting from BTM's inquiry of Firm's references and its own knowledge of the Firm.
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 BTM finds not to meet these requirements and may not be made to meet these requirements, may be determined by BTM to not be considered for the competitive range. The requirements are as follows:

- a. Firm is initially evaluated as responsible in accordance with the requirements of "Qualification Requirements", or that BTM 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. Firm has followed the instructions of the RFQ and included sufficient detailed information, such that the proposal can be evaluated. Any deficiencies in this regard must be determined by BTM to be either a defect that BTM will waive in accordance with "Acceptance/Rejection of Proposals" or that the proposal can be sufficiently modified to meet these requirements.
- c. BTM 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. BTM will make specific notes of questions, issues, concerns, and areas requiring clarification by Firms and to be discussed in any meetings held with Firms which BTM finds to be within the competitive range.

Rankings and spreads of the proposals against the evaluation criteria will then be made by BTM 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.** Firms of any proposals that have been determined by BTM 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 Firms in the Competitive Range.** The Firms whose proposals are found by BTM to be within the competitive range or may be reasonably made to be within the competitive range, will be contacted by BTM to answer any questions and/or requests for clarifications. Each such Firm may be invited for a private interview(s) and discussions with BTM 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, BTM shall have the right to reject any and all such conditions and/or exceptions and instruct the Firm to amend its proposal and remove said conditions and/or exceptions; and any Firm failing to do so may cause BTM to find such proposal to be outside the competitive range.

No information, financial or otherwise, will be provided to any Firm about any of the proposals from other Firms. Firms 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. Firms will not be told of their rankings among the other Firms.

### **1.7 Additional Instructions, Notifications, and Information**

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- A. **All Information True** – By submitting a response, Firms represent and warrant that all information provided in the response submitted shall be true, correct and complete. Firms who provide false, misleading, or incomplete information, whether intentional or not, may be excluded.
- B. **Cost of Responses** – BTD will not be responsible for the costs incurred by anyone in the submittal of responses.
- C. **Contract Negotiations** – This RFQ is not to be construed as a contract or as a commitment of any kind. If this RFQ results in a contract offer by BTD; a specific scope of services, fees, insurance coverages, and other contractual matters will be determined during contract negotiations. To ensure that the appropriate staff is assigned to the project BTD may make the inclusion of a “key persons clause” a part of the contract negotiations.
- D. **Contract Award**- BTD makes no promises or representations and cannot offer, promise or guarantee that the selected firm will be awarded a contract to provide architectural or engineering services to BTD until approved by the Vice President for Administration.
- E. **No Obligation** – BTD reserves the right to evaluate the responses submitted; waive any irregularities therein; select candidates for the submittal of more detailed or alternate proposals; accept any submittal or portion of submittal; reject any or all Firms submitting responses, should it be deemed in BTD’s best interest; or cancel the entire process.
- F. **Professional Liability Insurance** – The Firm shall have the appropriate liability insurance written by an insurer authorized to transact insurance in the State of Texas.
- G. **Management**—Should there be a change in ownership or management the contract shall be cancelled unless a mutual agreement is reached with the new owner or manager to continue the contract with its present provisions and prices. This contract is nontransferable by either party.
- H. **Payment Terms** – Payment will be made in accordance with a negotiated fee schedule.

### **1.8 SUBMITTAL INSTRUCTIONS**

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Sealed submittals are required. One original, four copies and one electronic copy of the responses are to be delivered to Wendy Weedon, Deputy CEO/General Manager, at the address set forth below at or before 4:00 p.m. on May 15, 2024. The sealed envelope will be addressed as below and must contain the Firms name and address and be clearly marked: “**RFQ for ARCHITECTURAL SERVICES # TP02172024**”. All proposals are to be submitted to:

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

To enable BTD to efficiently evaluate the responses, it is important that the Firms follow the required format in preparing their responses. Responses that do not conform to the prescribed format may not be evaluated. Pages shall be no larger than letter size (8 ½” by 11”) or, if folded to that dimension, twice letter size (11” by 17”)



each section (defined below) shall be separated by a tabbed divider.

## **1.9 CONTENT OF SUBMITTAL**

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Each response shall be submitted as outlined in this section. Please include an outside cover and/or first page, containing the name of the Project. The page limit for submittal is 25 pages.

A table of contents should be next, followed by dividers separating each of the following sections:

- **Divider #1: Firm Information**
  - a) Firm name, addresses, and telephone numbers of all firm offices.
  - b) Structure of firm, i.e., sole proprietorship, partnership, corporation, and size of firm.
  - c) Years firm has been in business.
  - d) Name of principals in firm.
  - e) Primary contact.
  - f) Organizational description.
  - g) Description of firm's philosophy.
  
- **Divider #2: General Company History/Qualifications**
  - a) A brief history of the Firm and the services routinely provided
  - b) An organization chart that explains team member responsibilities.
  - c) Name of the Project Team Leader in charge of projects.
  - d) The resumes of all persons to be assigned to the project with their prospective roles identified.
  - e) Documentation that the firms on the Architect's team (architects and engineers) are registered in the State of Texas.
  
- **Divider #3: Financial and Legal Status**
  - a) Describe the general financial capability of the Firm. If requested during the selection or negotiation process a financial statement and balance sheet may be required.
  - b) List any actions taken by any regulatory agency against or involving the firm or its agents or employees with respect to any work performed.
  - c) List all litigation against or involving the firm or its agents or employees with respect to any work performed.
  - d) All insurance coverage that the firm has which would be applicable to the work.
  
- **Divider #4: Experience and References**
  - a) Discussion of Firm's experience in working with government agencies.
  - b) List of representative governmental projects, whether ongoing or completed, including references that have been completed in the last five years. Please begin with projects in Texas of similar size. For each, please provide:
    - Project name and location
    - Year completed
    - Short description of project

- Name, addresses, and phone numbers of owner and contact person tasked with daily responsibilities of project
  - Cost of Construction for project (cost per square foot for new construction, please exclude all site costs and professional services)
  - For projects completed in the last five years please list the Cost Estimate, Bid Amount and Difference.
  - Names, addresses and telephone numbers of general contractor and engineer
  - Design and construction cost and whether or not it was completed on time
- **Divider #5: Management and Organizational Approach**

On two pages or less, please describe your management and organization approach to the project. The following should be addressed within this description:

- a) Describe your firm's understanding of the projects.
- b) Describe how the firm will organize to perform the services.
- c) Description of Firm's approach to code analysis and jurisdictional approvals.

### **1.10 PROTEST PROCEDURES**

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Protests resulting from the award of a contract through the RFQ # TP02172024 procedure must be made in writing to BTD's Contracting Officer within three (3) business days of the letter of non-selection to the bidder. The protest must outline the contents of the protest, to include the name of the protester, solicitation number, and the specific portion of the specification or procedure that has been violated.

Protests may be filed electronically to (insert name here) at (insert e-mail address here), by facsimile to (insert fax number here), or by mail to (insert mailing address here). BTD will respond in detail to each substantive issue raised in the protest. Final decision on behalf of BTD will be made by the President/CEO, in consultation with the Board of Directors and that decision will be final. BTD will allow for request reconsideration only if information becomes available that was not previously known or if there has been an error of law or regulation.

Federal Transit Administration will entertain a protest the alleges that BTD failed to follow these protest procedures and that such protest must be filed in accordance with FTA's Circular 4220.1E.

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

## Required Forms

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

- 1. Acknowledgment of Addendum
- 2. Buy America
- 3. DBE Compliance Statement
- 4. DBE Schedule of Utilization
- 5. DBE Good Faith Effort
- 6. Conflict of Interest
- 7. References - Vendor
- 8. Suspension and Debarment Certification Form
- 9. Delinquent State Business Tax Certification
- 10. Lobbying Certification
- 11. Certification and Authorization

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

## 2.1 Acknowledgment of Addendum

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**RFQ # TP02172024**

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

### ACKNOWLEDGMENT OF ADDENDUM

<input type="checkbox"/>	Addendum No. _____	Dated _____
<input type="checkbox"/>	Addendum No. _____	Dated _____
<input type="checkbox"/>	Addendum No. _____	Dated _____
<input type="checkbox"/>	Addendum No. _____	Dated _____
<input type="checkbox"/>	Addendum No. _____	Dated _____
<input type="checkbox"/>	Addendum No. _____	Dated _____

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

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

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

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

\_\_\_\_\_  
Date

**2.2 Buy America**

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**RFQ # TP02172024**

**Certificate of Compliance**

The Firm 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 Firm 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

## 2.3 DBE Compliance Statement

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### RFQ # TP02172024

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 submittal 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 submittal).

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:**

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Authorized Signature

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Company Name (print)

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Name and Title (print)

---

Date

(Note: Failure to complete and return the DBE forms as indicated above, will result in rejection of the submittal. 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).

**2.4 DBE Schedule of Utilization**

**Information on the DBE program: [www.dot.state.tx.us/business/business\\_outreach/dbe.htm](http://www.dot.state.tx.us/business/business_outreach/dbe.htm)  
Certified DBE Vendors: [www.dot.state.tx.us/business/tucp/default.htm](http://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)** RFQ # TP02172024  
**Submittal 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

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

## 2.5 DBE Good Faith Effort Documentation (Page 1 of 2)

### RFQ # TP02172024

If the Firm did not meet or exceed BTB's DBE subcontracting goal, then the Firm 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 Firm's responsibility to ensure that sufficient information is provided to BTB, so that good faith efforts can be comprehensively evaluated.

I, the Firm, 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 Firm) deemed necessary to support and/or clarify the good faith efforts that I made.

It is the Firm's responsibility to correctly, accurately, and substantively provide all necessary information to BTB, at the time of submittal submission. The information provided by the Firm must be sufficient enough for BTB to determine that the efforts made by the Firm to obtain DBE participation were such efforts that an Firm 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 Firm 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 submittal 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 Firm 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 Firm, 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.

- 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.

- 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 Submittal. 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
- Did you attend the pre-submittal teleconference scheduled by BTB? **N/A**  
Did you request submittals from DBEs that also attended the pre-submittal conference?  Yes  No  
If Yes, list DBE Firm/Person Contacted.
- Did you solicit submittals from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number one above by mail?  Yes  No
- Did you solicit submittals 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 submittals 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 submittals 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 submittal from or that initiated contact with you to ask about and/or submit an unsolicited submittal 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 submittals on from each DBE firm and/or the subcontracting areas(s) for which each DBE firm submitted a submittal to you, if different from what you solicited.
  - \_\_\_\_\_ c) If DBE firms submitted submittals, but those submittals were rejected, provide an explanation for rejecting those submittals and attach documentation to support the reason for rejecting the submittal (i.e. letters, memos, DBE submittal amount, telephone notes, meeting notes, etc.)
  - \_\_\_\_\_ d) If a DBE firm's submittal was rejected because of price, then list the DBE firm's submittal price and the name and submittal 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 submittals from in a timely manner such that the DBE firms had at least ten days prior to the submittal submission date to prepare and submit a submittal 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 BTB 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 Firm) 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 submittal. 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 BTB work for a period of not exceeding six months.**

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

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

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

\_\_\_\_\_  
Date

## 2.6 Conflict of Interest Acknowledgment and Certification

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### RFQ # TP02172024

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

## 2.7 References

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### RFQ # TP02172024

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:

**2.8 Suspension and Debarment Certification Form**

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

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

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

The prospective primary Firm/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 Firm/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: \_\_\_\_\_

Firm/  
Contractor: \_\_\_\_\_

## INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this proposal, the Firm/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 Firm/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 Firm/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 Firm/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 Firm/Contractor shall provide immediate written notice to the Owner to which this proposal is submitted if at any time the Firm/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 Firm/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 Firm/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 Firm/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 Firm/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 Firm/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.

## 2.9 Delinquent State Business Tax Certification

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All Firms shall certify that Firms 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: \_\_\_\_\_

Firm/  
Contractor: \_\_\_\_\_

## 2.10 Lobbying Certification

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RFQ # TP02172024

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

## 2.11 Certification and Authorization

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### RFQ # TP02172024

The undersigned certifies that he has fully read and understands this Request for Proposal and has full knowledge of the scope, quantity, and quality of the services to be furnished and intends to adhere to the provisions described herein. The undersign also affirms that they are duly authorized to submit this proposal, that this proposal has not been prepared in collusion with any other Offeror, and that the contents of this proposal have not been communicated to any other Offeror prior to the official opening of this proposal. Additionally, the undersigned affirms that the firm is willing to sign the enclosed Standard Form of Contract.

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

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

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

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

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

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

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

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



# Required Federal Clauses

## 3.1 Access

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

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

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

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

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

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

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

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

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

### 3.3 Civil Rights

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

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

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

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

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

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

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

**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, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**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. §§ 621634, 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.

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

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

### **3.5 Equal Employment Opportunity**

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

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

employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

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

### **3.6 Disadvantaged Business Enterprises**

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This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 2.42%. The goal for this specific project is 1.92%.

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/Firm 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 contractor's receipt of our payment, we will also need to include that our payments to Contractors will either be sent via Fed-X or wired directly to the Contractor.

### **3.7 Conformance with ITS National Architecture**

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Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

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

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

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;

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

By signing and submitting its bid or proposal, the bidder or Firm 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 Firm 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 Firm 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 Firm or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **3.9 Third Parties**

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

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

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

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

### **3.11 Fly America**

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a) Definitions as used in this clause-

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

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S-flag air

carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S-flag air carrier is available to provide such services.

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

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

Statement of Unavailability of U.S-Flag Air Carriers

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

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

### **3.12 Federal Tax Liability and Recent Felony Convictions**

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(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

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

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

### **3.13 Seismic Safety**

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The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

### **3.14 Lobbying**

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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.

### **3.15 Energy Conservation**

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

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

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

### **3.17 Prohibited Interest**

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

### **3.18 Policies for all Tiers**

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

### **3.19 Federal Changes**

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

### **3.20 Incorporation of FTA Terms**

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



### **3.21 Trafficking in Persons**

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

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or sub-agreements thereunder.

### **3.22 Safe Operation of Motor Vehicles**

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#### **Seat Belt Use**

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

#### **Distracted Driving**

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

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

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

- 1. Procure or obtain;
- 2. Extend or renew a contract to procure or obtain; or
- 3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - iii. Telecommunications or video surveillance equipment or services procured or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

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

d. See also § 200.471

### **3.24 Privacy Act**

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

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

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

### **3.25 Patent Rights and Rights in Data**

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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 Contract 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 Contract 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 Contract, 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, nonexclusive 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
- 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 not 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.

### **3.26 Disputes**

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

Performance During Dispute - Unless otherwise directed by BTD, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between BTM and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within Brazos County, Texas.

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 BTM 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.

### **3.27 Violation and Breach of Contract**

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#### **Disputes:**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the 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 agencies 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 agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

#### **Performance during Dispute:**

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

#### **Claims for Damages:**

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

#### **Remedies:**

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

#### **Rights and Remedies:**

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

### **3.28 Severability**

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

### **3.29 Termination**

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Termination for Convenience (General Provision)- BTM 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 BTB to be paid the Contractor. If the Contractor has any property in its possession belonging to BTB, the Contractor will account for the same, and dispose of it in the manner BTB directs.

Termination for Default [Breach or Cause] (General Provision)- If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be affected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default.

The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)- The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

Termination for Convenience or Default (Architect and Engineering)- The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall

(1) immediately discontinue all services affected (unless the notice directs otherwise), and

(2) deliver to the Agency 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. 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 Agency

Upon written notice, the Firm 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.