

**PANHANDLE COMMUNITY SERVICES (PANHANDLE TRANSIT)**

**CONSTRUCTION – INVITATION FOR BIDS (IFB)**

**FOR**

**FACILITY CONSTRUCTION**

**CONTRACT BID NO. 2023-PCS-01**



**PREPARED BY**

**PANHANDLE COMMUNITY SERVICES (PCS)  
1309 SW. 8<sup>th</sup> Avenue, Amarillo, Texas 79101**

**October 6, 2023**

October 6, 2023

Re: Invitation for Bid (IFB)  
Facility Construction  
IFB No. 2023-PCS-01

Panhandle Community Services (PCS) is soliciting bids for: **FACILITY CONSTRUCTION**. Your firm is invited to submit a bid.

Please send your completed bid clearly marked “**IFB NO. 2023-PCS-01 FACILITY CONSTRUCTION**” to the undersigned by **3:00 PM (CST), Friday, November 10, 2023**. Bids may be hand delivered or sent by a delivery service, such as Federal Express. Delivery service and mailed bids should be addressed to:

Panhandle Community Services (Panhandle Transit)  
Atten: Lylene Springer, Transportation Director  
1309 SW 8th Avenue  
Amarillo, Texas 79101  
[Lylene.springer@pcsvcs.org](mailto:Lylene.springer@pcsvcs.org)

Please allow a minimum of FIVE (5) additional working days for the delivery of mailed bids. If you will be attending the bid opening, plan to arrive at least 20 minutes early as there is no parking available at our facility and you will need to locate public parking.

The bid package, specifications and drawings are available at <https://www.pcsvcs.org/request-for-proposal/>. BIDDER(S) are hereby notified that the documents available at PCS are the only authorized source of bid documents in order to ensure accurate record for BIDDERS for addenda notification purposes.

A pre-bid meeting for this procurement will be held at **10:00 AM, Friday, October 20, 2023**, in the PCS Board Room at 1309 SW 8<sup>th</sup> Avenue, Amarillo, Texas 79101. All BIDDERS are encouraged to attend. Any questions or inquiries may be submitted in writing to ensure accuracy.

Any interpretation, correction or change of the bid documents will be made by addendum. Interpretations, corrections, or changes made in any other manner will not be binding, and BIDDERS shall not rely upon such interpretations, corrections, and changes. Addenda will be available through PCS to every BIDDER of record.

DBE Participation: It is the policy of the Texas Department of Transportation Public Transportation Division and Federal Transit Administration that Disadvantaged Business Enterprises (DBE's), as defined in 49 CFR, Parts 23 and 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. The DBE goal for this procurement is **1.0%**.

DBE's must be certified under the Federal Unified Certification Program (UPC). A list of certified DBEs is available at: <https://txdot.txdotcms.com>.

BASIS OF AWARD: The award of this contract is based on the lowest responsive and responsible BIDDER determined by Panhandle Community Services (PCS) by adding the base bid and all alternates as specified or required.

Please contact me with any questions or comments concerning the IFB at:

John Hendrickson  
Project Manager, HTG  
[john.hendrickson@trusthtg.com](mailto:john.hendrickson@trusthtg.com).

# PANHANDLE COMMUNITY SERVICES (PANHANDLE TRANSIT) FACILITY CONSTRUCTION

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# SECTION I – LEGAL NOTICE

## INVITATION FOR BID NO. 2023-PCS-01

Notice is hereby given that Panhandle Community Services (Panhandle Transit) is receiving bids for the following procurement until **3:00 PM (CST), Friday, November 10, 2023**, for the following:

### FACILITY CONSTRUCTION

In accordance with the drawings and specifications prepared by HUITT-ZOLLARS ARCH/ENGINEER and on file at Panhandle Community Services (PCS). This project is expected to take approximately **FOUR HUNDRED TWENTY-FIVE (425) days** to construct.

Bid Package, specifications and drawings are available at Panhandle Community Services (PCS), 1309 SW 8<sup>th</sup> Avenue, Amarillo, Texas 79101, <https://www.pcsvcs.org/request-for-proposal/>. Further information may be obtained from Lylene Springer, Transportation Director at [Lylene.springer@pcsvcs.org](mailto:Lylene.springer@pcsvcs.org). BIDDERS are hereby notified that this is the only authorized source of bid documents in order to ensure an accurate record of BIDDERS for addenda notification purposes.

Any bid submitted by email will be rejected as non-responsive and returned to the BIDDER unopened.

**Questions are due by 3:00 PM (CST), Thursday, October 26, 2023, with a response expected by November 1, 2023.**

A Bid Bond must be issued by a fully qualified surety company acceptable to PCS and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

All bids and related documents shall be subject to a financial assistance contract between PCS, the Texas Department of Transportation Public Transportation Division, and the Federal Transit Administration the Rural Areas Program, 49 U.S.C. 5311, as amended, terms and conditions established under the act will apply. This IFB complies with all federal and state rules and PCS policies and procedures.

All BIDDERS will be required to comply with all applicable federal and state rules including all clauses referenced in the Consolidated Certification Form (Form PTN-130). This form can be found at the following link:

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

All BIDDERS will be required to certify they are not on the Texas Comptroller and Texas Department of Transportation consolidated list of ineligible BIDDERS. Manufacturers appearing

on said list will be considered ineligible.

**A pre-bid meeting will be held at 10:00 AM (CST), Friday, October 20, 2023, in the PCS Board Room located at 1309 SW. 8th Avenue, Amarillo, Texas 79101.**

The purpose of this meeting is to provide an overview of the requirements of the project and to answer any questions BIDDERS may have concerning this procurement. Those unable to attend in person may participate remotely via GoToMeeting. Please send a request for login information to: [john.hendrickson@trusthtg.com](mailto:john.hendrickson@trusthtg.com).

PCS hereby notifies all BIDDERS that in regard to any contract entered into pursuant to this Invitation for Bid, advertisement or solicitation, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids and/or proposals in response and will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration for an award. PCS has a Disadvantaged Business Enterprise (DBE) program goal for this project; the goal of **(1.0%)** DBE participation is required for this contract. PCS encourages the Prime CONTRACTOR to offer contracting opportunities to the fullest extent possible through outreach and recruitment activities to small, minority and disadvantaged businesses.

All BIDDERS will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

Any interpretation, correction or change of the bid documents will be made by addendum. Interpretations, corrections, or changes made in any other manner will not be binding. Addenda will be mailed to every BIDDERS of record.

Bids will be good for NINETY (90) calendar days from the bid submittal due date. It is the responsibility of the BIDDER to ensure that the bid is delivered prior to the deadline. Any bids received after the deadline will not be accepted and will be returned to the BIDDERS unopened.

No bid may be withdrawn for a period of NINETY (90) days after bid opening. PCS reserves the right, as the interests of PCS may require, to postpone, accept or reject any and all bids and to waive any information in bids received and to award the contract to the lowest responsive and responsible BIDDERS as determined by its Board of Directors.

John Hendrickson  
Project Manager, HTG  
[john.hendrickson@trusthtg.com](mailto:john.hendrickson@trusthtg.com)

## **PCS BACKGROUND**

### *History*

Panhandle Community Services (PCS) is a political subdivision of the State of Texas pursuant to Texas Transportation Code Chapter 458.006 through 458.012, as amended.

In 1965, the Economic Opportunity Act grant was awarded to the Potter-Randall Citizens Committee for the formation of a Community Action Agency. Today, PCS has 14 service centers across the region. The strategic placement of each office enables PCS to provide rural demand response service to all 26 counties in the upper Texas Panhandle.

### *Governing Body*

All power and authority of PCS is vested in and exercised by its fifteen (15) member Board of Directors.

## PANHANDLE COMMUNITY SERVICES (PCS) BID FORM

<p><i>BIDS WILL BE RECEIVED UNTIL: 3:00 PM (CST), FRIDAY, NOVEMBER 10, 2023, AND THEN PUBLICLY OPENED AT:</i></p> <p>1309 SW 8<sup>th</sup> Avenue Amarillo, Texas 79101</p> <p><i>BID BOND REQUIREMENT:</i> A BID BOND, CASHIER'S CHECK OR CERTIFIED CHECK MUST ACCOMPANY THIS BID FOR NOT LESS THAN <b><u>10%</u></b> OF THE BASE BID PRICE.</p>	<p><b>BID NUMBER NO. 2023-PCS-01</b></p> <p>CURRENT DATE: <b>OCTOBER 6, 2023</b></p> <p><i>PERFORMANCE BOND REQUIREMENT:</i> IN THE EVENT BID IS ACCEPTED, A PERFORMANCE BOND WILL BE REQUIRED IN THE AMOUNT OF <b><u>100%</u></b> OF THE CONTRACT AMOUNT WITHIN <b><u>TEN (10) CALENDAR DAYS AFTER NOTIFICATION OF AWARD.</u></b></p>
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The undersigned hereby agrees to provide the goods/services/equipment as listed below and in accordance with the specifications on file at Panhandle Community Services, 1309 SW 8<sup>th</sup> Avenue, Amarillo, Texas 79101, which have been carefully examined and which are incorporated herein and made a part of the bid documentation.

ALL BLANK SPACES MUST BE FILLED OUT ON THIS BID FORM. IF THE BID AMOUNT IS ZERO OR A DEDUCTION, PLEASE INDICATE THIS AMOUNT IN BRACKETS.

***THIS FORM IS CONTINUED ON THE NEXT PAGE***

## GENERAL: BASE BID FORM

Base Bid	\$ _____
Alternate 1 (If Required)	\$ _____
Alternate 2 (If Required)	\$ _____
Alternate 3 (If Required)	\$ _____
<b>TOTAL BID</b>	<b>\$ _____</b>
	<i>(Basis of Award)</i>

\_\_\_\_\_  
*(Total bid shown is to be written out)*

Signature of Authorized Official: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Firm: \_\_\_\_\_

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

### BASIS OF AWARD:

The award of this contract is based on the lowest responsive and responsible BIDDER determined by Panhandle Community Services (PCS) by adding the base bid and all alternates as specified or required.

## AFFIDAVIT OF ADDENDA ACKNOWLEDGMENT

In compliance with this **IFB NO. 2023-PCS-01** and to all conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish the services described herein in accordance with the attached signed Bids or as mutually agreed upon by subsequent negotiation.

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FEI/FIN Number: \_\_\_\_\_

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

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

Initial for Receipt of each Addendum received below:

Addendum 1 \_\_\_\_\_

Addendum 2 \_\_\_\_\_

Addendum 3 \_\_\_\_\_

Addendum 4 \_\_\_\_\_

Addendum 5 \_\_\_\_\_

Addendum 6 \_\_\_\_\_

Addendum 7 \_\_\_\_\_

Addendum 8 \_\_\_\_\_

## **AFFIDAVIT OF NON-COLLUSION**

Non-collusion Statement: By my signature below, I, individually and as an agent for the BIDDER responding to this Invitation for Bids (IFB), certify that neither I, nor the business entity for which I am an agent, nor any other agent for that business entity, have entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of the free submission of competitive IFBs in connection with this submitted IFB. I understand that failure to submit this statement as part of the documents shall make this submittal nonresponsive and therefore not eligible for award consideration.

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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

## AFFIDAVIT OF BIDDER QUALIFICATION

The undersigned authorized representative of BIDDER certifies that the attached qualification information provided to PCS is true and correct, and that it is submitted with the understanding that PCS will use and rely upon the accuracy and currency of the information in the evaluation of BIDDER's responsibility for award of this contract.

1. Name of Firm: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Phone: \_\_\_\_\_ email: \_\_\_\_\_
4. Type of organization:  
\_\_\_\_\_ Individual \_\_\_\_\_ Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Joint venture
5. Include common facilities, common ownership and management and contractual arrangements.  
\_\_\_\_\_  
\_\_\_\_\_
6. Description of business: \_\_\_\_\_
7. Length of time in business: \_\_\_\_\_
8. Number of full-time employees (average from most recent Fiscal Year): \_\_\_\_\_
9. Total annual sales and receipts for the most recently completed Fiscal Year including any parent and all related and affiliated organizations (tax returns for the relevant year may be required for verification): \_\_\_\_\_
10. Name and title of all officers/managers: \_\_\_\_\_  
\_\_\_\_\_
11. Identify and specify the location(s) and telephone numbers of the major offices and other facilities that would relate to performance under the terms of the contract if awarded:  
\_\_\_\_\_
12. Identify accounting firm: \_\_\_\_\_
13. The successful business will be required to register to do business in Texas. If already registered, provide the date of the registration to do business in Texas and the name of the registered agent in the state: \_\_\_\_\_
14. Business web site: \_\_\_\_\_
15. Has this business performed contracts of similar size and scope as prime contractor? If yes, list the THREE (3) most recent:  
  
(1) Project Name: \_\_\_\_\_  
Project Cost: \_\_\_\_\_  
Project Duration: \_\_\_\_\_  
  
Owner Contact Information:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ email: \_\_\_\_\_



(2) Project Name: \_\_\_\_\_  
Project Cost: \_\_\_\_\_  
Project Duration: \_\_\_\_\_

Owner Contact Information:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ email: \_\_\_\_\_

(3) Project Name: \_\_\_\_\_  
Project Cost: \_\_\_\_\_  
Project Duration: \_\_\_\_\_

Owner Contact Information:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ email: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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

# AFFIDAVIT OF BID BOND

*(Bid Bond Requirements - Construction)*

For all procurements (other than construction contracts) with a value equal to or greater than \$100,000, PCS may require a suitable and approved bond with comprehensive security conditioned on the carrying out of the contract. Instead of a bond, PCS may permit any person, firm, or entity with which it contracts to provide other forms of performance, payment, or maintenance guarantees, bonds, or any combination thereof in the form, quality, and amount it considers appropriate to assure that the contract will be fulfilled. Legal counsel should be consulted regarding the bonding requirement for each project. Bids and contracts for the construction, demolition, alteration, repair, or reconstruction of an improvement must be accompanied by a bond that meets the minimum requirements outlined in Circular 4220.1F, 2CFR200 or any subsequent laws and Circulars in effect at the time of procurement. Bonding for construction contracts requirements are as follows:

1. 5% bid guarantee
2. 100% performance bond, and
3. Payment bonds are as follows:
  - a. 50% on contracts under \$1 million
  - b. 40% on contracts between \$1 million and \$5 million,  
Or
  - c. \$2.5 million on contracts over \$5 million

**Bid Security.** A Bid Bond must be issued by a fully qualified surety company acceptable to PCS and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

**Rights Reserved.** In submitting this Bid, the Offeror understood and agreed that PCS reserves the right to reject any and all bids or part of any bid. It is agreed that the Bid may not be withdrawn for ninety (90) days after the opening of bids without the written consent of PCS.

It is also understood and agreed that if the undersigned Offeror should withdraw any part or all of his bid within ninety (90) days after the bid opening without the written consent of PCS, or if the Offeror shall refuse or be unable to enter into this Contract, as provided above, or refuse, or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of PCS' damages occasioned by such withdrawal, or refusal, or inability to agree or provide adequate security therefor. It is further understood and agreed that to the extent the defaulting Offeror's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by PCS as provided in Item 4a "Bid Security" of the Instructions to Offerors) shall prove inadequate to recompense PCS for the damages occasioned by default fully, then the undersigned Offeror agrees to indemnify PCS and pay over to PCS the difference between the bid security and PCS' total damages, to make PCS whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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

## AFFIDAVIT OF DBE PARTICIPATION

*(This page is to be completed only by disadvantaged business enterprise contractors.)*

State of \_\_\_\_\_ County of \_\_\_\_\_ I hereby declare and affirm, that I am the \_\_\_\_\_ (Title) and authorized representative of \_\_\_\_\_ (Name of Firm) whose address is \_\_\_\_\_.

I hereby declare and affirm that I am a Disadvantaged Business Enterprise as defined by the Texas DBE Unified Certification Program specifications and that I will provide information requested by PCS to document this fact.

I do solemnly declare and affirm, under the penalties of perjury, that the contents of the aforementioned document are true and correct and that I am authorized, on behalf of the above firm, to execute this affidavit.

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me the above-named officer appeared, known to be \_\_\_\_\_ and the person described in the foregoing Affidavit and that he/she did execute the same in the capacity therein stated and for the purpose stated.

IN WITNESS THEREOF, I hereunto set my hand and official seal,

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(My Commission Expires)

(seal)

## **AFFIDAVIT OF DBE GOOD FAITH EFFORT**

The BIDDER must show that it took all necessary and reasonable steps to achieve the DBE contract goal which by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. 49 CFR, Part 26, Appendix A sets forth examples and guidance for good faith efforts.

The BIDDER is not limited to the examples provided in 49 CFR Part 26, Appendix A and may provide any documentation that demonstrates good faith efforts. If at any time, PCS has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, PCS may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice or Office of the Inspector General for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal program.

By signing below, the CONTRACTOR hereby affirms that it has made good faith efforts and has documented all such efforts in this form and the attached supporting documentation.

Name and Title of Officer: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_

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

# AFFIDAVIT OF LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

The following must be executed by the DBE who is being used as a SUBCONTRACTOR:

To: \_\_\_\_\_ (Name of BIDDER)

The undersigned intends to perform work in connection with the Texas DBE Unified Certification Program specifications as:

\_\_\_\_\_ Individual \_\_\_\_\_ Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Joint venture

The disadvantaged status of the undersigned is confirmed on the attached Affidavit of Disadvantaged Business Enterprise. The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

\_\_\_\_\_  
\_\_\_\_\_

at the following cost(s) \_\_\_\_\_.

The following commencement and completion date is projected:

PROJECTED WORK ITEM(S): \_\_\_\_\_

PROJECTED COMMENCEMENT DATE: \_\_\_\_\_

PROJECTED COMPLETION DATE: \_\_\_\_\_

\_\_\_\_\_ % Of the dollar value of the subcontract will be sublet and/or awarded to the non-disadvantaged CONTRACTORS and/or non-disadvantaged suppliers. The undersigned will enter into a formal agreement for the work with you conditioned upon the execution of a contract with PCS. No agreement has been entered into between the above-named BIDDER and the DBE SUBCONTRACTOR wherein the below-named BIDDER DBE SUBCONTRACTOR has promised not to provide subcontracting quotations to other BIDDER.

DBE Business: \_\_\_\_\_

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

Phone: \_\_\_\_\_

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

Name of Officer for DBE Firm: \_\_\_\_\_

Title of Officer for DBE firm: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_

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

## **AFFIDAVIT CONCERNING CONFLICTS OF INTEREST & NONCOMPETITIVE PRACTICES**

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

The undersigned, being first duly sworn, on oath states on behalf of the CONTRACTOR:

- A. Conflict of Interest. That the CONTRACTOR, by entering into this Contract with PCS to perform or provide work, services, or materials to PCS, has thereby covenanted, and by this affidavit does again covenant and assure that it has no direct or indirect pecuniary or proprietary interest and that it shall not acquire any such interest which conflicts in any manner or degree with the services required to be performed under this Contract and that it shall not employ any person or agent having any such interest. Suppose the CONTRACTOR or its agents, employees, or representatives hereafter acquires such a conflict of interest. In that case, it shall immediately disclose such interest to PCS and immediately eliminate the conflict or withdraw from this Contract, as PCS may require.
- B. Contingent Fees and Gratuities. That the CONTRACTOR, by entering into this Contract with PCS to perform or to provide services or materials for PCS, has thereby covenanted and by this affidavit does again covenant and assure:
  - 1. That no person or selling agency except bona fide employees or designated agents or representatives of the CONTRACTOR has been an employee or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
  - 2. That no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the CONTRACTOR or any of its agents, employees, or representatives to any official member, Board Member, or employee of PCS or other governmental agency to secure this Contract or secure favorable treatment concerning the awarding or amending or the making of any determination concerning the performance of this Contract.

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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

## AFFIDAVIT OF INSURANCE

### Insurance Requirements

1. Commercial General Liability Coverage Requirements Required Limits (\$)

General Aggregate (Other than Products-Completed Operations)	2,000,000
Products/Completed Operations Aggregate Limit	2,000,000
Each Occurrence	1,000,000
Personal Injury & Advertising Injury	1,000,000
Fire Damage (any one fire)	300,000
Medical Expense (per person)	10,000

General Coverage Requirements

  - (A) Coverage provided for Premises/Operations, Products/Completed Operations, Independent CONTRACTORS, Contractual Liability, XCU
  - (B) Additional Insured Endorsement naming PCS as an additional insured
  - (C) Blanket Waiver of subrogation in favor of PCS
  - (D) Primary and Non-Contributory Wording
2. Automobile Liability Coverage Requirements  
Bodily Injury and Property Damage Liability-Combined Single Limit of Liability, Including Non-Owned and hired Autos.

General Coverage Requirements	1,000,000
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  - (A) Additional Insured Endorsement naming PCS as an Additional Insured
  - (B) Blanket Waiver of subrogation in favor of PCS
  - (C) Primary and Non-Contributory Wording
3. Workers' Compensations Coverage Requirements  
  
Workers' Compensation State Benefits Statutory Employer's Liability (Coverage B)

(A) Bodily Injury-Each Accident	1,000,000
(B) Bodily Injury by Disease-Policy Limit	1,000,000
(C) Bodily Injury by Disease-Each Employee	1,000,000
4. Professional Errors & Omissions Insurance  
For all professional and/or design services performed by vendor 1,000,000

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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

## SECTION II – INSTRUCTIONS TO BIDDERS

Panhandle Community Services (Panhandle Transit), hereinafter called “PCS”, requests bids for: **FACILITY CONSTRUCTION** under the following requirements and conditions, which shall be considered an essential part of the contract documents. The following instructions are intended to afford the BIDDER an equal opportunity to participate in PCS’ contracts.

### *1. Request For Bid*

Bids are requested for: **FACILITY CONSTRUCTION** per the specifications, and drawings. The facility is located on a ten (10) acre site located approximately fifteen hundred feet south of Sundown Lane on the east side of South Coulter Road in Randall County. The facility will be approximately 23,000 square feet and will house operations and maintenance of PCS. The property will be issued a formal address by 911 once the facility construction is complete.

### *2. Specifications*

BIDDERS are expected to examine the specifications, standard provisions, and all instructions. Failure to do so will be at the BIDDERS risk. Invitation for Bids that are submitted on other than authorized forms or with different terms or provisions may not be considered as responsive.

All interpretations of the specifications shall be made on the basis of the following statement: The apparent silence of the specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used.

### *3. Information Required*

Each BIDDER shall furnish the information required by the Invitation for Bids. BIDDERS shall sign the statement submittal. Erasures or other changes must be initialed by the person signing the documents. Bids or statements signed by an agent are to be accompanied by evidence of his/her authority unless such evidence has been previously furnished to PCS.

Only signed, written Invitation for Bids specifically accepting responsibility for meeting the objectives and requirements specified in the Invitation for Bids will be considered. The cover letter must bear the signature of a person duly authorized to legally commit for the BIDDERS. All costs of any submission to this Invitation for Bids preparation will be borne by the BIDDERS.

PCS does not have to pay federal excise taxes or state and local sales and use taxes, except for contracts for improvements to real property.



#### 4. *Proposal Submission*

A. BIDDERS shall and delivered or mailed submit these documents by the Invitation for Bids on or before the due date at **3:00 PM (CST), Friday, November 10, 2023.**

(1) One (1) original hard (paper) copy with all required signed forms.

(2) One copy (electronic submission - including all required signed forms) via USB flash drive.

B. BIDDERS must submit both the physical copy and electronic version of the response by the due date listed in this IFB.

Send Submissions To:

Lylene Springer, Transit Director

Panhandle Community Services (PCS)

1309 SW 8<sup>th</sup> Avenue

Amarillo, Texas 79101

[Lylene.springer@pcsvcs.org](mailto:Lylene.springer@pcsvcs.org)

C. All bids are sealed and marked with the IFB number and description of the IFB.

D. PCS is not responsible for late bids. Bids received after the stated time will not be accepted.

#### 5. *Proposal Requirements, Format, Required Content, and Other*

A. Bids for the requested services will be acceptable only if a person, firm, or corporation meets the qualifications listed in this IFB.

B. Bids shall be prepared clearly and concisely.

C. Bids that do not adhere to the required format, are difficult to read, or are deemed illegible may be rejected.

D. Bids shall adhere to the following format and contain the following items in the order outlined below:

(1) Invitation for Bid Cover Page and all executed Attachments.

(2) Cover letter with the following information.

- Identification of the BIDDER, including name, address, and telephone number of the appropriate contact person(s).

- Signature of a person authorized to bind the BIDDER to the terms of the proposal.

### (3) Qualifications and Capabilities of the Company

- Name(s) and title(s) of all key personnel proposed for the duration of the contract. If oral presentations are conducted, the designated key personnel will be required to attend along with other representatives of the BIDDER.
- Please provide a brief profile of the BIDDER, including the principal line of business including year founded, organization form, and a general description of the BIDDER's financial condition. Identify any conditions (bankruptcy, pending merger, pending litigation, planned office closures) that may impede the BIDDER's ability to complete the project.
- Identify all qualifications and organizational capabilities that will establish the BIDDER as a satisfactory provider of the required product or service because of its strength and stability.
- Identify all SUBCONTRACTORS. For each SUBCONTRACTOR, provide the company's name, address, contact person, telephone number, and function. Produce TX-certified DBE documentation if claiming to be DBE.
- Provide current information on professional errors and omissions coverage carried by the BIDDER's firm, including the insurer's name and amount of coverage.

### (4) Inquiries

All inquiries shall be sent via email form to the email addresses listed below. Those inquiries and answers will be distributed to BIDDERS via addenda. The deadline to submit questions by **3:00 PM (CST), Thursday, October 26, 2023**.

For additional IFB Information and Questions, BIDDERS should contact:

John Hendrickson  
Project Manager, HTG  
[john.hendrickson@trusthtg.com](mailto:john.hendrickson@trusthtg.com)

- E. All bids must be submitted in sufficient time to be received and time-stamped at the above location on or before the published bid date and time shown on the Invitation for Bids. Any bid received after the published time and date cannot be considered. Any bids which are mislabeled or do not indicate the BIDDER's name or address as required above may be opened by PCS solely for the purpose of identifying the BIDDERS for return of the

bid packet.

- F. Any bid received after the time referred to will not be considered and will be returned unopened. Any bid received and opened may not be withdrawn by the BIDDERS for NINETY (90) days from the date on which the bids were opened.

## 6. *Sealed Bid Dates*

Sealed bids shall be hand delivered or mailed in an envelope marked “BIDDER’s name and Sealed BID NO. 2023-PCS-01 for: **FACILITY CONSTRUCTION** opening at **3:00 PM (CST), Friday, November 10, 2023**, and will be received at the office of the Transportation Director, Panhandle Community Services (PCS) at 1309 SW 8th Avenue, Amarillo, Texas 79101, at which time and place the bids will be opened in public.

### A. Schedule

- **October 6, 2023 – IFB Issued**
- **October 20, 2023 – Pre-Bid Meeting**  
The pre-bid meeting will be held in the PCS Board Room at 10:00 AM (CST), 1309 SW. 8th Avenue, Amarillo, Texas 79101. Those unable to attend in person may participate remotely via GoToMeeting. Please send a request for login information to: [john.hendrickson@trusthtg.com](mailto:john.hendrickson@trusthtg.com).
- **October 26, 2023 – BIDDER Questions Due**  
Written questions are due by 3:00 PM (CST). Questions must be emailed to [Lylene.Springer@pcsvcs.org](mailto:Lylene.Springer@pcsvcs.org), hand-delivered, or received via mail at Panhandle Community Services (PCS), Atten: Lylene Springer, Transportation Director, 1309 SW 8<sup>th</sup> Avenue, Amarillo, Texas 79101.
- **November 1, 2023 – PCS Response to BIDDER Questions**  
Responses will be posted as an addendum to the PCS website at: <https://www.pcsvcs.org/request-for-proposal/>.
- **November 10, 2023 – IFB Due**  
Bids are due no later than 3:00 PM (CST). All bids must be received at Panhandle Community Services (PCS), 1309 SW 8<sup>th</sup> Avenue, Amarillo, Texas 79101 prior to deadline.

*If hand delivery is preferred, please deliver to the PCS receptionist desk located within the PCS lobby at the above location to be time and date stamped.*

- **November 17, 2023 – Bid Evaluations**

PCS will evaluate each bid submittal for completeness and responsiveness to its needs and may request additional information if required by any or all proposing firms. References shall be contacted as required.

- **December 8, 2023 – Contract Award**

PCS Board of Directors will meet to award a contract to the successful BIDDER.

**7. *Examination of IFB and Contract Documents***

BIDDERS are expected to examine the Scope of Work, scope of services required, specifications, schedules, compliance requirements, and instructions. Failure to do so will be at the BIDDER's risk.

The submission of a proposal shall constitute an acknowledgement upon which PCS may rely that the BIDDERS has thoroughly examined and is familiar with the solicitation, Instructions, and Scope of Work, including any worksite identified in the IFB, and has reviewed and inspected all applicable statutes, regulations, ordinances, and resolutions addressing or relating to the goods to be provided hereunder. The failure or neglect of a BIDDER to receive or examine such documents, worksites, statutes, regulations, ordinances, or resolutions shall in no way relieve the BIDDERS from any obligations with respect to its bids and any Contract awarded pursuant to this IFB. No claim for additional compensation will be allowed based on lack of knowledge or misunderstanding of this IFB, worksites, statutes, regulations, ordinances, or resolutions.

**8. *Interpretation of IFB and Contract Documents***

No oral interpretations as to the meaning of the IFB will be made to the BIDDERS. Any explanation desired by a BIDDER regarding the meaning or interpretation of the IFB, Scope of Work, Specifications, etc., must be requested in writing and with sufficient time allowed (as defined in the Procurement Schedule) for a reply to reach all BIDDERS before the submission of their bids. Any interpretation or change made will be in the form of an addendum to the IFB, specifications, etc., as appropriate. All addendums will be available on PCS' website. All addenda will become part of the IFB and any subsequently awarded Contract. Oral explanations, statements, or instructions given by PCS before the award of the Contract will not be binding upon PCS.

**9. *Modification Or Withdrawal Of Invitation For Bids***

BIDS may be modified or withdrawn by written or email notice received by PCS prior to the exact hour and date specified for receipt of Invitation for bids. An IFB may also be withdrawn in person by an offeror or an authorized representative prior to the deadline; provided the offeror's identity is made known and he or she signs a receipt for the bid packet.

## **10. Opening Bid Packets**

All bids shall be opened and announced publicly as received by PCS as soon after the Invitation for bids deadline has passed and is reasonably practicable. Information submitted in response to the Invitation for Bids shall not be released by PCS during the process of or prior to the Contract award. BIDDERS are advised that PCS may be required to release certain information, other than trade secrets, after Contract award.

## **11. Eligibility**

- A. In order for a BIDDER to be eligible for award of the Contract, the bid must be responsive to the Invitation for Bids; and PCS must be able to determine that the BIDDER is responsible for fulfilling the Contract satisfactorily.
- B. Responsive bids are those complying with all material aspects of the Invitation for Bids. Bids which do not comply with all the terms and conditions of the Invitation for Bids will be rejected as non-responsive.
- C. Responsible BIDDERS at a minimum must:
  - (a) Have adequate financial resources or the ability to obtain such resources as required during the performance of the Contract;
  - (b) Have a satisfactory record of past performance;
  - (c) Have necessary management and technical capability to perform;
  - (d) Be qualified as an established firm regularly engaged in the type of business to perform the Contract required by this Invitation for Bids;
  - (e) Be otherwise qualified and eligible to receive an award under applicable federal, state, county, or municipal laws and regulations; and
  - (f) Certify that it is not on the U.S. Comptroller General's list of ineligible CONTRACTORS – signing and submitting a bid for this Invitation for Bids is so certifying.

(NOTE: This requirement is only applicable to federally-funded contracts.)
- D. BIDDERS may be requested to submit written evidence verifying that it meets the minimum criteria necessary to be determined a responsible BIDDERS. Refusal to provide the requested information shall result in the BIDDER being declared not responsible, and their bid shall be rejected.

## **12. *Reservation Of Rights***

PCS expressly reserves the right to:

- a) Reject or cancel any or all Invitation for Bids;
- b) Waive any defect, irregularity or informality in any bid qualifications or bid procedure;
- c) Waive as an informality, minor deviations from specifications at a lower price than other bids meeting all aspects of the specifications if it is determined that total cost is lower, and the overall function is improved or not impaired;
- d) Extend the Invitation for Bids due date;
- e) Reissue an Invitation for Bids;
- f) Procure any item or services by other means;
- g) PCS reserves the right to retain all bids submitted. The selection or rejection of a bid does not affect this right; and
- h) If applicable, PCS reserves the right to negotiate a Contract with the BIDDER having the best price/cost as determined by PCS. No award will be made automatically based upon the lowest price or based solely on the bids submitted. PCS additionally reserved the right to suspend negotiations with the first Offeror should it not progress in a manner satisfactory to PCS and commence negotiations with the next best rated BIDDER.

## **13. *Prompt Payment***

PCS will include the following clause in each TxDOT-assisted prime contract:

The prime CONTRACTOR agrees to pay each SUBCONTRACTOR under this prime contract for satisfactory performance of its contract no later than TEN (10) days from the receipt of each payment the prime CONTRACTOR receives from PCS. The prime CONTRACTOR agrees further to return retainage payments to each SUBCONTRACTOR within TEN (10) days after the SUBCONTRACTOR's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval by PCS. This clause applies to both DBE and non-DBE SUBCONTRACTORS.

When applicable, PCS may use the following mechanisms to ensure prompt payment.

- A. Language providing that prime CONTRACTORS and SUBCONTRACTORS will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- B. Language providing that prime CONTRACTORS will not be reimbursed for work performed by SUBCONTRACTORS until the prime CONTRACTOR ensures that the SUBCONTRACTORS

are paid promptly for work, they have performed.

C. Enforcement of public funds liens law and use of a similar mechanism for nonpublic improvement projects.

D. Other applicable mechanisms as necessary.

#### *14. Protests*

In the event that a BIDDER desires to protest any procedure, the BIDDER should present such protest, in writing, to Project Manager within FIVE (5) business days following the Invitation for Bids due date. The protest shall state the name and address of the protestor, refer to the project number and description of the bid documents, and contain a statement of the grounds for protest and any supporting documentation. For federally-assisted contracts, certain additional protest procedures apply and may be found in the Supplemental Conditions contained within the Invitation for Bids.

#### *15. Equal Opportunity*

Offerors are expected to comply with the Affirmative Action Programs of PCS with respect to its provisions concerning CONTRACTORS.

## SUMMARY OF BID REQUIREMENTS

**FAILURE TO SUBMIT ANY OF THE FOLLOWING DOCUMENTS MAY RENDER YOUR BID NON-RESPONSIVE**

Bid Submission:

Complete the following checklist indicating that the documents required for this bid are enclosed.

- \_\_\_\_\_ Base Bid Form
- \_\_\_\_\_ Affidavit Of Addenda Acknowledgment
- \_\_\_\_\_ Affidavit Of Non-Collusion
- \_\_\_\_\_ Affidavit Of Bidder Qualification
- \_\_\_\_\_ Affidavit Of Bid Bond
- \_\_\_\_\_ Affidavit Of DBE Participation
- \_\_\_\_\_ Affidavit Of DBE Good Faith Effort
- \_\_\_\_\_ Affidavit Of Letter of Intent To Perform As A Subcontractor
- \_\_\_\_\_ Affidavit Concerning Conflicts of Interest & Noncompetitive Practices
- \_\_\_\_\_ Affidavit Of Insurance
- \_\_\_\_\_ Certification Of Certification Of Specification Compliance
- \_\_\_\_\_ Certification Of Contractor Regarding Unavailability Of A Disadvantaged Business Enterprise
- \_\_\_\_\_ Certification Of Contractor Regarding Debarment, Suspension
- \_\_\_\_\_ Certification Of Lower-Tier Participants (Subcontractors) Regarding Debarment, Suspension
- \_\_\_\_\_ Certification Of Restrictions On Lobbying
- \_\_\_\_\_ Certification For Build America, Buy America
- \_\_\_\_\_ Certification Of Contract Clause Acknowledgement
- \_\_\_\_\_ PTN-130 Consolidated Certification Form

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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



## **SECTION III – SCOPE OF WORK AND TECHNICAL SPECIFICATIONS**

See separate Attachment - PCS OPERATIONS AND MAINTENANCE FACILITY PROJECT MANUAL

## SECTION IV – BID SUBMISSION PROVISIONS

### 1. *Postponement, Amendment, and/or Cancellation*

PCS reserves the right to revise or amend any portion of this IFB before the date and time for the proposal delivery. Such revisions and amendments, if any, shall be issued through an addendum to this IFB Addendums shall be available on the PCS website.

PCS reserves the right to cancel this IFB at any time or change the date and time for submitting bids by announcing the same before the date and time established for proposal submission.

### 2. *Rejection of Bids*

PCS reserves the right to reject any or all bids and waive any minor informalities or irregularities.

### 3. *Clarification of Bids*

PCS reserves the right to clarify any point in a proposal or obtain additional information to evaluate a particular proposal. Failure of a BIDDER to respond to such a request for further information or clarification may result in that bids' rejection.

### 4. *Modification or Withdrawal of Bids and Late Bids*

At any time before the time and date set for submission of bids, a BIDDER may request to withdraw or modify its Proposal. Such a request must be made in writing by a person with authority as identified on the IFB Cover Page, provided their identity is made known, and a receipt is signed for the proposal. All proposal modifications shall be made in writing, executed, and submitted in the same form and manner as the original proposal. Any proposal or modification of proposal received at PCS' office designated in the solicitation after the exact time specified for proposal receipt will not be considered.

### 5. *Errors and Administrative Corrections*

PCS will not be responsible for any errors in bids. BIDDERS will only be allowed to alter bids after the submittal deadline in response to requests for clarifications by PCS. PCS reserves the right to request an extension of the proposal period from a BIDDER or BIDDERS.

PCS reserves the right to allow corrections or amendments to be made that are due to minor administrative errors or irregularities, such as errors in typing, transposition, or similar administrative errors. Erasures or other changes or entries made by the BIDDER must be initialed by the person signing the proposal.

**6. *Compliance with IFB Terms and Attachments***

PCS intends to award a contract based on the terms, conditions and attachments contained in this IFB. BIDDERS are strongly advised not to make any exceptions. BIDDERS shall submit bids that respond to the requirements of the IFB. An exception is not a response to an IFB requirement.

BIDDERS are cautioned that exceptions to the terms, conditions, and attachments may result in a rejection of the proposal.

**7. *Collusion***

The BIDDER guarantees that the proposal submitted is not a product of collusion with any other BIDDER, and no effort has been made to fix the proposal price of any BIDDER or to fix any over-head, profit, or cost element of any proposal price (Affidavit of Non-Collusion). Failure to submit the signed affidavit at the time of bid opening shall be grounds for disqualifying the BIDDER's offer.

If PCS determines that collusion has occurred among BIDDERS none of the bids from the participants in such collusion shall be considered. PCS' determination shall be final.

**8. *Taxes and Interest***

PCS does not have to pay federal excise taxes or state and local sales and use taxes, except for contracts for improvements to real property. BIDDERS will not include these taxes in their proposed price(s). All other government taxes, duties, fees, licenses, permits, royalties, assessments, and charges shall be included in the proposed price.

PCS will not pay interest on unpaid or disputed invoices, whether due or overdue.

**9. *Single Proposal Response***

If only one proposal is received, a detailed price/cost analysis may be requested of that BIDDER. PCS reserves the right to reject the single proposal and put the IFB out for bid again if necessary.

**10. *Exclusionary of Discriminatory Specifications***

PCS agrees that it will comply with the requirements of 49 U.S.C. Section 5323(h) (2) refraining from using any Federal assistance awarded by the FTA to support procurements using exclusionary or discriminatory specifications.

**11. *Protest Procedures***

PCS will hear and consider a bona fide bid protest regarding its procurement actions in accordance with the following procedures. Due to the significantly limited role of PTN and FTA in bid protests, it is anticipated that the majority of all protests will be evaluated, and the final decision rendered by PCS. PCS intends to provide a thorough review of all bona fide

bid protests. PCS' primary concern is the timely procurement of needed capital equipment, supplies or services. It does not intend to allow the filing of bid protests to unnecessarily delay the procurement process. PCS will consider all protests filed in a timely manner as described below:

- 1) PCS reserves the right to postpone bid openings/proposal due dates for its own convenience and to reject any and all bids/proposals received.
- 2) Changes to the specifications/Scope of Work will be made by addendum only and sent to all BIDDERS of record.
- 3) Prime BIDDERS may make appointments to discuss the specifications/scope of work; however, this does not relieve BIDDERS from submitting the written documentation required below.
- 4) Protests may be made by prospective BIDDERS whose direct economic interest may be affected by the award of the contract or by failure to award a contract.
- 5) All protests must be submitted in writing and be addressed to PCS' Project Manager at:

Panhandle Community Services  
1309 SW 8th Avenue  
Amarillo, Texas 79101

The protest should be concise, logically arranged, and clearly state the grounds for protest. The protest shall include:

- Name, address, email address and telephone number of protester;
- Identification of solicitation/contract number (e.g., No. 2023-PCS-XX);
- A detailed statement of the legal and factual grounds for the protest, including copies of relevant documents; and
- A statement as to what relief is requested.

Protests must be submitted to PCS in accordance with these procedures and time requirements, must be complete and describe all issues that the protester believes relevant.

- 6) Protests Before Proposal Opening/Pre-bid Protests:

Protests alleging restrictive specifications or improprieties which are apparent prior to proposal or bid opening or receipt of bids must be submitted in writing as set forth above and must be received at least SEVEN (7) business days prior to proposal or bid opening or the closing date for receipt of Bids. If the written protest is not received by the time specified, bids may be received, and an award made in the normal manner,

unless PCS determines that remedial action is required. Oral protests not followed by a written protest will be disregarded. PCS may request additional information from the appealing party and information or response from other BIDDERS, which shall be submitted to PCS not more than SEVEN (7) business days after the date of PCS' request. As far as practicable, protest decisions will be made by the Executive Director, the project manager, and others as PCS deems appropriate. So far as is practical, the decision will be based upon the written appeal, information and written responses submitted by the appealing party and other BIDDERS. If any party fails to timely respond to a request for information, it may be determined by PCS that such party does not desire to participate in the proceedings, does not contest the matter, or does not desire to submit a response and in such a case, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent evaluation that PCS deems appropriate, PCS shall render a final decision.

7) Protests After Proposal Opening and Prior to Award:

Protests against the making of an award must be submitted in writing to PCS and received within FIVE (5) business days of the award. Notice of the protest and the basis thereof will be given to all BIDDERS. In addition, when a protest against the making of an award by PCS is received and it is determined to withhold the award pending disposition of the protest, the BIDDER whose bids might become eligible for award shall be requested, before expiration of the time for acceptance, to extend or to withdraw the proposal. Where a written protest against the making of an award is received in the time period specified, the award will not be made prior to FIVE (5) business days after resolution of the protest unless PCS determines that:

- The items to be purchased are urgently required; or
- Delivery or performance will be unduly delayed by failure to make award promptly; or
- Failure to make an award will otherwise cause undue harm to PCS or the federal government.

As far as practicable, protest decisions will be made by the Executive Director, the project manager, and others as PCS deems appropriate. So far as practicable, the decision on the protest will be based upon a written appeal, information and written responses submitted by the protesting party and other BIDDERS. If any party fails to timely respond to a request for information, it may be determined by PCS that such party does not desire to participate in the proceedings, does not contest the matter, or does not desire to submit a response and in such case, the protest will proceed and will not be delayed due to a lack of a response. Upon receipt and review of written submissions and any independent evaluation that PCS deems appropriate, PCS shall render a final decision.

#### 8) Protest After Award/Post Award Protest:

Protests after an award (Post Award Protest) must be submitted in writing to PCS and must be received no later than FIVE (5) business days after the award has been made.

In instances where the award has been made, the CONTRACTOR shall be furnished with the notice of protest and the basis thereof. If the contractor has not executed the contract as of the date the protest is received by PCS, the execution of the contract will not be made prior to FIVE (5) business days after resolution of the protest unless PCS determines that:

- The items to be purchased are urgently required; or
- Delivery or performance will be unduly delayed by failure to make award promptly; or
- Failure to make an award will otherwise cause undue hardship to PCS or the federal government.

As far as practicable, protest decisions will be made by the Executive Director, the project manager, and others as PCS deems appropriate. So far as practicable, the decision on the protest will be based upon a written appeal, information and written response submitted by the protesting party and other BIDDERS. If any party fails to timely respond to a request for information, it may be determined by PCS that such party does not desire to participate in proceedings, does not contest the matter, or does not desire to submit a response and in such case, the protest will proceed and will not be delayed due to a lack of a response. Upon receipt and review of written submissions and any independent evaluation that PCS deems appropriate, PCS shall render a final decision.

#### 9) Decision

Any decision pertaining to a protest is final.

#### 10) Protests to Federal Transit Administration (FTA)

Under limited circumstances, an interested party may protest to the FTA if the award is subject to an FTA grant. FTA's review of any such protest will be limited to:

- An alleged failure by PCS to have written protest procedures; or
- An alleged failure to follow such procedures.

Alleged violations of specific federal requirements that provide an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation.

Any protest filed with the FTA must be received by the agency not later than FIVE (5)

business days after PCS renders a final decision on the protest. In instances where the protester alleges that PCS failed to make a final determination on the protest, the protester shall file a complaint with FTA no later than FIVE (5) business days after the protester knew or should have known of PCS' failure to render a final determination.

11) Submission of Protest to FTA

Protests submitted to FTA shall be submitted to the FTA Region 6 Office in Fort Worth, Texas with a concurrent copy submitted to PCS. The protest filed with FTA shall:

- Include the name and address of the protester;
- Identify the PCS project number and the number of the contract solicitation;
- Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow PCS' protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.
- Include a copy of the local protest filed with PCS and a copy of the PCS decision, if any.

## SECTION V – SPECIAL CONDITIONS

Any explanation desired by a BIDDER regarding the meaning or interpretation of these Instructions, or any other Invitation for Bids document must be requested in writing to PCS with sufficient time allowed for a reply to reach BIDDER before the submission deadlines. Oral explanations or instructions will not be binding.

Any information given to a prospective offeror concerning Invitations for Bids will be furnished to all prospective BIDDERS as an addendum to the request if such information is necessary to BIDDERS in submitting an Invitation to Bid or if the lack of such information would be prejudicial to uninformed BIDDERS.

Bids are requested for: **FACILITY CONSTRUCTION** per the special conditions below:

### *1. Contract Award*

All BIDDERS will be required to comply with all Equal Employment Opportunity laws and regulations.

PCS reserves the right, as the interests of PCS may require, to postpone, accept or reject any and all bids and to waive defects or irregularities in the bids received, and to award a contract(s).

Please Note: The award of this contract is based on the lowest responsive and responsible BIDDER determined by Panhandle Community Services (PCS) by adding the base bid and all alternates.

In awarding a contract(s), PCS reserves the right to consider all elements entering into the determination of the responsibility of the BIDDERS. Any bid which is incomplete, conditional, obscure, or which contains additions not called for or irregularities of any kind, may be cause for rejection of the bid.

Contract(s) for the purchase of goods and/or services will be awarded within NINETY (90) calendar days from the date upon which bids were opened to the lowest BIDDER PCS deems responsive and responsible. The successful bidder will be required to execute the attached contract within FIVE (5) calendar days after notification of award.

In the event a single bid is received, PCS will conduct a price and/or cost analysis of the bid. A price analysis is the process of examining and evaluating a price submitted without examining in detail the separate cost elements and the profit included in the cost bid. It should be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison.



The comparison must be made to a purchase of similar quantities and involving similar specifications. Where a difference exists, detailed analysis must be made of this difference and the costs associated thereto.

PCS has the right to enter into a negotiated procurement should only a single bid be received.

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

## **2. *Facility Construction Schedule***

This project is expected to take approximately **FOUR HUNDRED TWENTY-FIVE (425) days** to construct. BIDDERS are expected to comply with associated engineering drawings and all other requirements outlined in Section III – SCOPE OF WORK AND TECHNICAL SPECIFICATIONS, PCS OPERATIONS AND MAINTENANCE FACILITY PROJECT MANUAL.

## **3. *Funding***

The proposed contract shall be funded in part by the Texas Department of Transportation Public Transportation Division and the Federal Transit Administration (FTA). Each BIDDER shall examine all contract documents noting particularly all requirements, which will affect BIDDER's work in any way.

## **4. *Bonding***

As security for the acceptance of a contract, each bid must be accompanied by a certified bid bond in the amount of TEN 10% of the total bid amount drawn payable to PCS. Such bid deposits of all BIDDERS will be held by PCS until all bids submitted have been canvassed and the bids have either been rejected or the contract has been awarded. The bid deposit of the successful BIDDERS will be held until the contract is duly executed. Bid deposits will be returned to the unsuccessful BIDDERS as soon as possible after awarding the contract. The successful BIDDERS under this bid shall execute a contract with PCS, or its authorized representative, within TEN (10) calendar days after notification of the award. If the successful BIDDERS with whom the contract shall have been awarded refuses to execute the contract within TEN (10) calendar days after notification of award of the contract, the amount of the bid deposit shall be forfeited to and retained by PCS as liquidated damages for such neglect or refusal.

## **5. *Sensitive Security Information***

Each third-party CONTRACTOR must protect, and take measures to ensure that its SUBCONTRACTORS at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S. C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CRF Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

6. *Statement of Qualification*

PCS reserves the right to award a contract to the low BIDDER it deems responsive and responsible. The BIDDER may be required, upon request, to prove to the satisfaction of PCS that the BIDDER has the skill and experience and the necessary facilities and financial resources to fulfil the contract in a responsible and satisfactory manner.

7. *Price Complete*

The price quoted shall include all items of labor, material, tools, equipment, and other costs necessary to fully complete the **FACILITY CONSTRUCTION** pursuant to the specifications. It is the intention of the specifications to provide and require complete goods and/or services prescribed. Anything omitted from the specifications, which is clearly necessary for the use of or operation of the goods and/or services shall be considered to be included within the scope of such goods and/or services although not directly specified or called for in the specifications. No advantage shall be taken by the manufacturer or supplier in the omission of any part or detail, which goes to make **FACILITY CONSTRUCTION** complete and ready for service or use. All parts shall be new and in no case will used (except for testing), reconditioned or obsolete parts be accepted. PCS and the manufacturer/supplier shall mutually agree when it is necessary or desirable to make changes in, additions to or deductions from the work to be performed, or the goods and/or serviced to be furnished, pursuant to the provisions of the contract documents. Any such changes which affect the contract price shall require the approval of PCS, in writing, in which the effect on the contract price is specifically set forth. All requests and responses shall be in writing.

8. *Payment Terms*

Net THIRTY (30) days after date of delivery of an approved and accepted invoice from the prime CONTRACTOR. Payment for products or services delivered to and accepted by PCS shall be at the contract price.

9. *Retainage*

The prime CONTRACTOR agrees to return retainage payments to each SUBCONTRACTOR within TEN (10) days after the SUBCONTRACTOR's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of PCS. This clause applies to both DBE and non-DBE subcontracts.

10. *Quantity and Time of Delivery*

A. Delivery shall be made: **NO LATER THAN {425} CALENDAR DAYS.**

B. In the event the **FACILITY CONSTRUCTION** delivered, installed, and tested by the CONTRACTOR does not satisfy all of the specifications and all other requirements appearing in the contract documents PCS may reject the **FACILITY CONSTRUCTION** or any portion in which case the equipment rejected shall be deemed not to have been

delivered, and PCS shall have the rights set forth in the IFB, in addition to any other rights and remedies to which it may be entitled by law.

- C. Further, if the **FACILITY CONSTRUCTION** is delivered, installed, and tested incomplete or contains any defective or damaged parts, said parts shall be removed and new parts shall be furnished. The new parts furnished, including the transportation charges for same plus the labor for removal and installation of said parts, shall be free of all costs to PCS. If PCS finds it necessary to perform any work, which should have been done by the CONTRACTOR, the CONTRACTOR agrees to reimburse PCS all costs incident(s) thereto including material, labor and overhead.
- D. In case the delivery, installation, and testing of the **FACILITY CONSTRUCTION**, under this contract shall be necessarily delayed because of strike, injunctions, government controls or by reason of any causes or circumstances beyond the control of the CONTRACTOR which could not reasonably have been foreseen by the CONTRACTOR at the time of bid opening, the time of completion of delivery shall be extended by a number of days to be determined in each instance by PCS.
- E. Acceptance of the **FACILITY CONSTRUCTION** shall not release the CONTRACTOR from liability for faulty workmanship or materials even after final payment has been made. PCS shall have the right to reject all materials and workmanship, which does not conform to the specifications. The CONTRACTOR shall not be relieved of any obligation to furnish materials and workmanship strictly in accordance with the specifications.
- F. The CONTRACTOR shall make all deliveries in accordance with the time requirements and other terms and conditions set in all applicable specifications and special conditions.

#### *11. Limited Liability*

By virtue of the provisions of Chapter 458 of the Texas Transportation Code, PCS is a political subdivision of the State of Texas, a body corporate with all the powers of a corporation. It is understood and agreed that only the corporate entity, PCS, shall be liable hereunder.

#### *12. Indemnification*

The CONTRACTOR shall indemnify and save harmless PCS, its Board and employees from and against all claims, suits, damages, injuries, deaths, costs, liability, damage and expense whether direct, consequential or incidental, for personal injury and for property damage, such loss, costs, liability, damage and expense arising out of, or resulting in whole or in part, directly or indirectly, from work or operations under the contract but not limited to the acts, errors, omissions and negligence of the CONTRACTOR's employees and agents, except to the extent of liability imposed due to PCS' own negligence.

PCS will give to the CONTRACTOR notice in writing TEN (10) days after PCS has received actual notice of the institution of any suit or proceeding and permit the CONTRACTOR,

through his counsel, to defend same and will give all needed information, assistance, and authority to enable the CONTRACTOR to do so.

**13. *Bid Submission Documents***

A complete and responsive bid shall include all documents identified in “SUMMARY OF BID DOCUMENTS”.

## SECTION VI – STANDARD CONTRACT PROVISIONS

### 1. *Administration*

This Contract is between PCS and the CONTRACTOR. The CONTRACTOR is responsible for providing the goods/services described herein. The Project Manager is the individual designated by PCS to manage the project daily and who shall represent PCS as the owner's representative. PCS is not a party to defining the division of work between the CONTRACTOR and its SUBCONTRACTORS if any, and the Specifications and/or Scope of Services has not been written with this intent.

The CONTRACTOR represents that it has or will obtain all duly licensed and qualified personnel and equipment required to perform hereunder. The Contractor's performance under this Contract may be monitored and reviewed by the Project Manager appointed by PCS. Reports and data required to be provided by the Contractor shall be delivered to the Project Manager within FIVE (5) business days. Questions by the CONTRACTOR regarding the interpretation of the terms, provisions, and requirements of this Contract shall be addressed to the Project Manager for a response.

### 2. *Contract Changes Notification of Delay*

The CONTRACTOR will notify PCS' Project Manager as soon as the CONTRACTOR has, or should have, the knowledge that an event has occurred that delays delivery or start-up of services. Within FIVE (5) days, the CONTRACTOR will confirm such notice in writing, furnishing as many details as possible.

### 3. *Request for Extension*

As soon as such data is available, the CONTRACTOR agrees to supply any reasonable proofs required by PCS' Project Manager to decide any request for extension. PCS' Project Manager will examine the request and any documents provided by the CONTRACTOR and will determine if the CONTRACTOR is entitled to an extension and the duration of such extension. PCS' Project Manager will notify the CONTRACTOR of the decision in writing. It is expressly understood and agreed that the CONTRACTOR will not be entitled to damages or compensation and will not be reimbursed for losses on account of delays resulting from any cause under this provision.

### 4. *Changes in the Work/Change Orders*

Oral changes are not permitted. No change in the contract shall be made unless PCS gives prior written approval therefor. The CONTRACTOR shall be liable for all costs resulting from, and/or for satisfactorily correcting any change in the work not authorized by PCS in writing. The CONTRACTOR shall submit to PCS a detailed pricing and schedule proposal for the work to be performed under the change order. The proposal may be accepted by PCS or may be modified by negotiations between the CONTRACTOR and PCS. A change order amendment shall be executed in writing by both parties. Disagreements that cannot be resolved within

negotiations shall be resolved in accordance with the contract “Disputes” clause. Regardless of any disputes, the CONTRACTOR shall proceed with the work ordered, provided the CONTRACTOR has obtained prior concurrence of PCS.

#### *5. Cost or Price Analysis*

PCS reserves the right to conduct a cost or price analysis for any purchase. PCS may be required to perform a cost analysis when competition is lacking in any purchase. Sole source procurements which result in a single bid being received will be subject to a cost analysis which will include the appropriate verification of cost data, the evaluation of specific elements of costs, and the projection of data to determine the effect on bid prices. PCS may require a Pre-Award Audit, and potential CONTRACTORS shall be prepared to submit data relevant to the proposed work, allowing PCS to determine that the proposed price is fair, reasonable, and following Federal, State, and local regulations.

Procurements resulting in a single response will be treated as a negotiated procurement. PCS reserves the right to negotiate with the single Respondent to achieve a fair and reasonable price. In the event both parties cannot agree upon a negotiated price, PCS reserves the right to reject the single response. Contract change orders or modifications will be subject to a cost analysis.

#### *6. Lack of Funds*

If expected or actual funding is withdrawn, reduced, or limited in any way before the expiration date outlined in this Contract or any amendment hereto, PCS may, upon written notice to the CONTRACTOR, terminate this Contract in whole or in part. Such termination shall be in accordance with PCS’ rights to terminate for convenience or default.

#### *7. Force Majeure*

The timely receipt of PCS’ requirements are essential. In the event PCS’ requirements are not received on time or in accordance with the delivery schedule, PCS may cancel the unfilled portion of the contract for cause, purchase substitute requirements elsewhere, and recover from the CONTRACTOR any increased costs, thereby incurred together with all resulting incidental and consequential damages. PCS may also terminate the contract for cause, purchase substitute requirements elsewhere and recover costs and damages for breach of CONTRACTOR obligations.

The CONTRACTOR shall be entitled to a reasonable extension of time from PCS for the delays caused by damage to the CONTRACTOR's and/or PCS' property caused by fire, lightning, earthquakes, tornadoes, and other extreme weather conditions, pandemics or acts of nature, power failures, riots, acts of civil or military authorities of competent jurisdiction, strikes, lockouts, and any other industrial, civil, or public disturbances beyond the control of

the CONTRACTOR and its SUBCONTRACTORS causing the inability to perform the requirements of this Contract. Any delay other than the ones mentioned above shall constitute a breach of the CONTRACTOR's contractual obligations.

#### **8. *Taxes, Licenses, Laws, and Certificate Requirements***

The CONTRACTOR shall maintain and be liable for all taxes, fees, licenses, and costs as may be required by federal, state, and local laws, rules, and regulations for the conduct of business by the CONTRACTOR and any SUBCONTRACTORS and shall secure and at all times maintain all such valid licenses and permits as may be required to provide the services or supplies under this contract. If for any reason, the CONTRACTOR's required licenses or certificates are terminated, suspended, revoked, lapsed, or in any manner modified from their status at the time this Contract becomes effective, the CONTRACTOR shall immediately notify PCS in writing of such condition.

The CONTRACTOR will give all notices and comply with all federal, state, and local laws, ordinances, rules, regulations, standards, and orders of any public authority bearing on the performance of the Contract, including, but not limited to, the laws referred to in these General Provisions of the Contract and the other Contract Documents. In the event the Contract Documents contain a variance in addition to any respect, all necessary changes shall be adjusted by appropriate written modification. Omission of any applicable laws, ordinances, rules, regulations, standards, or orders by PCS in the Contract Documents shall be construed as an oversight. It shall not relieve the CONTRACTOR from their obligations to meet such fully and completely. Upon request, the CONTRACTOR shall furnish PCS certificates of compliance with all such laws, orders, and regulations. The CONTRACTOR shall be responsible for obtaining all necessary permits and licenses required for performance under the Contract.

Applicable provisions of all federal, state, and local laws, and of all ordinances, rules, and regulations shall govern all claims and disputes which may arise between the person(s) submitting a bid response hereto and PCS, by and through its officers, employees and authorized representatives, or any other persons, natural and otherwise, and lack of knowledge by any CONTRACTOR shall not constitute a cognizable defense against the legal effect thereof.

#### **9. *Assignability***

The terms and provisions of the Contract Documents shall be binding upon PCS and the CONTRACTOR and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. The rights and obligations of the CONTRACTOR under the Contract may not be transferred, assigned, sublet, mortgaged, pledged, or otherwise disposed of or encumbered in any way. The CONTRACTOR may subcontract a portion of its obligations to other firms or parties but only after having obtained the written approval by PCS of the SUBCONTRACTOR, which approval shall not be unreasonably withheld. PCS may assign its rights and obligations under the Contract to any successor to the rights and

functions of PCS or to any governmental agency to the extent required by applicable laws and governmental regulations or to the extent PCS deems necessary or advisable under the circumstances.

Should PCS agree to the assignment of a contract, the CONTRACTOR shall be responsible for all associated costs, including all PCS' legal fees. The total expense will be deducted from the CONTRACTOR's invoice.

#### *10. Material and Workmanship*

- A. All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The CONTRACTOR may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- B. The CONTRACTOR shall obtain the PCS' approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the CONTRACTOR shall furnish to the PCS the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery, mechanical and other equipment. When required by this contract or by PCS, the CONTRACTOR shall also obtain PCS' approval of the material or articles that the CONTRACTOR contemplates incorporating into the work. When requesting approval, the CONTRACTOR shall provide full information concerning the material or articles. When directed to do so, the CONTRACTOR shall submit samples for approval at the CONTRACTOR's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- C. All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the CONTRACTOR remove the work of any employee PCS deems incompetent, careless, or otherwise objectionable.

#### *11. Conflicts of Interest and Non-Competitive Practices*

Conflict of Interest – By entering into this Contract with PCS to perform or provide work, services, or materials, the CONTRACTOR has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed and/or provided under this Contract and that it shall not employ any person or



agent having any such interest. Suppose the CONTRACTOR or its agents, employees, or representatives hereafter acquires such a conflict of interest. In that case, it shall immediately disclose such interest to PCS and immediately eliminate the conflict or withdraw from this Contract, as PCS may require.

Contingent Fees and Gratuities – CONTRACTOR, by entering into this Contract with PCS to perform or provide work, services, or materials, has thereby covenanted:

No person or selling agency except bona fide employees or designated agents or representatives of the CONTRACTOR has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and

No gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the CONTRACTOR or any of its agents, employees, or representatives, to any official, member, or employee of PCS or other governmental agency to secure this Contract or secure favorable treatment concerning the awarding or amending, or the making of any determination concerning the performance of this Contract.

#### *12. Conflicts of Interest – Current and Former Employees*

PCS seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former PCS employees in transactions with PCS. Consistent with this policy, no current or former PCS employee may contract with, influence, advocate, advise, or consult with a third party about a PCS transaction, or assist with the preparation of Bids submitted to PCS while employed by PCS or within ONE (1) year after leaving PCS' employment, if they participated in determining the work to be done or process to be followed while a PCS employee.

Furthermore, no member, officer, or employee of PCS during their tenure or for two (2) years after that will have any financial interests, direct or indirect, in this Contract or the proceeds thereof.

#### *13. Non-Waiver by Acceptance or Payment*

Neither the acceptance by PCS of any goods and/or services; the payment by PCS for any goods and/or services; nor both acceptance and payment, shall be deemed to waive, to compromise, or to affect in any manner the liability of the CONTRACTOR for any breach of contract, of warranty or of both contract and of warranty.

## **SECTION VII – SPECIFIC CONTRACT TERMS AND CONDITIONS**

### **1. *Entire Agreement***

This contract which includes project specifications and drawings, and any amendments or change orders contains the entire agreement between PCS and the CONTRACTOR and supersedes all prior negotiations, representations, or agreements, either written or oral. This contract may be amended only by a written instrument, signed by both PCS and the CONTRACTOR.

### **2. *Contract Documents and Precedence***

The documents constituting the Contract between PCS, and the CONTRACTOR are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, the following order of precedence shall be applied:

- a) Any required federal, state, or local regulations that PCS may not alter.
- b) Contract amendments.
- c) Results of negotiations documented in a mutually acknowledged writing signed by party representatives having authority to bind the respective party.
- d) Solicitation and all issued addenda and approved equals.
- e) Any optional federal regulations elected by PCS as expressly set forth herein.
- f) Clarifications of and amendments to CONTRACTOR's proposal as accepted by PCS.
- g) CONTRACTOR's proposal and Attachments, and all clarifications and amendments issued before contract award (except where in conflict with any of the preceding points).

### **3. *Payment Procedures***

- a) **Payment Schedule/Prompt Payment to SUBCONTRACTORS:**  
PCS will make payments during the duration of this contract based upon approved and accepted CONTRACTOR submitted invoices. Payment schedule to be set upon acceptance and award of the selected responsive BID. The contract will include an agreed and negotiated payment schedule. It is required by 49 CFR 26.29 that prompt payments are required by the prime CONTRACTOR to every SUBCONTRACTOR for

satisfactory performance of the work performed in accordance with subcontracts no later than TEN (10) days from receipts of each payment that PCS makes to the prime CONTRACTOR; this also includes any retainage.

b) Maximum Payment:

The prices submitted in the proposal shall include all items of labor, materials, tools, equipment, installation, and other costs necessary to fully complete the manufacture and delivery of the equipment according to these specifications. Pricing must be submitted on the pricing proposal sheet included herein.

c) Invoicing:

1. CONTRACTORS must invoice within THIRTY (30) days of completion of work or as agreed in writing as long as the project or service is ongoing.
2. Approved invoices are to be emailed to [lylene.springer@pcsvcs.org](mailto:lylene.springer@pcsvcs.org)
3. If you are unable to email, please use:

Panhandle Community Services  
1309 SW 8<sup>th</sup> Avenue  
Amarillo, Texas 79101

#### 4. *Workers' Compensation*

The CONTRACTOR shall comply with the state law known as the Workers' Compensation Act, Chapter 207, Texas Revised Code as applicable, and shall pay into the State Insurance Fund the necessary premiums required by that Act to cover all employees furnishing the services purchased under the terms of this contract and under the control of the CONTRACTOR and shall relieve PCS from any costs due to accidents or other liabilities mentioned in said Act. If THE CONTRACTOR is a self-insurer under the Texas Workers' Compensation Act, and duly authorized as such by the State of Texas, it shall tender to PCS proof of such status. The CONTRACTOR shall, from time to time upon request, tender to PCS a certificate evidencing its compliance with the Workers' Compensation Act.

#### 5. *Social Securities Act*

BIDDERS shall be and remain an independent CONTRACTOR for all services performed hereunder and agrees to and does as a result of this accept total and exclusive liability for payment of all contributions or taxes for social security, unemployment insurance, and old age retirement benefits or annuities now or hereafter imposed under any State. Federal law is measured by the wages, salaries, or other remunerations paid to persons by the BIDDER on work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all legal requirements which are now or may be issued or promulgated under said respective laws by any duly authorized State or Federal officials; and said BIDDER also agrees to indemnify and save harmless the Board of Trustees from any contributions or liability therefor.

6. *Advance Payments Prohibited*

No advance payment shall be made for the work furnished by the CONTRACTOR according to this contract; only approved progress payments will be made.

7. *Shipping Costs*

All prices shall include freight FOB to the designated delivery point. PCS shall reject requests for additional compensation for freight charges.

8. *Warranty and Guarantee*

THE CONTRACTOR guarantees that all equipment delivered and installed under the Contract will be made from materials suitable and adequate for the purposes intended and described in the Contract, and in a workmanlike manner in accordance with the best engineering practice, and that such equipment will fully comply with the Contract Drawings, Specifications and THE CONTRACTOR's bid including all performance requirements and representations included in the Contract Drawings, Specifications or the CONTRACTOR's bid, whether set forth on data sheets, performance curves, or otherwise.

All specialties, equipment and parts supplied by the CONTRACTOR shall be the same design and model on all equipment purchased under this Specification. The CONTRACTOR shall assume all responsibility for these specialties, parts and equipment whether manufactured by the CONTRACTOR or purchased by him/her from another source.

The CONTRACTOR shall warrant and guarantee the **FACILITY CONSTRUCTION**, for a period of ONE (1) year from date of acceptance for both labor and materials and final payment from PCS. Any and all materials, specialties, equipment or accessories that prove defective in normal operation within the above period shall be replaced or repaired by the CONTRACTOR free of any cost to PCS, including all material, labor, and transportation costs. Transportation of warranty replacement parts shall be by the fastest means possible, including airfreight if the part is of a size that can be reasonably shipped via airfreight.

If it becomes necessary under the terms of this guarantee that any part or material must be redesigned, replaced, or repaired by this CONTRACTOR, such replaced items and any other item affected by this replacement shall be guaranteed for an additional ONE (1) year period from date of replacement. Any needed redesign efforts to correct defective parts will be completed through a change order.

All CONTRACTORS will provide the Owner with a written Statement of Warranty to include the Material and Labor to replace any defective parts/components provided under this project for a period of ONE (1) year after final payment not from substantial completion.

9. *Independent Contractor*

THE CONTRACTOR shall be and remain an independent CONTRACTOR with respect to all service performed hereunder and agrees to and does hereby accept full and exclusive

liability for the payment of any and all contributions or taxes for Social Security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries, or other remuneration paid under this contract, and further agrees to indemnify and save harmless PCS from any such contributions or taxes or liability thereof.

#### *10. Non-Disclosure of Data*

Data provided by PCS either before or after the Contract award shall only be used for its intended purpose. BIDDERS, CONTRACTORS, and SUBCONTRACTORS shall not utilize or distribute PCS data in any form without the prior express written approval of PCS.

#### *11. Non-Disclosure of Obligation*

While providing the work required under this Contract, the CONTRACTOR might encounter licensed technology, software, documentation, drawings, schematics, manuals, data, or other materials marked "Confidential," "Proprietary," or "Business Secret." The CONTRACTOR shall, with regard to such information and material received or used in the performance of this Contract, employ practices no less than those used for the protection of the CONTRACTOR's confidential information.

The Contract imposes no obligation upon the CONTRACTOR concerning confidential information which the CONTRACTOR can establish that: a) was in possession of, or was rightfully known by the CONTRACTOR without an obligation to maintain its confidentiality before receipt from PCS or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the CONTRACTOR in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the CONTRACTOR without the participation of individuals who have had access to PCS' or the third

#### *12. Public Disclosure Request*

Contracts shall be considered public documents and, with exceptions provided under public disclosure laws, will be available for inspection and copying by the public.

Suppose a CONTRACTOR considers any portion of any documents which may be delivered to PCS pursuant to this Contract to be protected under the law. In that case, the CONTRACTOR shall identify each such item with words such as "Confidential," "Proprietary," or "Business Secret." Suppose a request is made for disclosure of any such document. In that case, PCS will determine whether the document should be made available under the law. Suppose PCS determines the document or parts thereof to be exempt from public disclosure. In that case, PCS will not release the exempted document.

### *13. Ownership of Documents*

PCS shall be the owner of all plans, scope of work and related documents prepared pursuant to this Contract or provided to THE CONTRACTOR by PCS. Any re-use of the plans, scope of work or related documents by PCS for other than the purpose intended by this Contract shall impose no liability on the CONTRACTOR.

### *14. Patents and Royalties*

The CONTRACTOR is responsible for paying all license fees, royalties, or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Contract. Before final payment is made on this Contract, the CONTRACTOR shall, if requested by PCS, furnish acceptable proof of a proper release from all such fees or claims.

### *15. Publicity*

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this contract or the work hereunder which the BIDDER or any of its SUBCONTRACTOR's desires to make for purposes of publication in whole or in part shall be subject to the approval of the Executive Director/CEO of PCS before release. BIDDER's failure to observe this provision PCS shall have the right to terminate the contract without obligation to accept deliveries after the date of termination or to make further payment except for completed articles delivered before termination.

### *16. Changed Requirements*

New federal, state, and local laws, regulations, ordinances, rules, policies, and administrative practices may be established after the contract is established and may apply to this Contract. To achieve compliance with changing requirements, the CONTRACTOR agrees to accept all changed conditions that apply to this Contract and require SUBCONTRACTORS to comply with revised requirements. Changed requirements will be implemented through Contract Changes/Change Order Procedure.

### *17. Delivery Points*

This contract requires all goods and/or services and supervision necessary to furnish the goods and services as set forth herein to be made to PCS' main facility using the Receiving Department to deliver goods.

### *18. Specified Material and "Approved Equals"*

A. In all cases the **FACILITY CONSTRUCTION** must be furnished as specified. Where brand names or specific items or processes are used in the specifications, consider the term "or approved equal" to follow. However, a request for approval for any proposed substitution as an equal must be submitted in writing to PCS TEN (10) days prior to the bid opening date.

- B. For all items listed and which are described or defined by dimensions or other measure of physical characteristics or performance, it is understood that such information indicates the character of the required items and so strict interpretations with respect to nonessential details shall not be made as to limit competition among manufacturers of substantially equivalent items.

Whenever this specification defines the material or article required by using a proprietary product or of a manufacturer or vendor, rather than by using descriptive detail of substance and function, the term "or equal" always is understood to follow immediately the name of the make, vendor, or proprietary product. An item of material shall be considered equal to the item so named in the specifications if: (1) it is at least equal in quality, durability, appearance, strength, and design; (2) it will perform at least equally the function imposed by the general design for the material or equipment being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in this specification.

Whenever in this specification the names of one or more manufacturers are mentioned as indicating that their product will comply with a particular specification or where specific trade names are mentioned, it is not intended to exclude products of other manufacturers whose names or symbols have not been provided, only however, that such products conform to the detailed requirements for the item as indicated in the specifications.

- C. BIDDERS shall be responsible for providing PCS with information in the latest applicable revision of any part or process specifically called for in the specifications for consideration.
- D. PCS shall have the power to reject the **FACILITY CONSTRUCTION**, furnished under the Contract, which does not conform, to the terms and conditions as set forth in the contract documents.

#### *19. Duration of Contract*

The duration of the contract shall be until delivery, installation, testing and acceptance of the **FACILITY CONSTRUCTION** not to exceed 425 calendar days from notification of award.

#### *20. Time for Performance*

Time is of the essence in the performance of this contract. The CONTRACTOR shall fully perform all of its obligations, including, without limitation, the satisfactory performance of all work to be done, by no later than the delivery or completion date set forth in the Special Conditions and Bid Document. The CONTRACTOR and PCS recognize it will be difficult to compute PCS' damage resulting from unexcused delays in the performance of the contract, particularly in view of the fact that PCS is not a profit-making entity. Accordingly, it is agreed that PCS will have the right to recover liquidated damages for delay in the completion of this

contract beyond the date specified and not subject to the contract excusable delays clause to be computed as follows: FIVE HUNDRED (\$500) dollars per day caused by delays or defective construction shall be borne by the party responsible thereafter.

Alternatively, if the delivery or performance is so delayed, PCS may terminate the contract in whole or in part under the Termination for Cause clause in the contract document and in that event, the CONTRACTOR shall be liable for fixed, agreed, liquidated damages accruing until the time PCS may reasonably obtain delivery or performance of similar supplies or services.

PCS may cancel the unfilled portion of the contract for default; purchase substitute requirements elsewhere; and recover from the CONTRACTOR any increased costs thereby incurred, together with all resulting incidental and consequential damages.

## *21. Covenant against Contingent Fees*

The CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business. For breach of violation of this warranty, PCS shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

## *22. Subcontracts Approval*

PCS shall have the right to approve or disapprove all subcontracts in accordance with the following provisions.

As used in this clause, the term "subcontract" includes SUBCONTRACTORS and major suppliers of material or services to the CONTRACTOR.

The CONTRACTOR shall notify PCS reasonably in advance of entering into any subcontract if CONTRACTOR's procurement system has not been approved by PCS and if the subcontract:

- A. Is to be a cost-reimbursement, time, and materials, or labor-hour contract, which, is estimated to involve an amount in excess of TEN THOUSAND (\$10,000) including any fee;
- B. Is expected to exceed ONE HUNDRED THOUSAND (\$100,000); or
- C. Is one of a number of subcontracts, under this contract, with a single SUBCONTRACTOR for the same or related supplies or services which, in the aggregate, are expected to exceed ONE HUNDRED THOUSAND (\$100,000);



The advance notification required by the above shall include a description of the supplies or services to be called for by the subcontract;

Identification of the proposed SUBCONTRACTOR and an explanation of why and how the proposed SUBCONTRACTOR was selected including the competition obtained: The proposed subcontract price, together with the CONTRACTOR's cost or price analysis thereof; the SUBCONTRACTOR's current, complete and accurate cost or pricing data and Certificate of Current Cost of Pricing Data, when such data and certificates are required by other provisions of this contract to be obtained from the SUBCONTRACTOR; Identification of the type of subcontract to be used; and a memorandum of negotiation, which sets forth the principle elements of the subcontract price negotiations. A copy of this memorandum shall be retained in the CONTRACTOR's file for the use of PCS' reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices.

The CONTRACTOR shall not enter into any subcontract for which advance notification to PCS is required by this clause, without prior written consent of PCS, provided, that PCS, in its discretion, may ratify in writing any subcontract. Such ratification shall constitute the consent of PCS required by this paragraph.

Neither consent by PCS to any subcontract nor any provisions thereof nor approval of the CONTRACTOR's procurement system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to relieve THE CONTRACTOR of any responsibility for performing this contract unless such approval or consent specifically provides otherwise.

### *23. Insurance*

The CONTRACTOR shall maintain, at its own expense, throughout the period of the Contract and any extensions thereof the following minimum insurance coverages of the types and in the amounts described below that are applicable to the scope of work being performed:

1. Workers Compensation and Employer's Liability Insurance. THE CONTRACTORS must carry Workers' Compensation Insurance (including occupational disease) in compliance with Workers' Compensation statutes of any applicable jurisdiction in which the Work is to be performed. A certificate of compliance from the appropriate workers' compensation bureau or board must be provided with the certificate of insurance.
2. Commercial General Liability Insurance. THE CONTRACTORS must carry Commercial General Liability Insurance written with limits of ONE MILLION (\$1,000,000) per occurrence and TWO MILLION (\$2,000,000) in the aggregate. The general aggregate limit shall apply separately to this project. PCS (including its directors, officers, employees, and volunteers) must be named as an additional insured on the CGL for liability arising out of the acts or omissions of the CONTRACTOR, including coverage for liability arising out of products and completed operations. The coverage afforded to PCS

shall be primary to any other insurance carried by PCS, and PCS' coverage shall not contribute to any loss made pursuant to this coverage grant. Commercial General Liability coverage (including PCS' status as additional insured) shall be maintained for at least two years after completion of the CONTRACTOR's work performed under this contract.

3. Commercial Auto Liability Insurance. The CONTRACTOR shall carry Commercial Automobile Liability Insurance covering all owned, leased, and non-owned vehicles used in connection with the work to be performed under this contract, with limits of not less than ONE MILLION (\$1,000,000) combined single limit per accident for bodily injury and property damage. PCS shall be afforded coverage under this policy for any liability arising out of the acts or omissions of the CONTRACTOR.
4. Requirements common to all policies.
  - a. The CONTRACTOR shall be solely responsible for reimbursing any deductible amount to the insurer, even if payment is being made on behalf of PCS as an additional insured on THE CONTRACTOR's policy.
  - b. The CONTRACTOR waives all rights of recovery it may otherwise have against PCS (including its directors, officers, employees, and volunteers) to the extent these damages are covered by any of THE CONTRACTOR's insurance policies as required in this contract.
  - c. All insurance required hereunder shall be licensed, admitted insurers authorized to do business in the state of Texas.
  - d. A certificate(s) of insurance showing that the CONTRACTOR's insurance coverages are in compliance with the insurance requirements set forth below must be completed by the CONTRACTOR's insurance agent, broker, or insurance company after the contract has been awarded. All certificates (other than Texas workers' compensation) shall provide for THIRTY (30) days written notice to PCS prior to cancellation or non-renewal of any insurance referred to therein. The certificate shall reference PCS' status as an additional insured with primary/noncontributory coverage under both the General Liability and Auto policies.
  - e. Failure of PCS to receive certificate(s) or other evidence of full compliance with these insurance requirements (or failure of PCS to identify and/or object to a deficiency in the certificate(s) that is/are provided by the CONTRACTOR) shall not be construed as a waiver of the CONTRACTOR's obligations to maintain such insurance. PCS shall have the right, but not the obligation, to prohibit the CONTRACTOR from beginning performance under this contract until such certificates or other evidence that insurance has been placed in complete compliance with the above insurance requirements is received and approved by

PCS. The CONTRACTOR shall provide certified copies of all insurance policies required above within FIVE (5) days of written request from PCS.

- f. By requiring insurance herein, PCS does not represent that coverage and limits will necessarily be adequate to protect the CONTRACTOR, and such coverage limits shall not be deemed as a limitation on the CONTRACTOR's liability under the indemnities granted to PCS.
- g. Any SUBCONTRACTORS engaged by the CONTRACTOR to perform the Work shall comply with these insurance and indemnification provisions and shall provide primary /noncontributory coverage to PCS as set forth herein.

#### *24. Partial Payments*

PCS shall make payment to the CONTRACTOR for work actually performed and accepted by PCS, less deductions, if any, as herein provided. PCS shall withhold TEN percent (10%) retainage and retainage is not subject to interest, nor will PCS be liable for same. Final payment will be made in accordance with Final Payment below. All payments will be made within THIRTY (30) days after acceptance and approval by PCS.

PCS may elect to reduce retainage in accordance with applicable provisions of the Texas Revised Code.

#### *25. Final Payment*

After the CONTRACTOR has completed all work and made all corrections to the satisfaction of PCS and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, as-built plans, and other documents - all as required by the contract document, he may make application for final payment following the procedures for Partial Payments.

The application for final payment shall be accompanied by three (3) copies of the affidavits certifying that all work required to be performed under this contract has been fully completed in accordance with the contract document, and that all claims, liens, bills for labor and materials, and/or other obligations incurred in connection with the performance of the work, including work performed by SUBCONTRACTORS, have been fully paid and settled.

The date of approval of the application for final payment by PCS for all completed items of work will be the date upon which all guarantees, and warranties begin, unless otherwise noted in PCS' approval. In cases where some predetermined amount of money has been withheld from final payment on certain contract items due to delay in their completion, as approved by PCS, then the date of start of the guarantees and warranties on the whole amount of these particular delayed contract items will start on the date of approval of their final payments by PCS.

## 26. *Safety*

It is the intention of PCS to protect PCS employees, customers, and property from harm due to CONTRACTOR activity, and to reduce PCS' liability exposure limits regarding safety and environmental infractions.

PCS expects all CONTRACTORS and SUBCONTRACTOR to comply with and abide by any and all applicable regulatory standards.

Some special and unique safety and environmental concerns found at PCS and incumbent upon the CONTRACTOR and SUBCONTRACTOR include:

- A. Multiple sized vehicles move about the interior and exterior of most buildings. Please be advised that set traffic patterns have been established and must be followed.
- B. Operators of all equipment are expected to be certified to operate appropriate equipment.
- C. Restrictive storm water pollution rules apply.
- D. Material Safety Data Sheets must be provided for all materials used. Specific notification is required if a product to be used on the job has been classified as an "Extremely Hazardous Material".
- E. Building evacuation procedures.
- F. Fire safety and prevention procedures.
- G. First aid procedures.
- H. Hazardous material safety.

## 27. *Compliance with Security Measures*

All CONTRACTORS are required to display an identification badge supplied by CONTRACTOR while on PCS' premises. If applicable, badges must be worn where they can be seen at all times. This requirement applies to every employee of all CONTRACTORS and/or SUBCONTRACTORS. All CONTRACTOR's employees are also required to wear clothing which identifies the company for which they work (i.e., uniform, hard hat, jacket, etc.).

## 28. *Site Access*

Access will be restricted to those areas designated by the Project Manager. Protection must be provided to ensure damage does not occur. In the event that CONTRACTOR operations result in any damage, damages shall be repaired within 24 hours at no additional cost to PCS.

## *29. Protection of Existing Vegetation, Structures, Equipment and Utilities and Improvements*

- A. The CONTRACTOR shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which was not to be removed and which do not unreasonably interfere with the work required under the contract. The CONTRACTOR shall only remove trees when specifically authorized to do so and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the CONTRACTOR shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Project Manager.
- B. The CONTRACTOR shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the CONTRACTOR. The CONTRACTOR shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of the contract or failure to exercise reasonable care in performing the work. If the CONTRACTOR fails or refuses to repair the damage promptly, the Owner may have the necessary work performed and charge the cost to the CONTRACTOR.

## *30. Accident Prevention*

- A. The CONTRACTOR shall provide and maintain work environments and procedures which will (1) safeguard the public and PCS personnel, property, materials, supplies, and equipment exposed to the CONTRACTOR operations and activities; (2) avoid interruptions of PCS operations and delays in project completion dates; and (3) control costs in the performance of this contract.
- B. For these purposes of contracts for construction or dismantling, demolition, or removal of improvements, the CONTRACTOR shall:
  - (1) Provide appropriate safety barricades, signs, and signal lights;
  - (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
  - (3) Ensure that any additional measures the Project Manager determines to be reasonably necessary for the purposes are taken.
- C. If this contract is for construction or dismantling, demolition, or removal of improvements with any Department of Transportation agency or component, the CONTRACTOR shall comply with all pertinent provisions of the latest version of U.S.

Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

- D. Whenever the Owner or its representatives become aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or PCS personnel, the Project Manager shall notify the CONTRACTOR orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the CONTRACTOR or the CONTRACTOR's representative at the work site, shall be deemed sufficient notice of noncompliance and that corrective action is required. After receiving the notice, the CONTRACTOR shall immediately take corrective action. If the CONTRACTOR fails or refuses to promptly take corrective action, the Owner may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The CONTRACTOR shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
- E. The CONTRACTOR shall insert this clause, including this paragraph (e), with appropriate changes in the designation of parties, in subcontracts.

### *31. Permits and Responsibilities*

The CONTRACTOR shall, without additional expense to PCS, be responsible for obtaining any necessary licenses and permits, and for complying with any federal, state, and municipal laws, codes, and regulations applicable to the performance of the work. The CONTRACTOR shall also be responsible for all damage to persons or property that occurs as a result of the CONTRACTOR's fault or negligence. The CONTRACTOR shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

### *32. Applicable Law and Forum*

All work done pursuant to any contract resulting from this IFB will be governed by and construed according to the regulations of the Federal Transit Administration and the laws of the State of Texas. Further, the successful BIDDER shall abide by all federal, state, and local laws, PCS, and ordinances governing any areas(s) where a service is rendered and shall have all required permits, licenses, agreements, tariffs, bonding, and insurance required by same. No claims for additional payment shall be approved for changes required to comply with any such requirements.

### *33. State of Texas*

The rights and duties of the parties hereto shall be determined by the laws of the State of Texas, and to that end, the contract shall be construed and considered as a contract made and to be performed in the County of Randall, Texas.

## SECTION VIII – FEDERAL AND STATE CLAUSES

It is the responsibility of BIDDERS to ensure that all federal and state clauses applicable to this IFB are adhered to when applicable.

### PTN-130 CONSOLIDATED CERTIFICATION FORM

The intent of the PTN-130 is to assist BIDDERS in the management of federal and state requirements by consolidating federal and state clauses related to this IFB.

By signing the PTN-130, the BIDDER agrees to comply with all applicable federal and state rules including all clauses referenced in the Consolidated Certification Form (Form PTN-130).

The PTN-130 Consolidated Certification Form is available on TxDOT's website at:

<https://www.txdot.gov/business/resources/forms-guides/public-transportation-forms-publications.html>

For questions or comments, please email a detailed request to:

John Hendrickson  
Project Manager, HTG  
[john.hendrickson@trusthtg.com](mailto:john.hendrickson@trusthtg.com)

Any subcontract entered into as a result of the IFB shall contain all the provisions of these Federal Clauses. As a PTN subrecipient, PCS is required to inform the BIDDER of the following information:

#### 1. *No Federal Government Obligations to Third Parties*

The Purchaser and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party of 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.

The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by PTN. It is further agreed that the clause shall not be modified, except to identify the SUBCONTRACTOR who will be subject to its provisions.

#### 2. *Access to Third Party Contract Records*

Access to Records. The CONTRACTOR agrees to provide sufficient access to FTA and its SUBCONTRACTORS to examine, inspect, and audit records and information related to the

performance of this Contract as reasonably may be required.

In accordance with 49 U.S.C. section 5325(g), the CONTRACTOR agrees to provide PCS, the Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, and 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, inspections, excerpts, and transcriptions.

The CONTRACTOR also agrees, pursuant to 49 C.F.R. section 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight ("PMO") CONTRACTOR, access to the CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. section 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309, or 5311.

Access to the Sites of Performance. The CONTRACTOR agrees to permit FTA and its CONTRACTORS access to the sites of performance under this Contract as may reasonably be required.

Reproduction of Documents. The CONTRACTOR will retain and will require its SUBCONTRACTOR at all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, SUBCONTRACTOR, arrangements, other third-party agreements of any type, and supporting materials related to those records.

Retention Period. The CONTRACTOR agrees to comply with the record retention requirements in accordance with 2 C.F.R section 200.333. The CONTRACTOR shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than 3 years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto.

The expiration or termination of this Contract does not alter the record retention or access requirements of this Section.

### **3. *Changes to Federal Requirements***

The CONTRACTOR shall comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures, and directives including, without limitation, those listed directly or by reference in the agreement between PCS and FTA. The CONTRACTOR's failure to comply with applicable FTA regulations, policies, procedures, and directives, as they may be amended or promulgated from time to time during the term of this contract, shall constitute a material breach of this contract.



#### 4. *Civil Rights (EEO, Title VI & ADA)*

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 hereof.

##### 1) Nondiscrimination.

- a) In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The CONTRACTOR shall also comply with applicable Federal implementing regulations and other requirements FTA may issue.
- b) Nondiscrimination in Contracting. The CONTRACTOR agrees and assures that it will abide by the following conditions, and that it will include the following assurance in every subagreement and third-party contract it signs: (1) The CONTRACTOR must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, or third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26; and (2) the CONTRACTOR must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable.

##### 2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

- a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, the CONTRACTOR shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. 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. In addition, the CONTRACTOR shall comply with any implementing requirements FTA may issue.

b) Age. In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, the CONTRACTOR shall refrain from discrimination against present and prospective employees for reason of age. The CONTRACTOR shall also comply with any implementing requirements FTA may issue.

c) Disabilities. In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, the CONTRACTOR shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. The CONTRACTOR shall also comply with any implementing requirements FTA may issue.

3) Inclusion in Subcontracts. CONTRACTORS shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

## **5. *Incorporation of FTA Terms***

Specific provisions in this Contract include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in the most recent addition and any revisions of FTA Circular 4220.1 "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, and in Appendix II of 2 C.F.R. part 200 are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply would cause PCS to be in violation of the FTA terms and conditions.

## **6. *Energy Conservation***

All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) the CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

## 7. *Trafficking in Persons*

- A. As prescribed in 48 CFR § 52.222-50, FTA has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. CONTRACTORS, CONTRACTOR employees, and their agents shall not—
- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
  - (2) Procure commercial sex acts during the period of performance of the contract;
  - (3) Use forced labor in the performance of the contract;
  - (4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;
  - (5)
    - I. Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;
    - II. Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;
  - (6) Charge employees or potential employees' recruitment fees;
- B. CONTRACTORS shall notify its employees and agents of-
- I. The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and
  - II. The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

- C. Take appropriate action, up to and including termination, against employees, agents, or SUBCONTRACTORS that violate the policy in paragraph (b) of this clause.

#### 8. *False or Fraudulent Statements or Claims*

Applicability - All contracts except micro-purchases (\$10,000 or less, except for construction contracts over (\$2,000).

- A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, 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 FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on CONTRACTOR to the extent the US Government deems appropriate.
- B. If CONTRACTOR makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on CONTRACTOR, to the extent the US Government deems appropriate.

The CONTRACTOR shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the SUBCONTRACTOR who will be subject to the provisions.

#### 9. *Disadvantaged Business Enterprise (DBE)*

The recipient or its CONTRACTOR agrees to ensure that DBEs, as defined in 49 CFR Parts 23 and 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement.

#### 10. *Fly America*

The CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R part 301- 10, which provide that recipients and subrecipients of Federal funds and their CONTRACTORS are required to use U.S. Flag Air Carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly

America Act. The CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag Air Carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The CONTRACTOR agrees to include the requirements of this section FTA in all subcontracts that may involve international air transportation.

#### *11. Americans with Disabilities Act (ADA) Access*

The CONTRACTOR shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The CONTRACTOR shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

#### *12. Special Notification Requirements for States*

If at any time during the performance of this contract, the CONTRACTOR becomes aware of actual or potential problems, fault defect in the project or any nonconformance with any contract document, federal, state, or local law, rule or regulation, the CONTRACTOR shall give immediate notice thereof to the Project Manager and PCS.

#### *13. Safe Operation of Motor Vehicles*

Seat Belt Use. The CONTRACTOR agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- (1) Adopting and promoting 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; and
- (2) Including a "Seat Belt Use" provision in each third-party agreement related to this Contract.

Distracted Driving, Including Text Messaging While Driving. The CONTRACTOR agrees to implement Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and U.S. DOT Special Provision pertaining to Distracted Driving by:

- (1) 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 the CONTRACTOR owns, leases, or rents, or a privately-owned vehicle when on official business in connection with this Contract or when performing any work for or on behalf of this Contract.
- (2) The CONTRACTOR agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- (3) The CONTRACTOR agrees to include the preceding “Distracted Driving, Including Text Messaging While Driving” provisions in each third-party agreement related to this Contract.

#### ***14. Federal Tax Liability and Recent Felony Convictions***

PCS is exempt from payment of all taxes, and taxes must not be included in bid prices. Necessary exemption certificates shall be furnished to the successful bidder upon request.

By entering into this agreement or a third-party contract financed under this agreement, the CONTRACTOR certifies that neither it (nor he nor she) nor any person or firm that has an interest in the CONTRACTOR's firm is a person or firm ineligible to be awarded government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

No part of this Contract shall be subcontracted to any person or firm ineligible for award of a government Contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

The penalty for making false statements as prescribed in the U.S. Criminal Code, 18 USC Section 1001.

#### ***15. Program Fraud and False or Fraudulent Statements and Related Acts***

The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies, “49 C.F. R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the PTN 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.

The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by PTN. It is further agreed that the clauses shall not be modified, except to identify the SUBCONTRACTOR who will be subject to the provisions.

#### **16. Prompt Payment**

PCS will include the following clause in each TxDOT-assisted prime contract:

The prime CONTRACTOR agrees to pay each SUBCONTRACTOR under this prime contract for satisfactory performance of its contract no later than TEN (10) days from the receipt of each payment the prime CONTRACTOR receives from PCS. The prime CONTRACTOR agrees further to return retainage payments to each SUBCONTRACTOR within TEN (10) days after the SUBCONTRACTOR's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of PCS. This clause applies to both DBE and non-DBE SUBCONTRACTORS.

When applicable, PCS may use the following mechanisms to ensure prompt payment.

- A. Language providing that prime CONTRACTORS and SUBCONTRACTORS will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- B. Language providing that prime CONTRACTORS will not be reimbursed for work performed by SUBCONTRACTORS until the prime CONTRACTOR ensures that the SUBCONTRACTORS are paid promptly for work, they have performed.
- C. Enforcement of public funds liens law and use of a similar mechanism for nonpublic improvement projects.
- D. Other applicable mechanisms as necessary.

*17. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment*

The CONTRACTOR certifies through the signing of this contract that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), the CONTRACTOR does not and will not use any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. The CONTRACTOR will include this certification as a flow down clause in any contract related to this Contract.

*18. Conformance with Intelligent Transportation Systems (ITS) National Architecture*

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. §section 502 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

*19. Severability*

In the event any provision specified is held or determined by a court of competent jurisdiction to be illegal, void or in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect.

*20. Termination*

A. Termination for Default

In the event the CONTRACTOR defaults in the performance of any of its obligations under this Contract, PCS shall have (in addition to and not in lieu of, all other rights, remedies, and damages to which it may be entitled by reason of such default) the right and option to terminate this Contract. In the event PCS exercises such right and option to terminate for default, PCS shall be obligated to pay only for work performed and accepted by PCS prior to the date upon which PCS gives CONTRACTOR written notice of termination for default, less 1) the amount of all damages suffered by PCS reason of such default and 2) any amount by which the commercially reasonable cost of correcting the default and/or completing the work exceeds the unpaid portion of amount which would have paid hereunder; if the sum of 1) and 2) plus all amounts previously paid exceed the value of the work performed and accepted by PCS prior to the giving of written notice of default, the CONTRACTOR shall be liable to PCS for such excess.

B. Termination for Convenience

PCS may terminate this Contract at any time at its convenience by giving notice in



writing to the CONTRACTOR, which notice shall state that it is a notice of termination for the convenience of PCS and shall specify the effective date of termination. The CONTRACTOR shall promptly submit its termination claim to PCS, and the parties shall negotiate the termination settlement to be paid CONTRACTOR. The CONTRACTOR shall be paid pursuant to the contract for costs and expenses accrued to the date of termination. In such event, amounts previously paid to the CONTRACTOR shall be credited against any amounts determined to be due to the CONTRACTOR pursuant to this paragraph. Upon receipt of the notice of termination the CONTRACTOR shall immediately cancel its outstanding orders for procurement of materials, supplies and other miscellaneous goods.

- C. In the event of termination either for default or for the convenience of PCS, the CONTRACTOR shall account for any property in its possession paid for from funds received from PCS, or property supplied to the CONTRACTOR by PCS.

## *21. Solid Wastes*

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

## *22. Debarment and Suspension*

The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200 during the term of this Contract. By signing this Contract, the Consultant certifies that neither it nor its principals, affiliates, or SUBCONTRACTORS are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this Contract by any Federal department or agency. This certification is a material representation of fact upon which PCS relies in entering this Contract. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to other remedies available to PCS, the Federal Government may pursue available remedies, including suspension or debarment or both. The CONTRACTOR shall provide PCS with immediate written notice if at any time the CONTRACTOR learns that its certification was erroneous when submitted or has become erroneous because of changed circumstances. The CONTRACTOR will include a provision requiring such compliance in its lower tier covered transactions.

### *23. Resolution Of Disputes, Breaches, Or Other Litigation*

When applicable contracts in excess of \$175,000, and all nonprocurement transaction, as defined in 2 C.F.R. §§ 180.220 and 1200.220, in excess of \$25,000 will contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where CONTRACTORS violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures. Specific language for dispute resolution will be provided in any resultant contract of the successful BIDDERS.

Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the CONTRACTOR must promptly notify PCS and FTA's Region 5 Office's FTA Chief Counsel and Regional Counsel. The CONTRACTOR must include these requirements as a flow down clause in any subcontract related to this Contract.

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

### *24. Contracting with the Enemy*

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

### *25. Lobbying Restrictions*

For any project of \$100,000 or more, the CONTRACTOR is required to make the following certifications. The CONTRACTOR must also require its CONTRACTORS or SUBCONTRACTORS to make the following certification in any Contracts or subcontracts valued at or above \$100,000.

Certification of Restrictions on Lobbying; Disclosure. The CONTRACTOR certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid by or on behalf of the CONTRACTOR 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.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence 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 a Federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The CONTRACTOR 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 PCS has relied to enter this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 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.

By its signature on this Contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. Section 3801, et seq., apply to this certification and disclosure, if any.

## **26. *Environmental Protection (Clean Air and Water Pollution Control)***

**Clean Water Act.** For any project of \$150,000 or more, the CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251-1387. The CONTRACTOR agrees to report each violation to PCS and understands and agrees that PCS will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency ("EPA") Regional Office. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**Clean Air Act Compliance.** For any project of \$150,000 or more, the CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. sections 7401-7671q. The CONTRACTOR agrees to report each violation to PCS and understands and agrees that PCS 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 \$150,000 financed in whole or in part with Federal assistance provided by FTA. of Documents. The CONTRACTOR will retain, and will require its SUBCONTRACTOR at all tiers to retain, complete and readily accessible records related in whole or in part to this

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

Recovered Materials. The CONTRACTOR agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with all the requirements of Section 6002 of the Resource Conservation and Recovery Act ("RCRA") as amended (42U.S.C. section 6962) and U.S. Environmental Protection Agency, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

### *Special Construction Clauses*

#### *27. DBE (Goal, Good Faith Efforts, Reporting Requirements, Forms etc.)*

DBE Participation: It is the policy of the Texas Department of Transportation Public Transportation Division and Federal Transit Administration that Disadvantaged Business Enterprises (DBE's), as defined in 49 CFR, Parts 23 and 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. The DBE goal for this procurement is **1.0%**.

##### A. Policy

As defined in 49 CFR, Parts 23 and 26, DBE's shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. The Disadvantaged Business requirements of these sections apply to this agreement.

##### B. DBE Obligation

The recipient or its CONTRACTOR agrees to ensure that DBEs, as defined in 49 CFR Parts 23 and 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or CONTRACTORS shall take all necessary and reasonable steps in accordance with 49 CFR Parts 23 and 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Recipients and their CONTRACTORS shall not discriminate on the basis of race, religion, color, creed, sex, disability, age or national origin in the award and performance of TxDOT-assisted contracts.

##### C. Procedure

DBEs are required to be certified, prior to submission of bid, under the Federal Unified Certification Program (UPC), by TxDOT. The certification application is available upon

request at <https://txdot.txdotcms.com>.

D. Commercially Useful Function (CUF) Review

Per 49 CFR 26.55(c) "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..." This form is for the purpose of reviewing DBEs for compliance with the CUF requirements for credit.

E. Good Faith Efforts

To demonstrate that sufficient reasonable efforts were taken to meet the DBE contract goal, the bidder shall document the steps it has taken to obtain DBE participation including but not limited to the following:

- (1) Whether the CONTRACTOR/supplier solicited through all reasonable and available means (attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capacity to perform the work of the contract;
- (2) Whether the CONTRACTOR/supplier solicited this interest within sufficient time to allow the DBEs to respond to the solicitation;
- (3) Whether the CONTRACTOR/supplier took appropriate steps to follow up initial solicitations.
- (4) Whether the CONTRACTOR/supplier selected portions of work to be performed by DBEs to increase the likelihood that DBE goals will be achieved (including, when appropriate, dividing contracts into economically feasible units to facilitate participation, even when the prime CONTRACTOR might otherwise prefer to perform these work items with its own forces);
- (5) Whether the CONTRACTOR/supplier provided adequate information about plans, specifications, and/or BIDDER requirements of the contract in a timely manner to assist them in responding to a solicitation;
- (6) Whether the CONTRACTOR/supplier negotiated in good faith with interested DBEs.
  - (a) It is the BIDDER's responsibility to make a portion of the work available to DBE SUBCONTRACTORS and suppliers and to select those portions of the

work or material needs consistent with the available DBE SUBCONTRACTORS and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

- (b) A BIDDER using good business judgment would consider a number of factors in negotiating with SUBCONTRACTORS, including DBE SUBCONTRACTORS, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a BIDDER's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime CONTRACTOR to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime CONTRACTORS are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- (7) Whether the CONTRACTOR/supplier rejected DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The CONTRACTOR's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the CONTRACTOR's efforts to meet the project goal.
- (8) Whether the CONTRACTOR/supplier made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or CONTRACTOR.
- (9) Whether the CONTRACTOR/supplier made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (10) Whether the CONTRACTOR/supplier effectively used the services of available CONTRACTORS' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- (11) In determining whether a BIDDER has made good faith efforts, PCS may take into account the performance of other BIDDERS in meeting the contract. For example, when the apparent successful BIDDER fails to meet the contract goal, but others meet it, PCS may reasonably raise the question of whether, with additional

reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful BIDDER fails to meet the goal but meets or exceeds the average DBE participation obtained by other BIDDERS, PCS may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

F. Reporting

- (1) The CONTRACTOR will submit monthly PTN MONTHLY PROGRESS REPORTs to PCS reflecting its DBE participation in the project.
- (2) All DBE billing, submitted during the reporting period, must be finalized, and entered prior to submission of the CONTRACTOR's payment application.
- (3) Any changes to the DBE SUBCONTRACTOR list or their amounts are to be reflected in the monthly progress reports. Changes include; DBE firms removed, DBE firms added, changes to subcontract amounts, and DBE credit adjustments.
- (4) All payments made to DBE firms must be finalized and reported within TEN (10) days of receipt of payment from PCS.

G. Review of Good Faith Efforts

- (1) PCS will review the CONTRACTOR's ATTACHMENT D: PTN MONTHLY PROGRESS REPORT to monitor and determine whether the utilization of DBE firms is consistent with the commitment of the CONTRACTOR as stated in its bid.
- (2) If it is determined that the CONTRACTOR's DBE utilization under the contract is not consistent with its commitment, the CONTRACTOR will be requested, in writing, to submit evidence of its good faith efforts to meet the commitment. The CONTRACTOR shall be given TEN (10) business days to submit this documentation. Failure to respond shall place the CONTRACTOR in non-compliance and subject to imposition of Administrative Sanctions as described in section FTA- 14.6.
- (3) The CONTRACTOR's good faith efforts documentation will then be reviewed for accuracy, sufficiency, and internal consistency. PCS shall make a determination as to the adequacy of the CONTRACTOR's good faith efforts documentation and so inform the CONTRACTOR. If it is determined that the CONTRACTOR's good faith efforts documentation is acceptable, the CONTRACTOR will be deemed to be in compliance with the DBE program.
- (4) If it is determined that the CONTRACTOR's good faith efforts documentation is not acceptable, the CONTRACTOR will be notified and be deemed to be in non-compliance with the DBE program.

- (5) Non-compliance by the CONTRACTOR with the requirements of federal DBE regulations (49 CFR part 26) constitutes a breach of contract and may result in imposition of Administrative Sanctions as described in section FTA-14.6.

H. DBE Program Definitions, as used in the contract:

- (1) Disadvantaged Business Enterprise means a small business concern:
  - (a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
  - (b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (2) Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 26.65(b).
  - (a) Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is —
  - (b) Any individual who a recipient finds to be socially and economically disadvantaged on a case-by-case basis.
    - I. Any individual in the following groups, members of which are reputably presumed to be socially and economically disadvantaged:
    - II. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
    - III. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
    - IV. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
    - V. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines,



Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong.

- VI. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- VII. Women;
- VIII. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- IX. Tribally owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

#### I. Assurances

##### (1) Federal Financial Assistance Agreement Assurance

PCS shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [Recipient] of its failure to carry out its approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

##### (2) Contract Assurance

The CONTRACTOR, sub-recipient, or SUBCONTRACTOR 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 DOT assisted contracts. 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 the recipient

deems appropriate.

J. Disadvantaged Business Enterprise Substitutions

It is strictly prohibited that a CONTRACTOR change the DBE(s) identified in a contract. If the BIDDER submits the names and addresses of DBE firms that will participate in a contract; a description of the work that each DBE will perform; the dollar amount of the participation of each DBE firm, etc., changes cannot be made without prior approval of PCS. Furthermore, the CONTRACTOR may not terminate a subcontract agreement, reduce the scope of work nor decrease the proposed price to the DBE without prior approval of PCS. Should a CONTRACTOR determine that it is necessary to request the substitution of a DBE for reasons such as default on the part of the DBE, poor work performance, etc., the CONTRACTOR must request in writing authorization to make a change, prior to subcontracting with other certified DBE's.

Should it be determined that a need exists to request a substitution of a DBE or modify a DBE's contract, the following steps are to be taken:

- (1) The CONTRACTOR must notify PCS in writing of the necessity to reduce, modify or terminate a DBE's contract and when necessary, propose a substitute firm to fulfill the commitment. This notification should include the rationale for the proposed substitution. Examples of acceptable reasons would be as follows:
  - (a) A committed DBE was found unable to comply with the contract within the required timeframe.
  - (b) A DBE was discovered not to be bona fide.
  - (c) The DBE desires to make significant changes in the contract.
- (2) The request should include the name, address, and principal official of any proposed substitute, as well as the dollar value and specification/scope of work of the proposed contract or change order.
- (3) PCS will review and evaluate the submitted documentation and respond to the request as soon as practicable. PCS retains the right to request additional information or request an interview.
- (4) A change must not be made until approved by PCS. The CONTRACTOR will then provide PCS with an executed copy of the DBE contract or change order with signatures of both parties to the agreement, within FIVE (5) days.
- (5) PCS will not approve additional monies for escalated costs incurred by a CONTRACTOR when a substitution is necessary.

## K. Administrative Sanctions

- (1) If PCS deems the CONTRACTOR to be in non-compliance with the DBE requirements of this contract, PCS will inform the CONTRACTOR in writing, by certified mail, that sanctions shall be imposed for failure to meet DBE utilization goals and/or failure to submit documentation of good faith efforts. The notice will state the specific sanction to be imposed.
- (2) The CONTRACTOR has FIVE (5) working days from the date of the notice to file a written appeal to PCS. Failure to respond within the FIVE (5) day period shall constitute a waiver of appeal. The Regional Administrator or designee, at his or her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within FIVE (5) working days of receipt of the written appeal. There shall be no right of appeal to PCS' governing board.
- (3) Sanctions may include, without limitation: suspension of any payment or part due to the CONTRACTOR for work that was identified to be performed by a DBE at the time of contract award, or of any monies held by PCS as retained on the contract; denial to the CONTRACTOR (including its principal and key personnel) of the right to participate in future contracts of PCS for a period of up to three years; and/or termination of the contract for cause.

### 28. *Davis-Bacon, Certified Payrolls and Wage Determination*

The Davis-Bacon and Related Acts apply to CONTRACTORS and SUBCONTRACTORS performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act CONTRACTORS and SUBCONTRACTORS must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to CONTRACTORS and SUBCONTRACTORS performing work on federal or District of Columbia contracts. The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance.

### 29. *Copeland Anti-Kickback Act*

The CONTRACTOR agrees to comply with all provisions of the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "CONTRACTORS and SUBCONTRACTORS on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). In complying with this requirement, the CONTRACTOR will prohibit inducing, by any means, any person employed

in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity will report all suspected or reported violations to the awarding agency.

### *30. Recycled Products*

The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designed in Subpart B of 40 CFR Part 247.

### *31. Bonding*

The successful BIDDER shall furnish, at its own expense, a performance bond in the percentage/amount stipulated on the Bid Form within TEN (10) calendar days after notification of award, as a guarantee of good faith on behalf of the CONTRACTOR that the terms of the specifications will be complied with in every particular. The performance bond shall, on its face, reference the date(s) of the contract period and the material, equipment or service covered by the contract. This bond shall be guaranteed by a surety company licensed to do business in the State of Texas. The performance bond shall be conditioned on the complete performance of the contract, in accordance with 31 CFR Part 223, the Common Grant Rule. PCS will not agree to release the surety on the performance bond until at least ONE (1) year after final payment and after the acceptance of the **FACILITY CONSTRUCTION**, to be provided under the contract, and PCS reserves the right to require the surety to remain bound thereafter to the extent that PCS may reasonably deem it necessary to do so to protect itself from the possibility of defective goods and/or services.

### *32. Cargo Preference*

The CONTRACTOR agrees to comply with the shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference - U.S.-Flag Vessels," 46 C.F.R. part 381. The CONTRACTOR agrees:

- a) To use privately owned United States-Flag commercial vessels to ship at least 50 % of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b) To furnish within TWENTY (20) working days following the date of loading for shipments originating within the United States or within THIRTY (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in Section (a) above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to PCS; (through the CONTRACTOR in the case of a lower-tier participating SUBCONTRACTOR's bill of

loading); and

- c) To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### *33. Seismic Safety*

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 42 U.S.C. Sections 7701 et seq. and Department of Transportation Seismic Safety Regulations 49 CFR Part 41 Sections 41.117 and 41.120 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.

### *34. Special DOL EEO Clauses*

The CONTRACTOR and SUBCONTRACTOR shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime CONTRACTORS and SUBCONTRACTORS take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

### *35. Veterans Preference*

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

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

### **36. *Contract Work Hours and Safety Standards Act***

For prime contracts in excess of \$100,000, CONTRACTORS and SUBCONTRACTORS must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to DBA-covered contracts.

The CONTRACTOR shall provide PCS with CONTRACTOR and SUBCONTRACTOR certified copies of each weekly payroll within FIVE (5) business days after the regular payroll date. Following a review by the Owner for compliance with state and federal labor laws, the payroll copy shall be retained for later reviewed by PTN.

A CONTRACTOR may use the Department of Labor Form WH-347, "Optional Payroll Form", which provides all the necessary payroll information and certifications. This Department of Labor form may be purchased at nominal cost from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Prevailing Wages shall be paid in accordance with the Federal Wage Decision and the Texas Department of Transportation Public Transportation Division determination Schedule(s) effective during the period of the Contract and as provided for in the Chapter 2258 of the Texas Government Code. The higher rate per classification will be used.

Each CONTRACTOR must submit an affidavit that Prevailing Wages have been paid prior to receipt of final payment.

### **37. *Build America, Buy America Act***

These provisions of this Article FTA-3 apply if the value of this Contract (including the value of any amendments) exceeds \$150,000. 3.1 Buy America Provision. The CONTRACTOR agrees to comply with 49 U.S.C section 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless iron, steel, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. §section 661.7.

Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented from time to time by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The CONTRACTOR acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

## SECTION IX – DEFINITIONS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract Documents, the following words and terms shall have the meanings indicated.

- (1) *Acceptance or Accepted.* Written documentation of PCS' determination that the CONTRACTOR's Work has been completed in accordance with the Contract.
- (2) *Addendum/Addenda.* Written additions, deletions, clarification, interpretations, modifications, or corrections to the solicitation documents issued by PCS in writing during the Solicitation period and prior to contract award.
- (3) *Administrative Change.* Documentation provided by PCS to the CONTRACTOR, which reflects internal PCS procedures not affecting the Contract term or Scope of Work.
- (4) *Bidder.* Individual, association, partnership, firm, company, corporation, or a combination thereof, including joint ventures, submitting a bid/proposal to perform the Reference Documents: Reports, specifications, and/or drawings available to BIDDERS for information and reference in preparing bids but not as part of this contract.
- (5) *Buyer.* Individual designated by PCS to conduct the Contract solicitation process, draft, and negotiate contracts, resolve issues, and support the Project Manager during Contract performance.
- (6) *Change Documentation.* A written document agreed upon by Project Managers, which if it creates a material change to the Contract term or Scope of Work shall be executed as a Contract Amendment.
- (7) *Change Order.* Written order issued by PCS, with or without notice to sureties, making Changes in the Work within the scope of this Contract.
- (8) *Contract Amendment.* A written change to the Contract modifying, deleting, or adding to the terms or scope of work, signed by both parties, with and without notice to the sureties.
- (9) *Contract or Contract Documents.* The writings and drawings embodying the legally binding obligations between PCS and the CONTRACTOR for completion of the Work.
- (10) *Contract Period.* The time during which the CONTRACTOR shall perform the Services or Work under the Contract.
- (11) *Contract Price.* Amount payable to the CONTRACTOR under the terms and conditions of the Contract for the satisfactory performance of the Services or Work under the Contract.

- (12) *Contractor*. The individual, association, partnership, firm, company, corporation, or a combination thereof, including joint ventures, contracting with PCS for the performance of Services or Work under the Contract.
- (13) *Cost Analysis*. The review, evaluation and verification of cost data and evaluating the specific elements of costs and profit. Cost analysis applies judgement utilizing criteria to project from the data to the estimated costs to form an opinion on the degree to which proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.
- (14) *Day*. Calendar Day.
- (15) *DBE*. Disadvantaged Business Enterprise.
- (16) *Documentation*. Technical Publications relating to the use of the Work to be provided by the CONTRACTOR under this Contract, such as reference, user, installation, systems administration, and technical guides, delivered by the CONTRACTOR to PCS.
- (17) *DOT*. Department of Transportation.
- (18) *Final Acceptance*. The point when PCS acknowledges that the CONTRACTOR has performed the Entire Work in accordance with the Contract.
- (19) *FTA*. The Federal Transit Administration.
- (20) *IFB or Solicitation*. Request for bids; also known as the solicitation document.
- (21) *PCS*. Panhandle Community Services.
- (22) *Person*. Includes individuals, associations, firms, companies, corporations, partnerships, and joint venture.
- (23) *Price Analysis*. The process of examining and evaluating a price without evaluating its separate cost elements and proposed profit.
- (24) *Procurement Administrator*. The individual designated by PCS to administer the Contract and be the CONTRACTOR's primary point of contact. The Procurement Administrator has no contracting authority.
- (25) *Project Manager*. The individual designated by PCS to manage the project daily and who shall represent PCS as the owner's representative.
- (26) *PTN*. The Texas Department of Transportation Public Transportation Division
- (27) *Scope of Work or Statement of Work (SOW)*. A section of the Request for Qualifications



consisting of written descriptions of Services to be performed, the goods to be provided, or the technical requirements to be fulfilled under this contract.

- (28) *Services*. The furnishing of labor, time, or effort by a CONTRACTOR, but not involving the delivery of any specific manufactured goods.
- (29) *Shall or Will*. Whenever used to stipulate anything, Shall or Will means mandatory by either the CONTRACTOR or PCS, as applicable, and means that the CONTRACTOR or PCS, as applicable, has thereby entered into a covenant with the other party to do or perform the same.
- (30) *Specifications or Technical Specifications*. A section of the Invitation for Bids consists of Written descriptions of Services to be performed, the goods to be provided, or the technical Requirements to be fulfilled under this contract.
- (31) *Subcontractor*. The individual, association, partnership, firm, company, corporation, or joint Venture entering into an agreement with the CONTRACTOR to perform any portion of the Work covered by this Contract.
- (32) *Submittals*. Information submitted to the Procurement Administrator according to the Scope of Work/Specifications.
- (33) *TxDOT*. The Texas Department of Transportation.
- (34) *Work*. Everything to be provided and done for the fulfillment of the Contract and shall include all goods and services specified under this Contract, including contract amendments and settlements.

## CERTIFICATION OF SPECIFICATION COMPLIANCE

The BIDDER hereby certifies that the equipment or goods supplied will comply with all specifications, the special requirements, attachment forms, amendments, or items approved by PCS on the specification request and approval form. Equipment and goods delivered to PCS which does not comply with the aforementioned specifications will be considered unacceptable and grounds for liquidated damages assessment or performance bond evocation and/or contract termination for default.

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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

## CERTIFICATION OF CONTRACTOR REGARDING UNAVAILABILITY OF A DISADVANTAGED BUSINESS ENTERPRISE

[Details on this topic are covered on the next page "Grant Relief for BIDDERS]

PROJECT NAME: \_\_\_\_\_  
PROJECT NUMBER: \_\_\_\_\_

NOTE: The BIDDER must prepare one of these forms for each DBE contract made where the DBE was found not to be ready, willing, or able to perform the work solicited. If the Offeror was unable to obtain the DBE signature, the form must be completed to the best of the BIDDER's ability, indicating the reason for the absence of the DBE signature.

I, \_\_\_\_\_ (Prime of General CONTRACTOR)

(Title) Of \_\_\_\_\_ (Name of Firm) certify that on \_\_\_\_\_ (Date).

I contacted the following DBE CONTRACTOR to obtain a bid for work items to be performed on the above-captioned contract.

FORM OF BID SOUGHT, I.E., DBE CONTRACTOR WORK ITEMS SOUGHT, UNIT PRICE, MATERIALS, LABOR, LABOR ONLY, ETC.

\_\_\_\_\_  
\_\_\_\_\_

To the best of my knowledge and belief, said DBE CONTRACTOR was unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project or unable to prepare a bid, for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_

Signature Of DBE: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ was offered an opportunity to bid on the above

identified work on \_\_\_\_\_ (Date) by \_\_\_\_\_ (Source)

The statement asserted above by the company which contacted me is a true and accurate account of why I did not submit a bid on the project.

Signature Of DBE: \_\_\_\_\_ Date: \_\_\_\_\_

# CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT, SUSPENSION

*(To be submitted with each bid exceeding \$25,000)*

2 CFR Part 180 and Part 1200, prohibits FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts.

- 1) The Subrecipient certifies to the best of its knowledge and belief, that it and its principals, including its first tier subrecipients:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from covered transactions by any Federal department or agency;
  - (b) Have not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of 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 any Federal or State antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local);
  - (d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, State, or local) terminated for cause or default.
- 2) The Subrecipient certifies that it and its principals, including its first tier subrecipients will assure that each lower tier participant involved in the Project is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from participation in this transaction by any Federal department or agency;
- 3) The Subrecipient certifies that if, later, it or its principals, including any of its first tier subrecipients, become aware of any information contradicting the statements of subparagraphs (1)(2), it will promptly provide any necessary information to FTA;
- 4) Where the Subrecipient is unable to certify to any of the statements in this certification, such Subrecipient shall attach an explanation to this certification.
- 5) The CONTRACTOR agrees to, and assures that its SUBCONTRACTORS, lessees, third-party CONTRACTORS, and other participants at any tier of the Project will, review the "Excluded Parties Listing System" at <http://www.sam.gov/poPCSI/public/SAM/> before entering into any subagreement, lease, third-party contract, or other arrangement in connection with the Project.

EXCEPTIONS:

☐ NA, no Exceptions

**[Note: Separate certification may be photocopied and submitted by each SUBCONTRACTOR.]**

Signature of Authorized Official (CONTRACTOR): \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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

Signature of Authorized Official (SUBCONTRACTOR): \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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

## **CERTIFICATION OF LOWER-TIER PARTICIPANTS (SUBCONTRACTORS) REGARDING DEBARMENT, SUSPENSION**

*(To be submitted with each bid exceeding \$25,000)*

The Lower Tier Participant [SUBCONTRACTOR to the Primary CONTRACTOR(s)], certifies by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

If the Lower Tier Participant (SUBCONTRACTOR) is unable to certify any of the statements in this certification, such participant shall attach an explanation to this certification.

The Lower Tier Participant (SUBCONTRACTOR), certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands the provisions of 31. U.S.C. Section 3801 et seq. is applicable thereto.

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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

**[Note: THIS CERTIFICATION SHALL BE COMPLETED BY ALL SUBCONTRACTORS.]**

## CERTIFICATION OF RESTRICTIONS ON LOBBYING

*(To be submitted with each bid exceeding \$100,000)*

The undersigned [CONTRACTOR] 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 sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of the 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.

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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

## CERTIFICATION FOR BUILD AMERICA, BUY AMERICA ACT

The CONTRACTOR agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented from time to time by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The CONTRACTOR acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

A bidder or offer or must submit to the FTA recipient the appropriate Build America, Buy America Act certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower-tier SUBCONTRACTORS.

The bidder or offer or hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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

### Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offer or hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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

## CERTIFICATION OF CONTRACT CLAUSE ACKNOWLEDGEMENT

The Acknowledgment serves to confirm that the CONTRACTOR has reviewed, complied, and/or accepted all contract clauses and provisions. Check the box and strike through any clauses not applicable to this contract.

<i>Federal Contract Clauses</i>	✓ (if present)
1) No Federal Government Obligations to Third Parties	<input type="checkbox"/>
2) Access to Third Party Contract Records	<input type="checkbox"/>
3) Incorporation of FTA Terms	<input type="checkbox"/>
4) Energy Conservation	<input type="checkbox"/>
5) Trafficking in Persons	<input type="checkbox"/>
6) False or Fraudulent Statements or Claims	<input type="checkbox"/>
7) Disadvantaged Business Enterprises (DBE)	<input type="checkbox"/>
8) Fly America	<input type="checkbox"/>
9) Americans with Disabilities Act (ADA) Access	<input type="checkbox"/>
10) Special Notification Requirements for States	<input type="checkbox"/>
11) Safe Operation of Motor Vehicles	<input type="checkbox"/>
12) Federal Tax Liability and Recent Felony Convictions	<input type="checkbox"/>
13) Program Fraud and False or Fraudulent Statements and Related Acts	<input type="checkbox"/>
14) Prompt Payment	<input type="checkbox"/>
15) Prohibition on Certain Telecommunications, Video Surveillance Services or Equipment	<input type="checkbox"/>
16) Conformance with Intelligent Transportation Systems (ITS) National Architecture	<input type="checkbox"/>
17) Severability	<input type="checkbox"/>
18) Terminating the Contract	<input type="checkbox"/>
19) Solid Wastes	<input type="checkbox"/>
20) Debarment and Suspension	<input type="checkbox"/>
21) Resolution of Disputes, Breaches, or Other Litigation	<input type="checkbox"/>
22) Contracting with the Enemy	<input type="checkbox"/>
23) Lobbying Restrictions	<input type="checkbox"/>
24) Environmental Protection (Clean Air and Water Pollution Control)	<input type="checkbox"/>
25) DBE (Goal, Good Faith Efforts, Reporting Requirements, Forms etc.)	<input type="checkbox"/>
26) Davis-Bacon Act	<input type="checkbox"/>
27) Copeland Anti-Kickback Act	<input type="checkbox"/>
28) Recycled Products	<input type="checkbox"/>
29) Bonding	<input type="checkbox"/>
30) Cargo Preferences	<input type="checkbox"/>
31) Seismic Safety	<input type="checkbox"/>
32) Special DOL EEO Clauses	<input type="checkbox"/>
33) Veterans Preference	<input type="checkbox"/>
34) Contract Work Hours and Safety Standards Act	<input type="checkbox"/>
35) Build America, Buy America Act	<input type="checkbox"/>
36) PTN-130 Consolidated Certification Form	<input type="checkbox"/>

Signature of Authorized Official: \_\_\_\_\_

Name and Title of Authorized Official: \_\_\_\_\_

Firm: \_\_\_\_\_

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



## **ATTACHMENT A: GOOD FAITH EFFORT**

*(INFORMATION ONLY DO NOT RETURN)*

1. PCS has established a one percent (1%) goal for Disadvantaged Business Enterprise (DBE) participation for this contract. Therefore, a BIDDER must be responsible and responsive and make a good-faith effort to meet the goal. The BIDDER can meet this requirement in either of two (2) ways. First, the BIDDER can meet or exceed the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if the BIDDER doesn't meet the goal, the BIDDER can document its good-faith efforts to meet the goal. This means that the BIDDER must show that it took all necessary and reasonable steps to achieve the DBE goal or other requirements of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not entirely successful.
2. PCS will use the good-faith efforts mechanism as required by 49 CRF part 26. It is up to PCS to make a fair and reasonable judgment whether a BIDDER that did not meet the goal made adequate good-faith efforts. PCS will consider the quality, quantity, and intensity of the different kinds of efforts that the BIDDER made. The efforts employed by the BIDDER should be those that one could reasonably expect a BIDDER to take if the BIDDER were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good-faith efforts to meet the DBE contract requirements. As emphasized by the Department of Transportation, PCS' determination concerning the sufficiency of the firm's good-faith efforts is a judgment call; meeting quantitative formulas is not required.
3. PCS will not require that a BIDDER meet a contract goal (i.e., obtain a specified amount of DBE participation) to be awarded a contract, even though the BIDDER shows that adequate good faith was made. The rule explicitly prohibits PCS from ignoring bona fide good-faith efforts.
4. The following is a list of types of actions PCS will consider as part of the BIDDER's good-faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
5. Soliciting through all reasonable and available means (e.g., attendance at pre-Bid meetings, advertising, and/or written notices) the interest of all certified DBEs who can perform the work of the contract. The BIDDER must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The BIDDER must determine with certainty whether or not a DBE is certified.
6. The DBEs are interested in taking appropriate steps to follow up initial solicitations.
7. Selecting portions of the work to be performed by DBEs to increase the likelihood of the DBE goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime CONTRACTORS might otherwise prefer to perform these work items with its own forces.
8. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract promptly to assist them in responding to a solicitation.

## **ATTACHMENT A: Good-Faith Effort (Continued)**

9. Negotiating in good faith with interested DBEs. It is the BIDDER's responsibility to make a portion of the work available to DBE SUBCONTRACTORS and suppliers and select those portions of the work or material needs consistent with the available DBE SUBCONTRACTORS and suppliers to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
10. A BIDDER using sound business judgment would consider several factors in negotiating with SUBCONTRACTORS, including DBE SUBCONTRACTORS, and would take a firm's price and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a BIDDER's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime CONTRACTOR to perform the work of a contract with its own organization does not relieve the BIDDER of the responsibility to make good-faith efforts. However, prime CONTRACTORS are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
11. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The CONTRACTOR's standing within its industry, membership in specific groups, organizations, or associations, and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids from DBEs in the CONTRACTOR's efforts to meet the project goal.
12. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance, as required by the recipient or CONTRACTOR.
13. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
14. Effectively using the services of available minority/women community organizations; minority/women CONTRACTORS' groups; Federal, State, and Local minority/women business assistance offices; and other organizations, as allowed on a case-by-case basis, to assist in the recruitment and placement of DBEs.

## **ATTACHMENT B: GRANT RELIEF FOR BIDDERS**

*(Instructions)*

- (1) PCS has established a one percent (1%) goal for Disadvantaged Business Enterprise (DBE) participation for this contract. Therefore, a BIDDER must be responsible and responsive and make a good-faith effort to meet the goal. The BIDDER can meet this requirement in either of two (2) ways. First, the BIDDER can meet or exceed the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if the BIDDER doesn't meet the goal, the BIDDER can document its good-faith efforts to meet the goal. This means that the BIDDER must show that it took all necessary and reasonable steps to achieve the DBE goal or other requirements of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not entirely successful.
- (2) PCS will use the good-faith efforts mechanism as required by 49 CRF part 26. It is up to PCS to make a fair and reasonable judgment whether a BIDDER that did not meet the goal made adequate good-faith efforts. PCS will consider the quality, quantity, and intensity of the different kinds of efforts that the BIDDER made. The efforts employed by the BIDDER should be those that one could reasonably expect a BIDDER to take if the BIDDER were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good-faith efforts to meet the DBE contract requirements. As emphasized by the Department of Transportation, PCS' determination concerning the sufficiency of the firm's good-faith efforts is a judgment call; meeting quantitative formulas is not required.
- (3) PCS will not require that a BIDDER meet a contract goal (i.e., obtain a specified amount of DBE participation) to be awarded a contract, even though the BIDDER shows that adequate good faith was made. The rule explicitly prohibits PCS from ignoring bona fide good-faith efforts.
- (4) The following is a list of types of actions PCS will consider as part of the BIDDER's good-faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
- (5) Soliciting through all reasonable and available means (e.g., attendance at pre-Bid meetings, advertising, and/or written notices) the interest of all certified DBEs who can perform the work of the contract. The BIDDER must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The BIDDER must determine with certainty whether or not a DBE is certified.
- (6) The DBEs are interested in taking appropriate steps to follow up initial solicitations.
- (7) Selecting portions of the work to be performed by DBEs to increase the likelihood of the DBE goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime CONTRACTOR might otherwise prefer to perform these work items with its own forces.
- (8) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract promptly to assist them in responding to a solicitation.

## **ATTACHMENT B: Grant Relief for BIDDERS (Continued)**

- (9) Negotiating in good faith with interested DBEs. It is the BIDDER's responsibility to make a portion of the work available to DBE SUBCONTRACTORS and suppliers and select those portions of the work or material needs consistent with the available DBE SUBCONTRACTORS and suppliers to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- (10) A BIDDER using sound business judgment would consider several factors in negotiating with SUBCONTRACTORS, including DBE SUBCONTRACTORS, and would take a firm's price and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a BIDDER's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime CONTRACTOR to perform the work of a contract with its own organization does not relieve the BIDDER of the responsibility to make good-faith efforts. However, prime CONTRACTORS are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- (11) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The CONTRACTOR's standing within its industry, membership in specific groups, organizations, or associations, and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids from DBEs in the CONTRACTOR's efforts to meet the project goal.
- (12) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance, as required by the recipient or CONTRACTOR.
- (13) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (14) Effectively using the services of available minority/women community organizations; minority/women CONTRACTOR's groups; Federal, State, and Local minority/women business assistance offices; and other organizations, as allowed on a case-by-case basis, to assist in the recruitment and placement of DBEs.

## ATTACHMENT C: DBE COMMERCIALLY USEFUL FUNCTION (CUF) REVIEW

### Commercially Useful Function (CUF) Review

Per 49 CFR 26.55(c) "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..." This form is for the purpose of reviewing DBEs for compliance with the CUF requirements for credit.

#### INSTRUCTIONS:

- CUF review must be performed a minimum of one time during the contract period for each DBE.
- CUF must be completed within 30 days of the DBE starting the work.
- Submission form must have signature and date of the compliance review.

Project ID: _____ County: _____ Subrecipient: _____ Name of DBE: _____	Reviewer: _____ Reviewer's Title: _____ Review Date: _____ Date DBE started work: _____
---	--

DBE is performing as:	<input type="checkbox"/> Prime Contractor	<input type="checkbox"/> Subcontractor	<input type="checkbox"/> Other Tier Subcontractor
Material Supplier:	<input type="checkbox"/> Manufacturer	<input type="checkbox"/> Regular Dealer	<input type="checkbox"/> Broker

Provide a brief description of the DBE's scope of work. (Obtain a copy of the Subcontractor Agreement and/or Purchase Order if needed.)

COMMENSURATE	Yes	No
Is the payment received by the DBE commensurate with the work being performed?	<input type="checkbox"/>	<input type="checkbox"/>
PERFORMING	Yes	No
Does the DBE have employees on the job to perform the work?	<input type="checkbox"/>	<input type="checkbox"/>
Do the DBE employees exclusively work for the DBE?	<input type="checkbox"/>	<input type="checkbox"/>
Is the DBE working without assistance from the prime contractor or another subcontractor? (Use of prime's equipment in an emergency is allowed but the cost associated with the use of the equipment cannot be credited towards the goal.)	<input type="checkbox"/>	<input type="checkbox"/>
Is the DBE only using equipment it owns, rents, or leases?	<input type="checkbox"/>	<input type="checkbox"/>
Is the DBE performing at least 30% of their work?	<input type="checkbox"/>	<input type="checkbox"/>
HAULING	N/A	Yes
Does the DBE hauling firm own or lease their trucks? (If yes, obtain verification of ownership or lease documents in the name of the DBE)	<input type="checkbox"/>	<input type="checkbox"/>
Does the DBE employ drivers for trucks owned by the company? (If leased trucks include operators, this should be indicated in the agreement)	<input type="checkbox"/>	<input type="checkbox"/>
Does a review of the haul tickets associated with the project indicate that hauling is being performed by the DBE?	<input type="checkbox"/>	<input type="checkbox"/>
MATERIALS	Yes	No
Does the DBE's name appear on all invoices, haul tickets, and/or bills of lading?	<input type="checkbox"/>	<input type="checkbox"/>

<b>SUPERVISING</b>	<b>Yes</b>	<b>No</b>
Is the DBE supervising its employees and their work?	<input type="checkbox"/>	<input type="checkbox"/>
Is the supervisor an employee of the DBE?	<input type="checkbox"/>	<input type="checkbox"/>
Description of supporting documentation that was reviewed (invoices, lease documents, payrolls, etc.)		
<b>CUF</b>	<b>Yes</b>	<b>No</b>
Does the DBE appear to be performing a Commercially Useful Function (CUF)?	<input type="checkbox"/>	<input type="checkbox"/>
If no, provide comments:		
Additional Comments:		

\_\_\_\_\_  
Reviewer's Signature:

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

# ATTACHMENT D: DBE MONTHLY PROGRESS REPORT

## DBE Monthly Progress Report

Project: \_\_\_\_\_

Contract: \_\_\_\_\_

Subrecipient: \_\_\_\_\_

District: \_\_\_\_\_

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

For Month of (Mo/Yr.): \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

DBE Goal: \_\_\_\_\_ %

DBE Goal Dollars: \$ \_\_\_\_\_

Name of DBE Sub/Supplier	Description of work performed by DBE	Total amount paid to DBE to Date that counts toward the goal	** Amount Paid to DBE for Work Performed <u>this month</u> (X)	*** Amount Paid to Non-DBE 2 <sup>nd</sup> Tier Subs and Haulers <u>this month</u> (Y)	Amount Paid to DBE <u>this month</u> that could count toward goal (X-Y)	Any Corrections or Adjustments to DBE Goal Credit (+ or -) (Explain Below)	Total Amount Paid to DBE <u>this month</u> that counts toward the goal

\*\* Goal/commitment progress report amount and/or race-neutral amount. Do not subtract non-DBE second tier subcontractors and haulers from this column.

\*\*\* Report amount of payment DBE subcontractors paid to the non-DBE subcontractors/haulers.

In the box below, explain the amount of the adjustment/correction of the DBE goal credit or any amount paid to the DBE that should be corrected or disallowed to the DBE goal credit.

**NOTES:** If using a non-DBE hauling firm that leases from DBE truck owner-operators, payments made to each owner-operator must be reported separately.

Any changes to the DBE commitments previously approved must be reported to TxDOT.

Submission of this report for periods of negative DBE activity is required. This report is required until DBE subcontracting, or material supply activity is completed.

I hereby certify that the above is a true and correct statement of the amounts paid to the DBE firms listed above.

Signature of Company Official \_\_\_\_\_

Date \_\_\_\_\_

## **ATTACHMENT E: PTN-130 CONSOLIDATED CERTIFICATION**





## Consolidated Certification Form

Form PTN-130  
(Rev. 8/23)  
Page 1 of 19

This form is to assist subrecipients with managing the federal and state clauses related to the procurement they're interested in completing. This document complies with all pertinent federal and state regulations for each procurement type.

To begin, select the procurement's funding source. If TxDOT is the pass-through entity (Direct Recipient), both Federal and State must be checked.

☒ Federal and State    ☐ State Only

### Federal Clauses – Procurement Types Summary:

#### All FTA-Assisted Third-Party Contracts and Subcontracts

1. No Federal Government Obligations to Third Parties
2. Access to Third Party Contract Records
3. Changes to Federal Requirements
4. Civil Rights (EEO, Title VI & ADA)
5. Incorporation of FTA Terms
6. Energy Conservation
7. Trafficking in Persons
8. False or Fraudulent Statements or Claims
9. Disadvantaged Business Enterprises (DBE)
10. Fly America
11. Americans with Disabilities Act (ADA) Access
12. Special Notification Requirements for States
13. Safe Operation of Motor Vehicles
14. Federal Tax Liability and Recent Felony Convictions
15. Program Fraud and False or Fraudulent Statements and Related Acts
16. Prompt Payment
17. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment
18. Conformance with Intelligent Transportation Systems (ITS) National Architecture
19. Severability

#### Award Exceeding \$10,000

20. Terminating the Contract
21. Solid Wastes

#### Award Exceeding \$25,000

22. Debarment and Suspension
23. Resolution of Disputes, Breaches, or Other Litigation

☐ **Award Exceeding \$50,000**

24. Contracting with the Enemy

☐ **Award Exceeding \$100,000**

25. Lobbying Restrictions

☐ **Award Exceeding \$150,000**

26. Environmental Protection (Clean Air and Water Pollution Control)

## All FTA-ASSISTED THIRD-PARTY CONTRACTS AND SUBCONTRACTS

### 1. No Federal Government Commitment or Liability to Third Parties

Except as the Federal Government expressly consents in writing, the Recipient agrees that:

- A. The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third-Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement; and
- B. Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third-Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third-Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

### 2. Access to Third-Party Contract Records

The Recipient agrees to require, and assures that each of its Subrecipients will require, its Third-Party Contractors at each tier to provide:

- A. The U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all Third-Party Contract records (at any tier) as required under 49 U.S.C. § 5325(g); and
- B. Sufficient access to all Third-Party Contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure.
- C. The Recipient will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.
- D. The Recipient agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

### 3. Changes to Federal Requirements

The Recipient agrees to include notice in each Third-Party Agreement that:

- A. Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and
- B. Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

### 4. Civil Rights

The Recipient agrees to apply these Federal Civil Rights laws and regulations apply to all contracts.

- A. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to: a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity. b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

- B. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
- C. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 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 C.F.R. 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. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
- D. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on 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.
- E. 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.
- I. 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.
- II. 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.
- III. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.
- IV. 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.
- V. 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.

## 5. Incorporation of Federal Transit Administration (FTA) Terms

The provisions within 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 the current FTA Circular 4220 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **6. Energy Conservation**

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

## **7. Trafficking in Persons**

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 subagreements thereunder.

## **8. False or Fraudulent Statements or Claims**

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

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

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

## **9. Disadvantaged Business Enterprises**

The contractor or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. 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 the recipient deems appropriate, which may include, but is not limited to:

- A. Withholding monthly progress payments;
- B. Assessing sanctions;

C. Liquidated damages; and/or

D. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. §26.13(b).

In accordance with 49 C.F.R. § 26.29(a), Prime contractors agree to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor using direct federal funds, and no later than 10 days from receipt of payment the recipient makes to the prime contractor using state or federal funds pass-through the Texas Department of Transportation (TxDOT) per TxDOT policy.

Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f)(1).

## 10. Fly America

The recipient agrees to comply with the air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 – 301-10.143.

## 11. ADA Access

The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:

A. Federal laws, including:

- I. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
- II. 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 individuals with disabilities:
  - a. For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
  - b. For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer;"
- III. 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 individuals with disabilities;
- IV. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
- V. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.

B. Federal regulations and guidance, including:

- I. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37;
- II. U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27;
- III. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38;
- IV. U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39;
- V. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35;
- VI. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36;
- VII. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R.

part 1630;

VIII. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, subpart F;

IX. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194;

X. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609;

XI. FTA Circular 4710.1, "Americans with Disabilities Act: Guidance;" and

XII. Other applicable federal civil rights and nondiscrimination regulations and guidance.

## 12. Special Notification Requirements for States

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

I. The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;

II. The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and

III. The amount of federal assistance FTA has provided for a State Program or Project.

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

## 13. Safe Operation of Motor Vehicles

### 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.

## 14. Federal Tax Liability and Recent Felony Convictions

A. The contractor certifies that it:

I. 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

II. 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.*

B. Flow Down

I. 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 subagreement.

## 15. Program Fraud and False or Fraudulent Statements and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it



has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **16. Prompt Payment**

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. Per Texas Department of Transportation (TxDOT) policy, the 30-day payment window is reduced to 10-days from receipt of payment when the contractor is using state or federal funds pass-through TxDOT to reimburse subcontractors. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

## **17. Prohibition on certain telecommunications and video surveillance services or equipment**

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

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. 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 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- E. 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).
- D. Telecommunications or video surveillance services provided by such entities or using such equipment.
- E. Telecommunications or video surveillance equipment or services produced 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.

In implementing the prohibition under Public Law 115-232, 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.

## **18. Conformance with ITS National Architecture**

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).

## **19. Severability**

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.

### **Awards Exceeding \$10,000**

## **20. Termination**

### **A. Termination for Convenience**

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

### **B. Termination for Default [Breach or Cause]**

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 effected 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.

### **C. Opportunity to Cure**

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

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

### **D. 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.

## **21. Solid Wastes**

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



establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## Awards Exceeding \$25,000

### 22. Debarment and Suspension

The Recipient agrees to the following:

- A. It will comply with the following requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200.
- B. It will not enter into any “covered transaction” (as that phrase is defined at 2 C.F.R. §§ 180.220 and 1200.220) with any Third-Party Participant that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by—
  - I. U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200;
  - II. U.S. OMB regulatory guidance, “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180; and
  - III. Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third-Party Participants.
- C. It will review the U.S. GSA “System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by U.S. DOT regulations, 2 C.F.R. part 1200.
- D. It will ensure that its Third-Party Agreements contain provisions necessary to flow down these suspension and debarment provisions to all lower tier covered transactions.
- E. If the Recipient suspends, debars, or takes any similar action against a Third-Party Participant or individual, the Recipient will provide immediate written notice to the:
  - I. FTA Regional Counsel for the Region in which the Recipient is located or implements the Underlying Agreement;
  - II. FTA Headquarters Manager that administers the Grant or Cooperative Agreement; or
  - III. FTA Chief Counsel.

### 23. Resolution of Disputes, Breaches, or Other Litigation

#### A. FTA Interest

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

#### B. Notification to FTA; Flow Down Requirement

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

- I. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- II. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- III. Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in

addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

### **C. Federal Interest in Recovery**

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

### **D. Enforcement**

The Recipient must pursue its legal rights and remedies available under any Third-Party Agreement or any federal, state, or local law or regulation.

### **E. Agency Process**

\*Vendors may view the dispute resolution process here:

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## State of Texas Procurement Contract Clauses

### State of Texas - Procurement Types Summary:

#### All Texas-Assisted Third-Party Contracts and Subcontracts

1. Debarment
2. Family Code Child Support Obligation Certification
3. Debts and Delinquencies Affirmations
4. Disaster Recovery Plan
5. Disclosure of Prior State Employment
6. Entities that Boycott Israel
7. Federal Executive Order 13224 Excluded Parties
8. False Statements
9. Financial Participation Prohibited Affirmation
10. Foreign Terrorist Organizations
11. Disaster Relief Contract Violation
12. Public Information Act
13. Signature Authority
14. State Auditor's Right to Audit
15. Suspension and Debarment
16. Assignment
17. Contracting Information Responsibilities
18. Human Trafficking Prohibition
19. Energy Company Boycotts
20. Firearm Entities and Trade Association Discrimination

#### 1. 34 TAC §20.585 Debarment

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

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

#### 2. §231.006 Family Code Child Support Obligation Certification

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

### **3. §2252.903 Gov't Code Debts and Delinquencies Affirmations**

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

### **4. §444.190 Gov't Code Disaster Recovery Plan**

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

### **5. §2254.033 Gov't Code Disclosure of Prior State Employment**

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

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

### **6. §2271.001 Gov't Code Entities that Boycott Israel**

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

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

### **7. Federal Executive Order 13224 Excluded Parties**

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

### **8. §2155.077(a)(2) Gov't Code False Statements**

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

### **9. §2155.004 Gov't Code Financial Participation Prohibited Affirmation**

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

### **10. §2252.152 Gov't Code Foreign Terrorist Organizations**

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

### **11. §2155.006 and 2261.053 Gov't Code Prior Disaster Relief Contract Violation**

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

### **12. Chapter 552, Gov't Code and §2252.907 Gov't Code Public Information Act**

Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, the Sub-recipient is required to make any information created or exchanged with the State pursuant to the Agreement and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is

accessible by the public at no additional charge to the State.

**13. §2252.0012 Gov't Code Signature Authority**

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

**14. §2262.154 Gov't Code State Auditor's Right to Audit**

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

**15. §2155.077 Gov't Code Suspension and Debarment**

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

**16. §2262.056 (b) Gov't Code Assignment**

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

**17. §552.372 Gov't Code Contracting Information Responsibilities**

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

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

**18. §2155.0061 Gov't Code Human Trafficking Prohibition**

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

**19. §2274.002 Energy Company Boycotts**

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

**20. §2274 Firearm Entities and Trade Association Discrimination**

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

**21. §2252.908, 2254.032, 2261.252(b) No Conflict of Interest**

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

**Certification to Purchaser**

1. The undersigned vendor certifies that the manufactured good(s) furnished will meet or exceed the specifications, and/or that services rendered will comply with the terms of the solicitation or contract.
2. The undersigned vendor certifies that it has read all of the bid, proposal, or contract documents and agrees to abide by the terms, certifications, and conditions thereof.

**Name of Company:**

**Address:**

**Telephone:**

**SS# or Tax ID#:**

**Printed Name of Person Completing Form:**

**Signature**

**Date:**

**Description of Commodity Service:**

**Disadvantaged Business Enterprise Information**

Type of Organization (check the application type of organization)

☐ Sole Proprietorship    ☐ General Proprietorship    ☐ Corporation    ☐ Limited Partnership    ☐ Limited Proprietorship

Is your firm a DBE?    ☐ Yes    ☐ No

**If yes, what type?**

## Third Party Procurement Contract Provisions

### Third Party Procurement Contracting Provisions

Select the additional third-party procurement contracting provisions based on the type of solicitation you're procuring:

*\*Procurements cannot be combined. Example: Construction procurement and Rolling Stock procurement, use separate PTN 130s for each.*

- ☒ **1. Construction Related Clauses**
  - ☒ Federal and State
  - ☐ State Clauses
  
- ☐ **2. Rolling Stock Related Clauses**
  - ☐ Federal and State
  - ☐ State Clauses
  
- ☐ **3. Professional Services / Architectural Engineering**
  - ☐ Federal and State
  - ☐ State Clauses
  
- ☐ **4. Materials & Supplies Related Clauses**
  - ☐ Federal and State
  - ☐ State Clauses
  
- ☐ **5. Operations / Management Related Clauses**
  - ☐ Federal and State
  - ☐ State Clauses

## 1a. Federal Construction Related Clauses

A. Davis-Bacon Act

B. Copeland Anti-Kickback Act Section 1 and Section 2

C. Recycled Products

D. Bonding

E. Cargo Preference

F. Seismic Safety

G. Special DOL EEO Clauses

H. Veterans Preference

☐ **Awards Exceeding \$100,000**

I. Contract Work Hours and Safety Standards Act

☐ **Awards Exceeding \$150,000**

J. Buy America

☐ **Disadvantaged Business Enterprise (DBE)**

K. Race Conscious DBE Goal

### A. Davis Bacon

The contractor agrees that all prime construction contracts in excess of \$2,000 awarded by non-federal entities will comply with Davis-Bacon Act (40 U.S.C. §§ 3141 - 3144, and 3146 - 3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors agree to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

The non-federal entity will place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

### B. Copeland Anti-Kickback Act

The contractor agrees to comply with all provisions of the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). In complying with this requirement, the contractor will prohibit inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity will report all suspected or reported violations to the awarding agency.

### C. Recycled Products

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

### D. Bonding

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or passthrough entity may accept the bonding policy and requirements of the non-Federal entity provided that



the Federal awarding agency or passthrough entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- I. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- II. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- III. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

It is also understood and agreed that if the bidder should withdraw any part or all of their bid within [90] days after the bid opening without the written consent of the Agency, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense Agency for the damages occasioned by default, then the bidder agrees to indemnify Agency and pay over to Agency the difference between the bid guarantee and Agency's total damages so as to make Agency whole.

The bidder understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

**Performance Guarantee.** A Performance Guarantee in the amount of 100% of the Contract value is required by the Agency to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Agency within ten (10) business days from Contract execution. The Agency requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. Agency may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Agency if:

- a. A bank in good standing issues it. The Agency will not accept a Letter of Credit from an entity other than a bank.
- b. It is in writing and signed by the issuing bank.
- c. It conspicuously states that it is an irrevocable, nontransferable, "standby" Letter of Credit.
- d. The Agency is identified as the Beneficiary.
- e. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
- f. The effective date of the Letter of Credit is the same as the effective date of the Contract
- g. The expiration date of the Letter of Credit coincides with the term of the contract.
- h. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Agency and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to

the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

**Payment Bonds.** A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Agency as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Agency) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

#### **E. Cargo Preference**

The contractor agrees to comply with the shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference - U.S.-Flag Vessels," 46 C.F.R. part 381.

#### **F. Seismic Safety**

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.

#### **G. Special DOL EEO Clauses**

The contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

#### **H. Veterans Preference**

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

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

<b>Davis-Bacon Act, Copeland Anti-Kickback Act, and Seismic Safety Certification</b>	
Name of Company	Printed Name of Person Completing Form
Date	Signature

### Construction Certification

The undersigned vendor certifies to abide by these clauses and include the following clauses in each subcontract financed in whole or in part with Federal Transit Administration (FTA) funds. Vendors are certifying by reference the entire list FTA's current fiscal year Certifications and Assurances (for fiscal year \_\_\_\_\_), and shall download at:

<https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances>.

Name of Company	Printed Name of Person Completing Form
Date	Signature

### 1b. State of Texas Required Clauses: Construction

#### Dispute Resolution

##### 1. §2260.004 Gov't Code Dispute Resolution

The Recipient agrees to the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute under this Agreement.

### Construction Certification

The undersigned vendor certifies to abide by these clauses and include the following clauses in each subcontract financed in whole or in part with State of Texas funds.

Name of Company	Printed Name of Person Completing Form
Date	Signature