

June 16, 2022



REQUEST FOR PROPOSAL

TAPS FACILITY FEASIBILITY STUDY/CONCEPTUAL DESIGN

TEXOMA AREA PARATRANSIT SYSTEM, INC.
6104 Texoma Parkway, Sherman, TX 75091-2008

REQUEST FOR PROPOSAL – COVER PAGE

Issue Date: June 16, 2022
Title: TAPS Facility Feasibility Study/Conceptual Design
Reference Number: RFP# TAPS22-03
Issuing and Using Agency: Texoma Area Paratransit System, Inc.
Attn: Shellie White, General Manager
6104 Texoma Parkway Sherman, TX 75091-2008

Proposals for Furnishing the Product(s)/Service(s) Described Herein Will Be Received Until:
2:00 PM on June 30, 2022 (CST)

All Inquiries for Information Should Be Directed To: Address listed above or e-mail shellie.white@transdev.com.

**PROPOSALS MUST BE MAILED OR HAND-DELIVERED TO:
TEXOMA AREA PARATRANSIT SYSTEM, INC., 6104 TEXOMA PARKWAY, SHERMAN, TEXAS
75091-2008.**
The Reference Number, Date and Time of proposal submission deadline, as reflected above, must clearly appear on the face of the returned proposal package.

In Compliance with This Request for Proposals and To All Conditions Imposed Therein and Hereby Incorporated by Reference, The Undersigned Offers and Agrees to Furnish the Goods/Services Described Herein in Accordance with The Attached Signed Proposal.

Name and Address of Firm:

_____ Date: _____

_____ By: _____
(Signature in ink)

_____ Zip Code: _____ Name: _____
(Please Print)

Telephone: () _____ Title: _____

Fax Number: () _____ FEL/FIN Number: _____

DUNS Number: _____ E-Mail Address: _____

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DEFINITION OF WORDS AND TERMS

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. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written documentation of TAPS's determination that the Offeror's Work has been completed in accordance with the Contract.

Addendum/Addenda: Written additions, deletions, clarification, interpretations, modifications or corrections to the solicitation documents issued by TAPS during the Solicitation period and prior to contract award.

Administrative Change: Documentation provided by TAPS to Offeror, which reflects internal TAPS procedures not affecting the Contract terms or Scope of Work.

Best and Final Offer: Best and Final Offer shall consist of the Proposer's revised proposal, the supplemental information, and the Proposer's Best and Final Offer. In the event of any conflict or inconsistency in the items submitted by the Proposer, the items submitted last will govern.

Buyer: Individual designated by TAPS to conduct the Contract solicitation process, draft and negotiate contracts, resolves contractual issues and supports the Project Manager during Contract performance.

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.

Change Order: Written order issued by TAPS, with or without notice to sureties, making changes in the Work within the scope of this Contract.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or scope of work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between TAPS and the Offeror for completion of the Work.

Contract Period: The period of time during which the Offeror shall perform the Services or Work under the Contract.

Contract Price: Amount payable to the Offeror under the terms and conditions of the Contract for the satisfactory performance of the Services or Work under the Contract.

Offeror: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with TAPS for the performance of Services or Work under the Contract.

Cost Analysis: The review, evaluation and verification of cost data and the evaluation of the specific elements of costs and profit. Cost analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.

Day: Calendar Day.

DBE: Disadvantage Business Enterprise.

Documentation: Technical publications relating to the use of the Work to be provided by Offeror under this Contract, such as reference, user, installation, systems administration and technical guides, delivered by the Offeror to TAPS.

DOT: Department of Transportation.

Final Acceptance: The point when TAPS acknowledges that the Offeror has performed the entire Work in accordance with the Contract.

FTA: Federal Transit Administration.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Price Analysis: The process of examining and evaluating a price without evaluating its separate cost elements and proposed profit.

Procurement Administrator: The individual designated by TAPS to administer the Contract and be the Offeror's primary point of contact. The Procurement Administrator has no contracting authority.

Project Manager: The individual designated by TAPS to manage the project on a daily basis and who may represent TAPS for Contract Administration.

Proposer or Offeror or Proposer: Individual, association, partnership, firm, company, corporation or a combination thereof, including joint ventures, submitting a proposal/proposal to perform the Work.

Provide: Furnish without additional charge.

Reference Documents: Reports, specifications, and/or drawings that is available to proposers for information and reference in preparing Proposals but not as part of this Contract.

RFP or Solicitation: Request for Proposals; also known as the solicitation document.

Scope of Work or Statement of Work (SOW): A section of the Invitation for Proposals consisting of written descriptions of Services to be performed, or the goods to be provided, or the technical requirements to be fulfilled under this Contract.

Services: The furnishing of labor, time or effort by an Offeror, but not involving the delivery of any specific manufactured good.

Shall or Will: Whenever used to stipulate anything, Shall or Will means mandatory by either the Offeror or TAPS, as applicable, and means that the Offeror or TAPS, as applicable, has thereby entered into a covenant with the other party to do or perform the same.

Specifications or Technical Specifications: A Section of the Invitation for Proposals consisting of written descriptions of Services to be performed, or the goods to be provided, or the technical requirements to be fulfilled under this Contract.

Sub-Officer: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Offeror to perform any portion of the Work covered by this Contract.

Submittals: Information that is submitted to the Procurement Administrator in accordance with the Scope of Work/Specifications.

TAPS: Texoma Area Paratransit System, Inc.

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.

LEGAL NOTICE

June 16, 2022

REQUEST FOR PROPOSALS
TAPS Facility Feasibility
Study/Conceptual Design
RFP #TAPS22-03

Texoma Area Paratransit System, Inc. (“TAPS”) is seeking Proposals for a facility feasibility study/conceptual design. The scope of work/specifications is outlined in the Request for Proposals (RFP). The successful Proposer shall meet the terms and conditions set forth in this document and all other attachments.

The RFP, which includes the procurement schedule, may be obtained by downloading the document from TAPS’s website found at **Error! Hyperlink reference not valid.** under ‘Request for Proposals’. All interested offerors should complete the Offeror’s Registration Form (contained in the RFP) and submit to the listed person, via e-mail. All questions should be directed to:

Shellie White, General Manager
Texoma Area Paratransit System
6104 Texoma Parkway
Sherman, TX 75091-0008
E-mail: shellie.white@transdev.com

All Proposals must be received on or before **2:00 pm (CST) on June 30, 2022**, at the address listed above.

The right is reserved to accept any proposal or any part or parts thereof or to reject any and all proposals. Acceptance of any proposal is subject to concurrence by the Texas Department of Transportation and/or the Federal Transit Administration.

Any contract resulting from these Proposals is subject to financial assistance contract between TAPS and the Federal Transit Administration and/or the Texas Department of Transportation.

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

Funding provided in whole or in part by the Texas Department of Transportation “TXDOT”.

INTERESTED PROPOSER REGISTRATION FORM

TAPS FACILITY FEASIBILITY STUDY/CONCEPTUAL DESIGN

RFP #TAPS22-03

Date: June 16, 2022
To: INTERESTED OFFERORS
Subject: TAPS Facility Feasibility Study/Conceptual Design RFP #TAPS22-03

To Proposers:

The REQUEST FOR PROPOSALS (RFP) and any issued addenda(s) are available for download at www.tapsbus.com. Please submit this Form to shellie.white@transdev.com with your completed contact information.

Name of Interested Offeror: _____

Name of Contact Person: _____

Title of Contact Person: _____

Street Address/Post Office Box: _____

City, State, Zip Code: _____

Telephone Number: _____

Fax Number: _____

E-Mail Address: _____

Website Address: _____

Date of Download: _____

This Form is requested to ensure that every Interested Offeror receives issued addenda(s) for this REQUEST FOR PROPOSALS. Failure to register this download may result in a rejection of the quotation due to non-compliance with addenda requirements. See **ATTACHMENT C - ADDENDUM PAGE**, which must be completed and submitted with the proposal that you provide to TAPS.

Thank you for your interest. We look forward to receiving your proposal.

Sincerely,
Shellie White
TAPS/Transdev
General Manager

SECTION 1 - INSTRUCTIONS TO PROPOSERS

1-1 Introduction

TAPS is the primary public transportation provider for Cooke, Clay, Fannin, Grayson, Montague, and Wise Counties in North Texas. The Texas legislature enacted the Rural and Urban Transit Act in 1995 which created transit TAPSs that can receive public transportation funds through the Texas Department of Transportation. TAPS meets the requirements of the Act; it operates as a Rural and Urban Transit System which means that TAPS is considered a Political Subdivision of State of Texas. Additionally, TAPS holds 501(C3) status. TAPS provides a customer-focused transportation service that connects people to places in an efficient and safe manner.

TAPS provides demand response paratransit service within the service area and owns 36 medium duty vans. TAPS has one facility comprised of a Maintenance Building located at 6104 Texoma Parkway, Sherman, TX 75091.

1-2 Purpose

TAPS is issuing this Request for Proposal (RFP) to interested and qualified firms or consultant teams to assess the viability of constructing an administrative/operations facility adjacent to the maintenance facility located at 6104 Texoma Parkway, Sherman, TX 75091. TAPS is seeking a consultant team with strong transit planning and site layout skills. The feasibility study will be a continuation of the recent Facility Needs Assessment and will include a conceptual design and cost estimates.

1-3 Proposal Submission

The proposer will submit:

- **One (1) Original;**
- **Three (3) copies;**

The Proposer will submit one (1) sealed envelope containing the One (1) Original and required Three (3) copies, complete with all signed affidavits and certifications, bound together. Oversize pages used for drawings or similar purposes are allowed. The package containing the proposal must be clearly marked with the words "**Proposal for Feasibility Study/Conceptual Design RFP #TAPS22-03**" and the time and date Proposals are due. TAPS will not accept responsibility for late Proposals that may be improperly routed in the mail or otherwise delivered after the prescribed date and time.

TAPS shall not be responsible for unintentional premature opening of a proposal that has not been properly addressed and identified per the instructions included with this RFP. All Proposals are due **NOLATER THAN 2:00 pm (CST), June 30, 2022.**

1-4 Proposal Format and Required Content

Proposals shall be prepared in a clear, concise, and economical manner. Proposals should be bound simply, and sections shall be tabbed to coincide with the sections of the RFP and pages should be numbered in each section.

There is no page limitation or minimum document size, but any information the Proposer submits is expected to be concise and relevant to the RFP. Illustrations may be included in the proposal. Proposals that do not adhere to the required format, are difficult to read or are deemed illegible by TAPS may be rejected.

Proposals shall adhere to the following format and contain the following items in the order outlined below:

- A. Request for Proposals Cover Page (page 2);
- B. Attachment (M) - Proposal Form
- C. Cover Letter, providing the following information:
 - 1. Identification of the proposer(s), including name, address and telephone number of the appropriate contact person at each company/firm.
 - 2. Proposed working relationship among proposing companies/firms, i.e., prime-sub-consultants, if applicable.
 - 3. Signature of a person authorized to bind the proposing firm/company to the terms of the proposal.
- D. Properly completed and executed Attachments (A-O)
- E. Qualifications/experience of prime consultant with studies of similar type and size
- F. Developed work plan and schedule
- G. Breakdown of Costs

1-5 Proposal Signature

Each proposal shall include the RFP Cover Page signed by a person authorized to bind the proposing firm to the terms of the Contract. Proposals signed by an agent are to be accompanied by evidence of that person's authority.

1-6 Inquiries

The proposer is required to show on all correspondence with TAPS the following: "**Proposal for Facility Feasibility Study/Conceptual Design RFP #TAPS22-03**". Any communication with TAPS should be written and directed to: Shellie White, General Manager, TAPS, 6104 Texoma Parkway, Sherman, Texas 75091-0008. Written communication may also be forwarded via email to shellie.white@transdev.com. Correspondence will not be accepted by any other means or by any other TAPS staff member.

1-7 Procurement Schedule

The projected schedule for this procurement is:

Invitation for Proposals available:	June 16, 2022
Deadline for questions and clarifications:	June 23, 2022
Deadline for <u>responses</u> to questions and clarifications:	June 27, 2022
Proposals due by 2:00 pm (CST) :	June 30, 2022
Proposal Opening at 2:15 pm (CST) :	June 30, 2022
Recommend Contract Award:	July 2022
Anticipated Completion date:	September 30, 2022

1-8 Proposal Specifics

TAPS reserves the right to reject any or all Proposals. Any restrictions on the use of data contained within a proposal must be clearly stated in the proposal itself.

1-9 Examination of RFP and Contract Documents

Proposers are expected to examine the Scope of Work, scope of services required, specifications, schedules, compliance requirements and all instructions. Failure to do so will be at the Proposer's risk. It is the intent of these specifications to provide product(s)/service(s) of first quality, and the workmanship must be the best obtainable in the various trades. The product(s)/service(s) proposed must be high quality in all respects. No advantage will be taken by the Proposer in the omission of any part or detail, which goes to make the product/service(s) complete. All manner of workmanship and material used in the production of the services and not herein contained or specified shall be of the industry standard and shall conform to the best practices known in the industry.

Offeror will assume responsibility for all equipment used in the proposal item, whether the same is manufactured by the Offeror or purchased ready made from a source outside the Offeror's company. It is the sole responsibility of the Offeror to read the Scope of Work/Specifications and understand them.

The submission of a proposal shall constitute an acknowledgment upon which TAPS may rely on that the Proposer has thoroughly examined and is familiar with the solicitation, instructions and Scope of Work, including any work site identified in the RFP, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods and services to be provided hereunder. The failure or neglect of a Proposer to receive or examine such ~~contracts~~ work sites, statutes, regulations, ordinances, or resolutions shall in no way relieve the Proposer from any obligations with respect to its Proposal or to any Contract awarded pursuant to this RFP. No claim for additional compensation will be allowed which is based on lack of knowledge or misunderstanding of this RFP, work sites, statutes, regulations, ordinances, or resolutions.

1-10 Interpretation of RFP and Contract Documents

No oral interpretations as to the meaning of the RFP will be made to any Proposer. Any explanation desired by a Proposer regarding the meaning or interpretation of the RFP, Scope of Work, Specifications, etc., must be requested in writing and with sufficient time allowed (a minimum of fifteen (15) calendar days before the proposal due date) for a reply to reach all Proposers before the submission of their Proposals. Any interpretation or change made will be in the form of an addendum to the RFP, specifications, etc., as appropriate. All addendums will be furnished as promptly as is practicable to all Offerors who have registered to submit a proposal on this RFP and to whom the RFP has been issued to at least seven (7) calendar days prior to the proposal due date. **All addenda will become part of the RFP and any subsequently awarded Contract.** Oral explanations, statements, or instructions given by TAPS before the award of the Contract will not be binding upon TAPS.

1-11 Cost of Proposals

TAPS is not liable for any costs incurred by Proposers in the preparation, presentation, testing, or negotiation of Proposals submitted in response to this solicitation.

1-12 Samples

Samples of items, when called for, must be furnished free of charge. Samples must be labeled with the Proposer's name, manufacturer's brand name and number, proposal number, and item reference. Request for return of samples shall be accompanied by instructions, which include shipping authorization and name of carrier, and must be received within ninety (90) days after proposal opening date. If instructions are not received within this time, the commodities shall be disposed of by TAPS.

SECTION 2 – SCOPE OF WORK

2-1 Introduction/Background

TAPS is issuing this Request for Proposal (RFP) to interested and qualified firms or consultant teams to assess the viability of constructing an administrative/operations facility adjacent to the maintenance facility located at 6104 Texoma Parkway, Sherman, TX 75091. TAPS is seeking a consultant team with strong transit planning and site layout skills. The feasibility study will be a continuation of the recent Facility Needs Assessment and will include a conceptual design and cost estimates.

TAPS seeks to move administration and transportation functions from leased space to Agency owned site currently occupied by the maintenance facility. TAPS previously developed space requirements and construction documents for the new facility to be located at 6104 Texoma Parkway, Sherman, TX. TAPS recently requested consultant assistance to review current and previous studies and develop an updated facility needs assessment. A comparison was developed to show the differences between the original facility plan and current operational needs.

2-2 Scope of Work / Specifications

The primary goals of the Feasibility Study effort include:

Task 1 – Develop a Work Plan and Schedule

- Develop a Work Plan to guide and manage the project
- Establish a schedule with milestones

Task 2 – Validation of Space Needs (based on interviews with staff, the following information would be compiled on each functional area):

- Thoroughly review the current facility needs and potential future needs
- Current space allocations and unmet space needs
- Equipment with significant impact on space needs
- Degree of automation and communication
- Data/record storage practices and requirements
- Relationship to general public access and visitation; and
- Parking needs and traffic generation characteristics.

Average square foot space needs per employee, by individual component/personnel classification, will be defined, along with space needs for specialized equipment, meeting rooms, and other non-personnel space needs. The net square foot requirement for each component of the proposed facility will be determined. The total quantity of land required to accommodate the proposed facility will be determined by identifying the following:

- Total square footage required for structure
- Employee and patron parking requirements
- Vehicular access and maneuvering

The primary goals of the Conceptual Design and Costs effort include:

Task 1 – Render a Conceptual Facility

- The study, as outlined in the feasibility report, should render a conceptual facility based on the scope of services outlined in the RFP.
- The Consultant should then translate the market and corresponding program and market assessment into the preferred conceptual facility design including spatial relationship.
- The Program Summary should provide a summary of areas that each program space requires including an estimate of the order of magnitude of cost for the design options.
- Conceptual Design Narratives are to be included as well.

Task 2 – Furthermore, the deliverables for the preferred Concept Design Solution shall include the following:

- Site Plan with Ground Floor Plan outline.
- Floor Plan(s).
- Conceptual Vignette depicting building character.
- Final Summarized Building Program.
- Estimates of probable cost.
- An outline of building specifications
- Project Schedule and phasing, if applicable.

SECTION 3 – PROPOSAL SUBMISSION PROVISIONS

3-1 Postponement, Amendment and/or Cancellation of Invitation for Proposals

TAPS reserves the right to revise or amend any portion of this RFP prior to the date and time for the proposal delivery. Such revisions and amendments, if any, shall be issued through addenda to this RFP. Copies of such addenda and/or amendments shall be placed on TAPS website and will be furnished to the Proposer's email address submitted on the Offerors Registration Form. If the revisions or addenda require changes in requested information or the format for proposal submission, the established date for submission of Proposals contained in this RFP may be postponed by such number of days as, in TAPS's opinion, shall enable Proposers adequate time to revise their Proposals.

TAPS reserves the right to cancel this RFP at any time or change the date and time for submitting Proposals by announcing same prior to the date and time established for proposal submittal.

3-2 Rejection of Proposals

TAPS reserves the right to reject any or all Proposals and waive any minor informalities or irregularities.

3-3 Clarification of Proposals

TAPS reserves the right to obtain clarification of any point in a proposal or to obtain additional information necessary to properly evaluate a particular proposal. Failure of a Proposer to respond to such a request for additional information or clarification may result in the Proposals' rejection.

3-4 Approved Equals

In all cases, services and materials must be furnished as specified. Where brand names or specific items are used in the specifications, consider the term "or approved equal" to follow.

Any unapproved deviations, exceptions, substitutions, alternates or conditional qualifications contained in a proposal may be cause for its rejection.

If potential proposers believe that their product is equal to the product specified, they must submit a written request to TAPS on the provided form (Attachment D) and this request will be approved or rejected by TAPS at least seven (7) calendar days prior to the due date of Proposals. Requests for approved equals and clarification of specifications must be received by TAPS in writing a minimum of fifteen (15) days before the proposal opening to allow analysis of the request.

Any request for an approved equal must be fully supported with catalog information, specifications and illustrations, or other pertinent information, as evidence that the substitute offered is equal to or better than the specification. Where an approved equal is requested, the Proposer must demonstrate the equality of this product to TAPS to determine whether the Proposer's product is or is not equal to that specified.

3-5 Modification or Withdrawal of Proposals and Late Proposals

At any time before the time and date set for submittal of Proposals, a Proposer 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 RFP 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 TAPS's office designated in the solicitation after the exact time specified for proposal receipt will not be considered.

3-6 Errors and Administrative Corrections

TAPS will not be responsible for any errors in Proposals. Proposers will only be allowed to alter Proposals after the submittal deadline in response to requests for clarifications or Best and Final Offers by TAPS. TAPS reserves the right to request an extension of the proposal period from a Proposer or Proposers.

TAPS 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 proposer must be initialed by the person signing the proposal.

3-7 Compliance with RFP Terms and Attachments

TAPS intends to award a Contract based on the terms, conditions, and attachments contained in this RFP. Proposers are strongly advised to not take any exceptions. Proposers shall submit Proposals which respond to the requirements of the RFP. An exception is not a response to an RFP requirement. If an exception is taken, a "Notice of Exception" must be submitted with the proposal. The "Notice of Exception" must identify the specific point or points of exception and provide an alternative.

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

TAPS may, at its sole discretion, determine that a proposal with a Notice of Exception merits evaluation. A proposal with a Notice of Exception not immediately rejected, may be evaluated, but its competitive scoring will be reduced to reflect the importance of the exception. Evaluation and negotiation will only continue with the Proposer if TAPS determines that a Contract in the best interest of TAPS may be achieved. The Notice of Exception will be used as part of TAPS's evaluation of the proposal, and, therefore, must be made known during the course of the proposing process. Comments and exceptions substantially altering the form agreement will not be considered after conclusion of the proposal process and the award of a contract. Failure to submit a marked-up copy of the form agreement with a proposal will be interpreted by TAPS as the proposer's acceptance of the form agreement provided herein.

3-8 Collusion

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

If TAPS determines that collusion has occurred among Proposers, none of the Proposals from the participants in such collusion shall be considered. TAPS's determination shall be final.

3-9 Pricing, Taxes and Effective Date

The price to be quoted in any proposal will include all items of labor, materials, tools, equipment, delivery and other costs necessary to fully meet the requirements of TAPS. Any items omitted, which are clearly necessary for the completion of this project, will be considered a portion of such specifications, although not directly specified.

Price Proposals shall include all freight charges, FOB to the designated delivery points.

TAPS is exempt from payment of Federal, Excise and Transportation Tax, and the Texas Sales, Excise and Use Tax. Proposers 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.

In the event of a discrepancy between the unit price and the extended amount for a required item, the unit price will govern.

The price quoted by the proposing companies/firms will not change for a period of ninety (90) days, beginning from the date the proposal is opened.

3-10 Proposal Alternatives

Proposals shall address all requirements identified in this solicitation. In addition, TAPS may consider proposal alternatives submitted by Proposers that provide enhancements beyond the RFP requirements. Proposal alternatives may be considered if deemed to be in TAPS's best interests. Proposal alternatives must be clearly identified.

3-11 Single Proposal Response

If only one Proposal is received in response to the RFP, a sample of two (2) Proposals, if available, awarded to the Proposer within the past two (2) years may be requested of the single Proposer. A cost/price analysis and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

3-12 Exclusionary or Discriminatory Specifications

TAPS agrees that it will comply with the requirements of 49 U.S.C. Section 5323(h) (2) by refraining from using any Federal assistance awarded by the FTA to support procurements using exclusionary or discriminatory specifications. TAPS further agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal Statute.

3-13 Protest Procedures

Pre-Proposal Protests:

All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter on official firm/agency letterhead or by electronic mail) to the Board Chair as specified below not later than ten (10) business days prior to the deadline for submission of Proposals/proposals.

The Board Chair may, within his or her discretion, postpone the deadline for submission of Proposals/proposals, but in any case, shall provide a written response to all protests not later than two (2) business days prior to the deadline for submission of Proposals/proposals. If the deadline for submission of Proposals/proposals is postponed by the Board Chair as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the Board Chair shall be the final agency decision on the matter.

Pre-Award Protests:

With respect to protests made after the deadline for submission of Proposals/proposals but before contract award by TAPS, protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the Proposals/proposals evaluation and award process.

Such protests shall be submitted in writing (defined as being sent or received via letter on official firm/agency letterhead or by electronic mail) to the Board Chair as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by TAPS.

The Board Chair, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that TAPS shall announce the contract award.

The decision by the Board Chair shall be the final agency decision on the matter.

Requirements for Protests:

All protests must be submitted to TAPS in writing (defined as being sent or received via letter on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor and be signed by the Protestor. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by TAPS.

All protests must be directed in writing (defined as being sent or received via letter on official firm/agency letterhead or by electronic mail) to the Board Chair at the address shown in the solicitation documents.

Protest Response:

The Board Chair shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, TAPS will also send a copy of the response to a protest to the Protester by electronic mail if an electronic mail address is indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official TAPS response to the protest and TAPS will not be responsible for the failure of the Protester to receive the protest response by electronic mail.

3-14 Insurance Requirements

Offeror shall not commence work until all insurance required under this section has been obtained and the proper insurance verification has been provided to TAPS.

3-14.1 General Requirements

All insurance policies shall be written with a company or companies licensed to conduct business within the Commonwealth of Texas and holding a current Best's Key Rating of A- VII or better. Offeror agrees to name TAPS as additional insureds on General, Business Automobile and Excess or Umbrella liability policies by endorsement to the policies. Insurance policies shall be endorsed to give TAPS 30 day's written notice (10 days in case of Workers Compensation) of cancellation for any reason, non-renewal or material change in coverage or limits. In case of non-payment of premium by Offeror, TAPS retains the rights but is not obligated to pay any premiums and deduct such amounts from any payments due to the Offeror.

There shall be no exclusions for punitive damages in the General or Business Automobile policies.

Complete, certified copies of all insurance policies applicable to this agreement will be sent to TAPS within 60 days of each inception or anniversary date, so that these insurance policies may be reviewed by TAPS. Until copies of policies are received, Evidence of Coverage in the form of an original Certificate of Insurance shall be submitted to TAPS. The Offeror also agrees to have deficiencies in the insurance policies amended as per the directions of TAPS or its representative.

3.14.2 Required Coverages

The Offeror agrees to provide the following coverages:

- A. **Commercial General Liability** (Occurrence Form), either singly or in combination with Excess or Umbrella Liability Insurance policy **covering all operations** with the following limits:

Each Occurrence (Bodily Injury, Property Damage)	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
General Aggregate Limit	\$1,000,000
Products and Completed Operations Aggregate Limit	\$1,000,000
Fire Damage Limit	\$50,000
Medical Payments – Any One Person	\$5,000

- B. **Business Automobile Policy** either singly or in combination with Excess or Umbrella Liability Insurance policy **covering all operations** with the following limits:

Owned, Hired or Non-Owned (Per Accident)	\$1,000,000
Medical Payments (Each Person) \$5,000	
Comprehensive (\$5,000 Deductible – Maximum)	Actual Cash Value
Collision (\$5,000 Deductible – Maximum)	Actual Cash Value

In the case of policies that list specific vehicles or specific drivers, proof of coverage is required to be provided to TAPS for each vehicle or driver before it can be used in service. The Offeror will be fully responsible for all physical damage deductibles to TAPS owned vehicles. In addition, Offeror will be fully responsible for all rental costs and other costs associated with any vehicles that replace any vehicle that sustains any type of physical damage.

C. **Workers Compensation**

Part A	Statutory
Part B – Employers Liability	
Bodily Injury by Accident	\$500,000
Bodily Injury by Disease (Policy Limit)	\$500,000
Bodily Injury by Disease (Each Employee)	\$500,000

All States and Voluntary Compensation endorsements shall be included in the Workers Compensation policy. Workers Compensation shall be provided to all employees of the Offeror.

SECTION 4 – PROPOSAL EVALUATION & CONTRACT AWARD

4-1 General

It is the intent of TAPS to select only responsible and responsive firms.

4-2 Eligibility for Award

The initial step in the proposal review process and the purpose is to gauge the responsiveness of the Proposer. The Proposals will be evaluated according to the following criteria:

- The completeness of the proposal (20%),
- Pricing (25%)
- Background and experience in projects of similar scope (25%),
- References (15%),
- Any other item deemed in the best interest of TAPS (15%).

Failure to meet any or all of the above criteria will result in a nonresponsive proposal and said proposal will be rejected in its entirety.

In order to qualify as a Responsible Proposer, in addition to the other requirements herein provided, a Proposer must be prepared to prove to the satisfaction of TAPS that it has the integrity, skill, and experience to faithfully perform the conditions of the Contract and that it has the necessary financial resources to provide the services in a satisfactory manner and within the time specified.

To be considered skilled and experienced, the Proposer must show, among other requirements of TAPS, that it has satisfactorily supplied services of the same general type and scope as that which is called for in the RFP.

The Proposer shall maintain at all times, the necessary licenses, permits or certifications required and may be required to furnish evidence of the same.

4-3 Contract Award

Contract award, if any, will be made by TAPS to the responsible Proposer whose proposal best meets the requirements of the RFP, and will be the most advantageous to TAPS with respect to operational plan, quality, and other factors as evaluated by TAPS. TAPS shall have no obligations until a Contract is signed between the Proposer and TAPS.

Contract award will occur when TAPS signs the Contract or issues a purchase order. No other act of TAPS shall constitute Contract award. The Contract will establish the Contract value and incorporate the terms of this document but will not be the authorization for Offeror to proceed.

4-4 Execution of Contract and Notice to Proceed

The Proposer to whom TAPS intends to award the Contract shall sign the Contract and return it to TAPS. Upon authorization by TAPS's Board of Directors, or designee, the Contract will be countersigned. Upon receipt by TAPS of any required documentation and submittals by the Proposer, a Notice to Proceed may be issued, if appropriate.

4-5 Public Disclosure of Proposals

TAPS is subject to the Texas Freedom of Information Act. Therefore, the contents of this RFP and the Offeror's proposal submitted in response to this RFP shall be considered public documents and are subject to the Texas FOIA statutes. As such, all Proposals submitted to TAPS will be available for inspection and copying by the public after the selection process has been concluded. There are, however, various items that may be exempt under public disclosure laws. If any proprietary, privileged, or confidential information or data is included in the Offeror's proposal, each page that contains this information or data should be marked as such (e.g., "Proprietary," "Confidential," "Business Secret," or "Competition Sensitive") in order to indicate your claims to an exemption provided in the Texas FOIA. It is TAPS's sole right and responsibility, however, to make the determination whether these items are exempt or not exempt under the Texas FOIA statutes.

All data, documentation and innovations developed as a result of these contractual services shall become the property of TAPS.

SECTION 5 – STANDARD CONTRACTUAL TERMS & CONDITIONS

5-1 Administration

This Contract is between TAPS and the Offeror who will be responsible for providing the goods and/or performing the services described herein. TAPS is not party to defining the division of work between the Offeror and its Sub Offerors, if any, and the Specifications and/or Scope of Services has not been written with this intent.

Offeror represents that it has or will obtain all duly licensed and qualified personnel and equipment required to perform hereunder. Offeror's performance under this Contract may be monitored and reviewed by a Procurement Administrator appointed by TAPS. Reports and data required to be provided by Offeror shall be delivered to the Procurement Administrator. Questions by Offeror regarding interpretation of the terms, provisions, and requirements of this Contract shall be addressed to the Procurement Administrator for response.

5-2 Notification of Delay

Offeror will notify TAPS's Procurement Administrator as soon as Offeror has, or should have, knowledge that an event has occurred which will delay delivery or start-up of services. Within five days, Offeror will confirm such notice in writing furnishing as many details as is available.

5-3 Request for Extension

Offeror agrees to supply, as soon as such data are available, any reasonable proofs that are required by TAPS's Procurement Administrator to make a decision of any request for extension. TAPS's Procurement Administrator will examine the request and any documents supplied by Offeror and will determine if Offeror is entitled to an extension and the duration of such extension. TAPS's Procurement Administrator will notify Offeror of the decision in writing. It is expressly understood and agreed that Offeror 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.

5-4 Contract Changes

Any proposed change in the contract will be submitted to TAPS for its prior written approval and TAPS will make the change by a Change Order if agreed upon by both parties in writing. Each written Change Order will expressly include any change in the Contract price or delivery schedule. No oral order or conduct by TAPS will constitute a Change Order unless confirmed in writing by TAPS.

5-5 Instructions by Unauthorized Third Persons

In accordance with subsection 5-4, Contract Changes, of the solicitation, TAPS's GM or his authorized representative are the only persons authorized to make changes within the general scope of the Contract.

Any instructions, written or oral, given to Offeror by someone other than TAPS's GM or his authorized representative, which are considered to be a change in the Contract, will not be considered as an authorized Contract change. Any action on the part of Offeror taken in compliance with such instructions will not be grounds for subsequent payment or other consideration in compliance with the unauthorized change.

5-6 Cost or Price Analysis

TAPS reserves the right to conduct a cost or price analysis for any purchase. TAPS may be required to perform a cost analysis when competition is lacking for any purchase. Sole source procurements which result in a single Proposal 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 Proposal prices. TAPS may require a Pre-Award Audit and potential Offerors shall be prepared to submit data relevant to the proposed work which will allow TAPS to sufficiently determine that the proposed price is fair, reasonable, and in accordance with Federal, State and local regulations. Procurements resulting in a single Proposal will be treated as a negotiated procurement and TAPS reserves the right to negotiate with the single Proposer to achieve a fair and reasonable price. If a negotiated price cannot be agreed upon by both parties, TAPS reserves the right to reject the single Proposal. Contract change orders or modifications will be subject to a cost analysis.

5-7 Lack of Funds

If expected or actual funding is withdrawn, reduced, or limited in any way prior to the expiration date set forth in this Contract or in any amendment hereto, TAPS may, upon written notice to Offeror, terminate this Contract in whole or in part. Such termination shall be in accordance with TAPS's rights to terminate for convenience or default.

5-8 Force Majeure

The timely receipt of TAPS's requirements is essential. If the requirements are not received on time in accordance with the delivery schedule, TAPS may cancel the unfilled portion of the contract for cause, purchase substitute requirements elsewhere, and recover from Offeror any increased costs, thereby incurred together with all resulting incidental and consequential damages. TAPS may also terminate for cause, purchase substitute requirements elsewhere and recover costs and damages for breach of Offeror obligations.

The Offeror shall be entitled to a reasonable extension of time from TAPS for the delays caused by damage to Offeror's and/or TAPS's property caused by fire, lightning, earthquakes, tornadoes, and other extreme weather conditions 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 Offeror and its sub Offerors causing the inability to perform the requirements of this Contract. Any delay other than ones mentioned above shall constitute a breach of Offeror's contractual obligations.

5-9 Taxes, Licenses, Laws, and Certificate Requirements

Offeror 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 Offeror and any sub Offerors and shall secure and at all times maintain any and all such valid licenses and permits as may be required to provide the services or supplies under this Contract. If for any reason, Offeror'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, Offeror shall immediately notify TAPS in writing of such condition.

Offeror will give all notices and comply with all federal, state, local and TAPS 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. If the Contract Documents are at variance therewith in any respect, any necessary changes shall be adjusted by appropriate modification. Omission of any applicable laws, ordinances, rules, regulations, standards or orders by TAPS in the Contract Documents shall be construed as an oversight and shall not relieve the Offeror from his obligations to meet such fully and completely. Upon request, Offeror shall furnish to TAPS certificates of compliance with all such laws, orders and regulations. Offeror 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 any and all claims and disputes which may arise between person(s) submitting a Proposal response hereto and TAPS, by and through its officers, employees and authorized representatives, or any other persons, natural and otherwise, and lack of knowledge by any Offeror shall not constitute a cognizable defense against the legal effect thereof.

5-10 Defective Work, Materials or Services

When and as often as TAPS determines that the work, materials, or services furnished under the Contract are not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to Offeror. Within seven (7) calendar days of receiving such written notification, Offeror must supply TAPS with a written detailed plan which indicates the time and methods needed to bring the work, materials, or services within acceptable limits of the Contract. TAPS may reject or accept this plan at its discretion. In the event this plan is rejected, the work, materials, or services will be deemed not accepted and returned to Offeror at Offeror's expense. This procedure to remedy defects is not intended to limit or preclude any other remedies available to TAPS by law, including those available under the Uniform Commercial Code.

5-11 Assignment

Offeror shall not assign any interest, obligation, or benefit under or in this Contract or transfer any interest in the same, whether by assignment or notation, without the prior written consent of TAPS. If an assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of Offeror. This provision shall not prevent Offeror from pledging any proceeds from this Contract as security to a lender. An assignment may be conditioned upon the posting of bonds, securities and the like by the assignee and the assignee must assume the written Contract and be responsible for the obligations and liabilities of Offeror, known and unknown, under this Contract and applicable law.

TAPS may assign its rights and obligations under the Contract to any successor to the rights and functions of TAPS or to any governmental agency to the extent required by applicable laws or governmental regulations, or to the extent TAPS deems necessary or advisable under the circumstances.

5-12 Indemnification and Hold Harmless

The Proposer agrees to indemnify and hold TAPS, its directors, officers, agents, and employees from and against all claims, damages, suits or judgments, including attorneys' fees and other costs and expenses incident thereto because of harm (including but not limited to harm arising from libel and/or slander) injury or death to persons or loss, damage or destruction to property, including property of TAPS, the Agreement and third persons, resulting from a breach of contract or the negligence of Proposer or its directors, officers, agents or employees while such person is acting in the scope of this Agreement.

5-13 Applicable Law and Forum

All work done pursuant to any contract resulting from this RFP 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 Proposer shall abide by all federal, state, and local laws, codes, and ordinances governing any areas(s) in which 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. Any actions arising here from shall be filed in the County of Grayson, Texas and the Federal Transit Administration if applicable.

5-14 Attorney Fees

In the event either party shall engage the services of an attorney or other professional due to the default of the other party, the defaulting (non-prevailing) party shall pay all legal costs and fees, including attorney's fees, incurred by the non-defaulting (prevailing) party in enforcing its rights.

5-15 Ethics Policy

TAPS has adopted the Transdev Ethics Policy. These policies shall apply to Transdev employees working on behalf of TAPS who participate in procurements. It is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows:

- The employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement. In addition, any persons acting as members of an evaluation committee for any procurement shall, for the purposes of the procurement, be bound by conditions of this Section. Throughout the proposal/proposal evaluation process and subsequent contract negotiations, offerors shall not discuss or seek specific

information about this procurement, including but not limited to, the contents of submissions, the evaluation process or the contract negotiations, with members of any evaluation committee, TAPS Board of Directors, or other employees other than the designated procurement officer.

5-16 Conflicts of Interest and Non-Competitive Practices

- A. Conflict of Interest – Offeror by entering into this Contract with TAPS to perform or provide work, services, or materials, 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. In the event that Offeror or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to TAPS and take action immediately to eliminate the conflict or to withdraw from this Contract, as TAPS may require.
- B. Contingent Fees and Gratuities – Offeror, by entering into this Contract with TAPS to perform or provide work, services, or materials, has thereby covenanted:
1. No person or selling agency except bona fide employees or designated agents or representatives of Offeror 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
 2. No gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Offeror or any of its agents, employees, or representatives, to any official, member or employee of TAPS or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

5-17 Conflicts of Interest – Current and Former Employees

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

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

5-18 Other Public Agency Orders

Other federal, state, county, and local entities may utilize the terms and conditions established by this Contract. TAPS does not accept any responsibility or involvement in the purchase orders or contracts issued by other agencies.

5-19 Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, and unenforceable provision.

5-20 Non-waiver of Breach

No action or failure to act by TAPS shall constitute a waiver of any right or duty afforded to TAPS under the Contract; nor shall any such action or failure to act by TAPS constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by TAPS in writing.

5-21 Use of TAPS's Name in Offeror Advertising or Public Relations

TAPS reserves the right to review and approve all TAPS-related copy prior to publication. Offeror will not allow TAPS-related copy to be published in Offeror's advertisements or public relations programs until submitting TAPS-related copy and receiving prior written approval from TAPS's General Manager. Offeror will agree that published information on TAPS or its program will be factual, and in no way imply that TAPS endorses Offeror's firm, service, or product.

SECTION 6 – SPECIFIC CONTRACTUAL TERMS & CONDITIONS

6-1 Contract

Any Contract resulting from this solicitation will be structured as a firm, fixed price contract. The Contract(s) issued by TAPS may reflect agreed to modification of Contract terms, funding, or other matters subject to subsection 5-4, Contract Changes. Standard Purchase Orders will be the authorization for the Offeror to perform the service or deliver the goods as directed.

6-2 Contract Documents and Precedence

The documents constituting the Contract between TAPS and Offeror 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:

- 1) Any required federal, state or local regulations that may not be altered by TAPS;
- 2) Contract;
- 3) Purchase Order;
- 4) Contract amendments;
- 5) Results of negotiations;
- 6) Solicitation and all issued addenda and approved equals;
- 7) Any optional federal regulations elected by TAPS as expressly set forth herein;
- 8) Clarifications of and amendments to Offeror's proposal as accepted by TAPS; and
- 9) Offeror's proposal and Attachments, and all clarifications and amendments issued prior to contract award.

6-3 Contract Term

The term of the Contract arising from this RFP shall be for two (2) years from acceptance date.

6-4 Payment Procedures

Payments for services rendered and expenses incurred shall be made after presentation of Offeror's invoices upon delivery of goods ordered by TAPS. Such invoices shall be computed in accordance with the fee schedule agreed to by TAPS and Offeror, and incorporated into the final contract, and are due and payable within thirty (30) days of receipt of a correct invoice as agreed upon by TAPS. Each invoice shall contain Offeror's list of items delivered. Offeror also agrees to supply, with each invoice, additional information as may be requested by TAPS.

Invoices should clearly identify TAPS purchase order number and any prompt payment discount offered to TAPS for paying within ten (10) days of receipt. TAPS may, at any time, conduct an audit of any and/or all records kept by the Offeror for this project. Any overpaymentuncovered in such an audit may be charged against the Offeror’s future invoices. TAPS maywithhold payment for services it believes were improper, failed to meet with project specifications,or are otherwise questionable. Invoices should be submitted to:

Texoma Area Paratransit System
General Manager
6104 Texoma Parkway
Sherman, TX 75091
Or email to:
shellie.white@transdev.com

6-5 Advance Payment Prohibited

No advance payment shall be made for the work furnished by Offeror pursuant to this Contract.

6-6 Prompt Payment to Sub Offerors

The Offeror is required to pay each first tier Sub Offeror for all work that the Sub Offeror has performed to the satisfaction of TAPS, no later than thirty (30) calendar days after the Offeror has received payment from TAPS for that work, and each tier of Sub Offerors must likewise pay the next lower tier of Sub Offerors within thirty (30) calendar days after receiving payment. If this Contract provides for retainage, the Offeror must remit to each first-tier Sub Offeror its share of any retainage within thirty (30) days after receipt of such retainage from TAPS, and each tier of Sub Offerors must likewise remit retainage to the next lower tier of Sub Offerors within thirty (30) calendar days after receiving payment. If this Contract does not provide for retainage, then neither Offeror nor any Sub Offeror may withhold retainage from a Sub Offeror. The requirements of this paragraph must be stated in all of the Offeror's subcontracts.

A delay in or postponement of payment to a Sub Offeror requires good cause and prior written approval by TAPS’s General Manager or his/her designee. The Offeror is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.

TAPS will not pay the Offeror for work performed unless and until the Offeror ensures that each Sub Offeror has been promptly paid under all previous payment requests, as evidenced by the filing with TAPS of lien waivers (if applicable), canceled checks (if requested), and the Offeror's sworn statement that it has complied with the prompt payment requirements. The Offeror must submit a prompt payment affidavit, (form to be provided by TAPS) which identifies each Sub Offeror (both DBE and non-DBE) and the date and amount of the last payment to such Sub Offeror, with every payment request filed with TAPS, except for the first payment request.

Failure to comply with these prompt payment requirements is a breach of the Contract which may lead to any remedies permitted under law, including, but not limited to, Offeror debarment.

6-7 Price Adjustments

Price adjustments either upward or downward may be negotiated only at the time of renewal unless TAPS requests a contract modification.

6-8 Shipping Charges

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

6-9 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 any authorized TAPS-related facility and will be determined at the time of order at the sole discretion of TAPS.

6-10 Summary Report

Offeror shall, if requested, submit to TAPS a quarterly report of services provided to TAPS under this Contract. The report, in a format acceptable to TAPS, shall identify by item the amount of work completed, the status of the project in relation to the schedule, and any other information that may be relevant to project oversight.

6-11 Warranty Provisions

- A. No Waiver of Warranties and Contract Rights: Conducting of tests and inspections, review of Scope of Work or plans, payment for a work, or acceptance or final acceptance of the work by TAPS shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve Offeror from its warranty/guarantee responsibility.
- B. Warranty: Offeror warrants that the work performed under this Contract shall be free from defects in material and workmanship and shall conform to all requirements of this Contract. Any work corrected shall be subject to this subsection to the same extent as the work initially provided.
- C. Warranty Applicable to Third Party Suppliers, Vendors, Distributors, and Sub Offerors: Offeror shall ensure that the warranty requirements of this Contract are enforceable through and against Offeror's suppliers, vendors, distributors, and sub-Offerors. Offeror is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to TAPS by Offeror and those extended to Offeror by its suppliers, vendors, distributors, and sub-Offerors. Such inconsistency or difference shall not excuse Offeror's full compliance with its obligations under this Contract. Offeror shall cooperate with TAPS in facilitating warranty related work by such suppliers, vendors, distributors, and sub-Offerors.

6-12 Express Warranties for Services

Offeror warrants that the services shall in all material respects conform to the requirements of this Contract. Offeror warrants those qualified professional personnel with in-depth knowledge

shall perform the services in a timely and professional manner; and that the services shall conform to the standards generally observed in the industry for similar services. Offeror warrants that the services shall be in compliance with all applicable laws, rules, and regulations.

6-13 Warranty Remedies

If at any time before Final Acceptance of any work covered by this Contract, Offeror or TAPS discovers one or more material defects or errors in the work of any other aspect in which the work materially fails to meet the provisions of the warranty requirements herein, Offeror shall, at its own expense and within thirty (30) days of notification of the defect by TAPS, correct the defect, error, or nonconformity.

Notice Required – TAPS shall give written notice of any defect to Offeror. If Offeror has not corrected the defect within thirty (30) days after receiving the written notice, TAPS, in its sole discretion, may correct the defect itself. In the case of an emergency where TAPS believes delay could cause serious injury, loss, or damage, TAPS may waive the written notice and correct the defect. In either case, TAPS shall charge-back the cost for such warranty repair to Offeror.

Offeror is responsible for all costs of repair or replacement in order to restore the work to the applicable Contract requirements or scope of work, including shipping charges, for work found defective before Final Acceptance, regardless of who actually corrects the defect.

6-14 Independent Status of Offeror

In the performance of this Contract, the parties shall be acting in their individual, corporate, or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent Offeror relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Offeror shall not make any claim or right, privilege or benefit, which would accrue to an employee.

6-15 Notices

Any notice which is required to be given hereunder shall be deemed sufficiently given or rendered if such notice is in writing and is delivered personally or sent by certified mail, postage prepaid, return receipt requested, or by a national overnight courier service to the following addresses:

Texoma Area Paratransit System
General Manager
6104 Texoma Parkway
Sherman, TX 75091

Any notice given hereunder by personal delivery or express mail shall be deemed delivered when received. Any properly addressed notice given herein by certified mail shall be deemed delivered when the return receipt therefore is signed, or refusal to accept the mailing by the addressee is noted thereon by the postal authorities. Either party may, at any time, change its address for the above purposes by sending a notice to the other party stating the change and setting forth the new address.

6-16 Non-Disclosure of Data

Data provided by TAPS either before or after Contract award shall only be used for its intended purpose. Proposers, vendors, Offerors, and sub-Offerors shall not utilize or distribute TAPS data in any form without the prior express written approval of TAPS.

6-17 Non-Disclosure Obligation

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

The Contract imposes no obligation upon Offeror with respect to confidential information which Offeror can establish that: a) was in the possession of, or was rightfully known by Offeror without an obligation to maintain its confidentiality prior to receipt from TAPS or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by Offeror in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by Offeror without the participation of individuals who have had access to TAPS’s or the third party’s confidential information. Offeror may disclose confidential information if so, required by law, provided that Offeror notifies TAPS that the third party of such requirement prior to disclosure.

6-18 Public Disclosure Requests

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

If an Offeror considers any portion of any documents which may be delivered to TAPS pursuant to this Contract to be protected under the law, Offeror shall clearly identify each such item with words such as “Confidential,” “Proprietary,” or “Business Secret.” If a request is made for disclosure of any such document, TAPS will determine whether the document should be made available under the law. If the document or parts thereof are determined by TAPS to be exempt from public disclosure, TAPS will not release the exempted document. If the document is not exempt from public disclosure law, TAPS will notify Offeror of the request and allow Offeror five (5) days to take whatever action it deems necessary to protect its interests. If Offeror fails or neglects to take such action within said period, TAPS will release the document deemed subject to disclosure. By signing a Contract, Offeror assents to the procedure outlined in this paragraph and shall have no claim against TAPS on account of actions taken under such procedure.

6-19 Ownership of Data

Subject to the rights granted Offeror pursuant to this Agreement, all right, title and interest in and to the data collected and developed during the performance of this contract shall at all times remain the sole and exclusive property of TAPS. Offeror shall surrender all such data to TAPS prior to submitting an invoice for final payment.

6-20 Patents and Royalties

Offeror 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, Offeror shall, if requested by TAPS, furnish acceptable proof of a proper release from all such fees or claims.

6-21 Changed Requirements

New federal, state, and local laws, regulations, ordinances, rules, policies, and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, Offeror agrees to accept all changed requirements that apply to this Contract and require sub-Offerors to comply with revised requirements as well. Changed requirements will be implemented through subsection 5-4, Contract Changes/ Change Order Procedure.

6-22 Counterparts

This Contract may be signed in two (2) counterparts, each of which shall be deemed an original and which shall together constitute one (1) Contract.

6-23 Contractual Relationships

No contractual relationship will be recognized under the Contract other than the contractual relationship between TAPS and the Prime Offeror.

SECTION 7 - STATE OF TEXAS CONTRACT REQUIREMENTS

7-1 Debarment

34 TAC §20.585 Debarment Under this subchapter, the director may, in order to protect the interests of the state: (1) conduct an investigation upon a complaint regarding an Offeror's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment; (2) cancel one or more of the Offeror's active or pending contracts upon a complaint regarding the Offeror's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment; (3) assess actual damages and costs incurred due to Offeror's failure to perform as specified in the contract; (4) debar an Offeror for a specified period of time; and (5) take any other action authorized by law.

7-2 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. Authority: Chapter 552, Gov't Code and §2252.907 Gov't Code.

7-3 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. Authority: §231.006 Family Code.

7-4 Debts and Delinquent Affirmation

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. Authority: §2252.903 Gov't Code.

7-5 Disaster Recovery Plan

In accordance with 13 TAC (Texas Administrative Code) §6.94(a)(9), Sub-recipient shall provide to AGENCY the descriptions of its business continuity and disaster recovery plans. Authority: §444.190 Gov't Code.

7-6 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 AGENCY 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: (i) the nature of the previous employment with AGENCY or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination. Authority: §2254.033 Gov't Code.

7-7 Entities that Boycott Israel

Pursuant to Section 2271.001 of the Texas Government Code, Sub-recipient certifies that either (i) it meets an exception criterion under Section 2271.002, or (ii) it does not boycott Israel and will not boycott Israel during the term of this Agreement. Sub-recipient shall in a writing to the AGENCY state any fact(s) that make it exempt from the boycott certification. Authority: §2271.001 Gov't Code.

7-8 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. Authority: Federal Executive Order 13224.

7-9 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. Authority: §2155.077(a)(2) Gov't Code.

7-10 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. Authority: §2155.004 Gov't Code.

7-11 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. Authority: §2252.152 Gov't Code.

7-12 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. Authority: §2155.006 and §2261.053 Gov't Code.

7-13 Signature Authority

The Sub-recipient represents and warrants that the individual executing this Agreement is authorized to sign this Agreement on behalf of the Sub-recipient and to bind the Sub-recipient. Authority: §2252.0012 Gov't Code.

7-14 State Auditor's Right to Audit

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as

acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Authority: §2262.154 Gov't Code.

7-15 Suspension and Debarment

Sub-recipient certifies that it and its principals are not suspended or debarred from doing business with the State of Texas or federal government as listed on the State of Texas Debarred Vendor List as maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Authority: §2155.077 Gov't Code.

7-16 Agency Policy

It is the responsibility of the end user to verify their procurement policies or other local requirements that could affect their solicitation are included in their solicitation.

7-17 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 AGENCY. Any attempted assignment in violation of this provision is void and without effect. Authority: §2262.056 (b) Gov't Code.

7-18 Contracting Information Responsibilities

In accordance with Section 552.372 of the Texas Government Code, Sub-recipient agrees to: (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the AGENCY for the duration of the Agreement, (2) promptly provide to the AGENCY any contracting information related to the Agreement that is in the custody or possession of the Sub-recipient on request of the AGENCY, and (3) on termination or expiration of the contract, either provide at no cost to the AGENCY 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 the AGENCY. 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 Subrecipient agrees that the Agreement can be terminated if the Sub-recipient knowingly or intentionally fails to comply with a requirement of that subchapter. Authority §552.372 Gov't Code.

7-19 Dispute Resolution

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. Authority: §2260.004 Gov't Code.

7-20 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. Authority: §2155.0061 Human Trafficking Prohibition.

SECTION 8 - FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

8-1 No Federal Government Commitment or Liability to Third Parties

1. The Purchaser and Offeror acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any commitment or liabilities to the Purchaser, Offeror, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Offeror agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-Offeror who will be subject to its provisions.

8-2 Program Fraud and False or Fraudulent Statements or Related Acts

1. The Offeror 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 Offeror 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 Offeror 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 Offeror to the extent the Federal Government deems appropriate.
2. The Offeror 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 Offeror, to the extent the Federal Government deems appropriate.
3. The Offeror 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 sub-Offeror who will be subject to the provisions.

8-3 Access to Records and Reports

The following access to records requirements applies to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Offeror agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Offeror which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Offeror also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Offeror access to Offeror's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving

federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Offeror agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Offeror, access to the Offeror's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Offeror agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Offeror which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive proposing, the Offeror shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Offeror agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Offeror agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Offeror agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

8-4 Changes to Federal Requirements

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

Applicable changes to those federal requirements will apply to each subcontract and parties thereto at any tier.

8-5 Termination Provisions

- a. **Termination for Convenience (General Provision)** TAPS may terminate this contract, in whole or in part, at any time by written notice to the Offeror when it is in the Government's best interest. The Offeror shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Offeror shall promptly submit its termination claim to TAPS to be paid the Offeror. If the Offeror has any property in its possession belonging to TAPS, the Offeror will account for the same, and dispose of it in the manner TAPS directs.
- b. **Termination for Default [Breach or Cause] (General Provision)** If the Offeror does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Offeror fails to perform in the manner called for in the contract, or if the Offeror fails to comply with any other provisions of the contract, TAPS may terminate this contract for default. Termination shall be affected by serving a notice of termination on the Offeror setting forth the manner in which the Offeror is in default. The Offeror will only be paid 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 TAPS that the Offeror 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 Offeror, TAPS, after setting up a new delivery or performance schedule, may allow the Offeror to continue work, or treat the termination as a termination for convenience.

- c. **Opportunity to Cure (General Provision)** TAPS in its sole discretion may, in the case of a termination for breach or default, allow the Offeror 10 business days 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 Offeror fails to remedy to TAPS's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Offeror of written notice from TAPS setting forth the nature of said breach or default, TAPS shall have the right to terminate the Contract without any further obligation to Offeror. Any such termination for default shall not in any way operate to preclude TAPS from also pursuing all available remedies against Offeror and its sureties for said breach or default.

- d. **Waiver of Remedies for any Breach** In the event that TAPS elects to waive its remedies for any breach by Offeror of any covenant, term or condition of this Contract, such waiver by TAPS shall not limit TAPS's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. **Termination for Convenience of Default (Cost-Type Contracts)** TAPS may terminate this contract, or any portion of it, by serving a notice of termination on the Offeror. The notice shall state whether the termination is for convenience of TAPS or for the default of the Offeror. If the termination is for default, the notice shall state the manner in which the Offeror has failed to perform the requirements of the contract. The Offeror shall account for any property in its possession paid for from funds received from TAPS, or property supplied to the Offeror by TAPS. If the termination is for default, TAPS may fix the fee, if the contract provides for a fee, to be paid the Offeror in proportion to the value, if any, of work performed up to the time of termination. The Offeror shall promptly submit its termination claim to TAPS and the parties shall negotiate the termination settlement to be paid the Offeror.

If the termination is for the convenience of TAPS, the Offeror shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

- f. **Termination for Default (Supplies and Service)** If the Offeror fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Offeror fails to comply with any other provisions of this contract, TAPS may terminate this contract for default. TAPS shall terminate by delivering to the Offeror a Notice of Termination specifying the nature of the default. The Offeror will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Offeror was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- g. **Termination for Default (Transportation Services)** If the Offeror fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Offeror fails to comply with any other provisions of this contract, TAPS may terminate this contract for default. TAPS shall terminate by delivering to the Offeror a Notice of Termination specifying the nature of default. The Offeror will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Offeror has possession of Recipient goods, the Offeror shall, upon direction of TAPS, protect and preserve the goods until surrendered to the Recipient or its agent. The Offeror and TAPS shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Offeror was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of TAPS.

8-6 Civil Rights Requirements

The following requirements apply to the underlying contract:

1. *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.
2. *Nondiscrimination on the Basis of Sex* – Title XI 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.
3. *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 aged 40 and over on the basis of age.

4. *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 Offerors 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.
5. *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 Offeror shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.
 - a. *Nondiscrimination* – In accordance with Federal transit law at 49 U.S.C. § 5332, the Offeror 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 Offeror agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
 - b. *Race, Color, Religion, National Origin, Sex* – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e at seq., and Federal transit laws at 49 U.S.C. § 5332, the Offeror 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 Offeror 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 Offeror agrees to comply with any implementing requirements FTA may issue.
 - c. *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 Offeror agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Offeror agrees to comply with any implementing requirements FTA may issue.

- d. *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. § 1451 et seq., and Federal transit law at 49 U.S.C. § 5332, the Offeror agrees that it will not discriminate against individuals on the basis of disability. In addition, the Offeror agrees to comply with any implementing requirements FTA may issue.
 - e. *Promoting Free Speech and Religious Liberty* – The Offeror 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.
6. The Offeror also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

8-7 Disadvantaged Business Enterprise (DBE) Participation

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency’s overall goal for DBE participation is 2%. A separate contract goal for DBE participation has not been established for this procurement.
- b. The Offeror shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Offeror shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Offeror 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 TAPS deems appropriate. Each subcontract the Offeror signs with a sub-Offeror must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. Proposals/Proposers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying an initial proposal:
 1. The names and addresses of DBE firms that will participate in this contract;
 2. A description of the work each DBE will perform;
 3. The dollar amount of the participation of each DBE firm participating;
 4. Written documentation of the proposal/offeror’s commitment to use a DBE sub-Offeror whose participation it submits to meet the contract goal;
 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime Offeror’s commitment; and

6. If the contract goal is not met, evidence of good faith efforts to do so.

Proposers must present the information required above as a matter of responsiveness with initial Proposals (see 49 CFR 26.53(3)).

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

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

8-8 Incorporation of FTA Terms

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Offeror shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

8-9 Suspension and Debarment

This contract is a covered transaction for purposes of 2 CFR part 180 and 2 CFR part 3000. As such, the Offeror is required to verify that none of the Offeror, its principals, as defined at 2 CFR §180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940 and 180.935.

The Offeror is required to comply with CFR part 3000, Subpart C and must include the requirement to comply in any lower tier covered transaction it enters into.

8-10 Disputes, Breaches, Defaults, or Other Litigation

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of TAPS's General Manager. This decision shall be final and conclusive unless within five (5) days from the date of receipt of its copy, the Offeror mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Offeror shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Offeror and the Offeror shall aproposale be the decision.

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

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

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

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by TAPS or the Offeror shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

8-11 Energy Conservation

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

8-12 Fly America

The Offeror agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their Offerors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personnel 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 Offeror 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 Offeror agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

8-13 Access Requirements for Persons with Disabilities

The Recipient agrees to comply with the provisions of 49 U.S.C. § 5301(d), which sets forth the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use transit service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. The Recipient also agrees to comply with all applicable requirements of the following Federal laws and any subsequent amendments thereto: section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicap; the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires accessible facilities and services to be made available to persons with disabilities; and the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities.

8-14 Veterans Preference

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

- (1) 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
- (2) 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.

8-15 DHS Seal, Logo, and Flags

The Offeror shall not use the DHS seal(s), logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FTA pre-approval.

8-16 Equal Employment Opportunity

During the performance of this contract, the Offeror agrees as follows:

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

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

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

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

copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

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

8-17 Procurement of Recovered Materials

(1) In the performance of this contract, the Offeror shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

(2) Information about this requirement, along with the list of EPA designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

8-18 Buy America Requirements

The Offeror agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all 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. Separate

requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

8-19 Byrd Anti-Lobbying Amendment

Offerors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.”

8-20 Clean Air and Federal Water Pollution Control Act

The Offeror agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

(1) The Offeror agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Offeror agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Offeror agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

(1) The Offeror 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. 1251 et seq.

(2) The Offeror agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Offeror agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

8-21 Conformance with ITS National Architecture

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. 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).

8-22 Prompt Payment

The Offeror is required to pay its sub-Offerors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Offeror's receipt of payment for that work. In addition, the Offeror is required to return any retainage payments to those sub-Offerors within 30 days after the sub-Offeror's work related to this contract is satisfactorily completed.

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

8-23 Seismic Safety

The Offeror 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 Offeror also agrees to ensure that all work performed under this contract, including work performed by a sub-Offeror, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

8-24 Special DOL EEO Clause

Applies to construction contracts > \$10,000; This Offeror and sub-Offeror 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 Offerors and sub-Offerors 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.

8-25 Violation and Breach of Contract

Rights and Remedies of the Agency

The Agency shall have the following rights in the event that the Agency deems the Offeror guilty of a breach of any term under the Contract.

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

For purposes of this Contract, breach shall include.

Rights and Remedies of Offeror

Inasmuch as the Offeror can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Agency, the Offeror expressly agrees that no default, act or omission of the Agency shall constitute a material breach of this Contract,

entitling Offeror to cancel or rescind the Contract (unless the Agency directs Offeror to do so) or to suspend or abandon performance.

Remedies

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

Disputes

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

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

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

Performance during Dispute

Unless otherwise directed by Agency, Offeror shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

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

Remedies

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

Rights and Remedies

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

8-26 Notification to FTA and USDOT Inspector General

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

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

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

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. 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 sub-Offerors 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.

8-27 Contracting with the Enemy

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

ATTACHMENT A – Vendor Checklist

(Verification that all necessary documents are included)

This form must be completed and returned with the technical proposal. Failure to return this form may be cause for considering your proposal non-responsive.

	<u>Vendor Check-Off</u>	<u>TAPS Check-Off</u>
Cover Letter	_____	_____
Invitation for Proposal Cover Page	_____	_____
Attachment A: Vendor Checklist	_____	_____
Attachment B: Proposal Affidavit	_____	_____
Attachment C: Addendum Page	_____	_____
Attachment D: Request for Clarification/ Approved Equals	_____	_____
Attachment E: Certification Regarding Debarment and Suspension	_____	_____
Attachment F: Affidavit of Non-Collusion	_____	_____
Attachment G: Firm Data Sheet	_____	_____
Attachment H: DBE Good Faith Effort (Information Sheet)	N/A	N/A
Attachment I: DBE Letter of Intent	_____	_____
Attachment J: DBE Affidavit	_____	_____
Attachment K: DBE Unavailable Certification	_____	_____
Attachment L: Prompt Payment Affidavit	_____	_____
Attachment M: Proposal Pricing Form	_____	_____
Attachment N: Certification and Restrictions on Lobbying	_____	_____
Attachment O: Buy America Certification	_____	_____

ATTACHMENT B – Proposal Affidavit

The undersigned hereby declares that he/she has carefully read and examined the Advertisement, the Scope and Terms, the Specifications, Warranty, and Quality Assurance Requirements, with all supporting certificates and affidavits, for the provision of services specified at the prices stated in the fee proposal.

Signed: _____

Title: _____

Company Name: _____

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public: _____

My Commission Expires: _____

ATTACHMENT C – Addendum Page

The undersigned acknowledges receipt of the following addenda to this RFP. (Include the number and date for each entry.)

Addendum Number _____	Dated _____
Addendum Number _____	Dated _____
Addendum Number _____	Dated _____
Addendum Number _____	Dated _____
Addendum Number _____	Dated _____
Addendum Number _____	Dated _____
Addendum Number _____	Dated _____

Failure to acknowledge the receipt of all addenda may cause the proposal to be considered non-responsive to this Invitation for Proposal, which will require rejection of the proposal.

Signature

Title

ATTACHMENT D – Request for Clarifications / Approved Equals

Date: _____

Proposing Company: _____

Section of the RFP: _____ Page Number: _____

Proposer's Request: _____

TAPS Response: _____

Approved _____

Denied _____

Comments: _____

Signature: _____ Date: _____

ATTACHMENT E - Certification Regarding Debarment and Suspension

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Offeror is required to verify that none of the Offeror, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Offeror is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its proposal or proposal, the proposer or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by TAPS. If it is later determined that the proposer or proposer knowingly rendered an erroneous certification, in addition to remedies available to TAPS, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Authorized Official: _____

Signature: _____

Date: _____

Where the Offeror is unable to certify to any of the statements in this certification, such Offeror shall attach an explanation to this proposal.

The Offeror, _____, certifies or affirms the truthfulness and accuracy of the contents of the statement submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 ET Seq. are applicable thereto.

Authorized Official: _____

Signature: _____

Date: _____

ATTACHMENT F – Affidavit of Non-Collusion

I hereby swear (or affirm) under the penalty for perjury:

1. That I am the proposer (if the proposer is an individual), a partner in the proposal (if the proposer is a partnership), or an officer or employee of the proposing corporation having authority to sign on its behalf (if the proposer is a corporation).
2. That the attached proposal has been arrived at by the proposer independently and have been submitted without collusion and without any agreement, understanding, or planned common course of action with any other vendor or materials, supplies, equipment, or service described in the Invitation for Proposals, designed to limit independent Proposals or competition.
3. That the contents of this proposal/proposal has not been communicated by the proposer or its employees or agents to any person not an employee or agent of the proposer or its surety on any bond furnished with the proposal, and will not be communicated to any such person prior to the official opening of the proposal; and
4. That I have fully informed myself regarding the accuracy of the statements made in the affidavit.

Signed: _____

Company Name: _____

Subscribed and sworn to before me this _____ day of _____, 20_____

Notary Public: _____

My Commission expires _____, 20_____

Proposer's Federal Employer Identification Number: _____
(Number used on Employer's Quarterly Federal Tax Return)

ATTACHMENT G – Firm Data Sheet

The prime consultant is responsible for submitting the information requested below **for all firms on the project team, both prime and sub-Offerors**. All firms are to be reported on one combined sheet unless the number of firms requires the use of an additional sheet. Failure to submit complete data will result in the Expression of Interest not being considered.

Firm's Name and Address	Firm's DBE Status*	Firm's Age	Firm's Annual Gross Receipts

* Y = DBE-Certified by TXDOT NA = Firm Not Claiming DBE Status
 N = Not DBE-Certified by TXDOT IP = DBE-Certification In-Process

ATTACHMENT H – Good Faith Effort
(For information only – not to be returned)

1. TAPS has established a ten percent (0.0%) goal for Disadvantaged Business Enterprise (DBE) participation for this contract. Therefore, a proposer must, in order to be responsible and responsive, make a good-faith effort to meet the goal. The proposer can meet this requirement in either of two (2) ways. First, the proposer can meet or exceed the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if the proposer doesn't meet the goal, the proposer can document its good-faith efforts to meet the goal. This means that the proposer must show that it took all necessary and reasonable steps to achieve the DBE goal, or other requirement 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 fully successful.
2. TAPS will use the good-faith efforts mechanism as required by 49 CRF part 26. It is up to TAPS to make a fair and reasonable judgment whether a proposer that did not meet the goal made adequate good-faith efforts. TAPS will consider the quality, quantity, and intensity of the different kinds of efforts that the proposer made. The efforts employed by the proposer should be those that one could reasonably expect a proposer to take if the proposer 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, TAPS's determination concerning the sufficiency of the firm's good-faith efforts is a judgment call; meeting quantitative formulas is not required.
3. TAPS will not require that a proposer meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the proposer shows that an adequate good faith was made. The rule specifically prohibits TAPS from ignoring bona fide good-faith efforts.
4. The following is a list of types of actions that TAPS will consider as part of the proposer'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.
 - a. Soliciting through all reasonable and available means (e.g., attendance at pre-proposal meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The proposer must determine with certainty whether or not a DBE is certified.
 - b. The DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - c. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime Offeror might otherwise prefer to perform these work items with its own forces.
 - d. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

ATTACHMENT H – Good-Faith Effort (Continued)

- e. Negotiating in good faith with interested DBEs. It is the proposer's responsibility to make a portion of the work available to DBE sub-Offerors and suppliers and to select those portions of the work or material needs consistent with the available DBE sub-Offerors 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.

A proposer using good business judgment would consider a number of factors in negotiating with sub-Offerors, including DBE sub-Offerors, 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 proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime Offeror to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good-faith efforts. Prime Offerors are not, however, required to accept higher quotes from DBEs, if the price difference is excessive or unreasonable.

- f. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Offeror'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 Proposals from DBEs in the Offeror's efforts to meet the project goal.
- g. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance, as required by the recipient or Offeror.
- h. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- i. Effectively using the services of available minority/women community organizations; minority/women Offerors' groups; Federal, State, and Local 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.

ATTACHMENT I – DBE Letter of Intent

To: _____
(Name of Proposer)

The undersigned intends to perform work in connection with the above project as a DBE (circle one):

Individual _____ Corporation _____ Partnership _____ Joint Venture _____

The Disadvantaged Business Enterprise status of the undersigned is confirmed:

1. On the reference list of Disadvantaged Business Enterprises dated _____; or
2. On the attached Disadvantaged Business Enterprise Identification Statement.

The undersigned is prepared to perform the following work in connection with the above project (Specify in detail particular work items or parts thereof to be performed):

The DBE Offeror will perform this work at the following price: _____

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

Items	Projected Commencement Date	Projected Completion Date
_____	_____	_____
_____	_____	_____

The above work will not be sublet to a non-Disadvantaged Business Enterprise at any tier. The undersigned will enter into a formal agreement for the above work with you, conditioned upon your execution of a contract with TAPS.

Name of Disadvantaged Business Enterprise: _____

By: _____

Title: _____

Date: _____

ATTACHMENT J – DBE Affidavit

State of _____

Date: _____

County: _____

The undersigned, being duly sworn, deposes and says that he/she is the (sole owner, partner, president, treasurer, or other duly authorized official of a corporation) of

(Name of Official)

(Name of DBE)

and certifies that since the date of its certification through the IL UCP, the certification has not been revoked nor has it expired nor has there been any change in the minority status of

(Name of DBE)

(Signature and Title of Person Making Affidavit)

Sworn to before me this _____ day _____, 20_____

(Notary Public)

NOTE: The proposer must attach the DBE’s most recent certification letter or document to this affidavit.

ATTACHMENT K – DBE Unavailable Certification

I, _____, the _____
 (Name) (Title)

of _____ certify that on _____
 (Proposer/Prime Offeror) (Date)

I contacted the following Disadvantaged Business Enterprise to obtain a proposal to perform the following work item(s):

<u>DBE Organization</u>	<u>Work Items Sought</u>	<u>Form of Proposal Sought (i.e., materials, materials & labor, labor only, etc.)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

To the best of my knowledge and belief, said Disadvantaged Business Enterprise was unavailable for work on this project, or unable to prepare a proposal, for the following reason(s):

Signature: _____ Date: _____

_____ was offered an opportunity on _____
 (Name of Disadvantaged Business Enterprise) (Date)

by _____ to submit a proposal to perform the above identified
 work. (Proposer)

The above statement is a true and accurate account of why I did not submit a proposal on this project.

Signed: _____
 (Disadvantaged Business Enterprise Official)

Title: _____

Date: _____

ATTACHMENT L – Prompt Payment Affidavit

Complete either (A) or (B), as applicable

(A) The undersigned affirms, to the best of his/her knowledge and belief, that:

- (1) The undersigned understands and agrees that the Offeror is required to pay all Sub Offerors for all work that any Sub Offeror has satisfactorily completed no later than thirty (30) days after the Offeror has received payment from TAPS for that work.
- (2) The undersigned understands and agrees that the Offeror is required to pay retainage amounts, if any, to a Sub Offeror no later than thirty (30) days after TAPS has released retainage to the Offeror for that portion of the work.
- (3) The undersigned understands and agrees that any delay in or postponement of payment to any Sub Offeror by the Offeror requires the Offeror to demonstrate good cause and to receive prior written approval by TAPS’s General Manager or his/her designee.
- (4) The undersigned understands and agrees that TAPS will not pay the Offeror for Services performed or Deliverables submitted unless and until the Offeror certifies that the Sub Offerors have been promptly paid for the work or services they have performed under all previous payment requests, as evidenced by the filing with TAPS the Offeror's sworn statement that the Offeror has complied with the prompt payment requirements.

The undersigned solemnly declares and affirms under penalty of perjury that the above and foregoing are true and correct, and that he/she is authorized on behalf of the Offeror to sign this affidavit.

Signature

Company Name

Official’s Name and Title

Date

(B) The undersigned solemnly declares and affirms under penalty of perjury that no Sub Offerors will be used in the performance of the work or services and, as such, the statutory prompt payment requirements are inapplicable. The undersigned further declares that he/she is authorized on behalf of the Offeror to sign this affidavit.

Signature

Company Name

Official’s Name and Title

Date

ATTACHMENT M – Proposal Pricing Form

The undersigned hereby declares that he/she has carefully read and examined the Public Notice, the Invitation for Proposal, terms, and requirements, with all supporting certificates and affidavits, for the goods and services noted herein, and that he/she will enter into contract negotiations for said provision of goods and services, as specified, using the costs identified herein, as the basis for those contract negotiations. **Detailed cost information shall be attached and meet the requirements as described in the Proposal.**

	COST
	\$
Total Cost	\$

Signature

Company Name

Official's Title

Address

Date

Telephone Number

ATTACHMENT N – Certification and Restrictions on Lobbying

I, _____, hereby certify
(Name and title of official)

On behalf of _____ that
(Name of Proposer/Prime Offeror)

- 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 any agency, a Member of Congress, and 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, 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 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.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name: _____

Type of print name: _____

Signature of authorized representative: _____ Date _____

Signature of notary and SEAL: _____

ATTACHMENT O – Buy America Certification
Steel or Manufactured Products

- a. Except as provided in 49 CFR 661.7 and 49 CFR 661.11, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.
- b. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.
- c. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as, transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.
- d. For a manufactured product to be considered produced in the United States:
 - 1. All of the manufacturing processes for the product must take place in the United States; and
 - 2. All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Company _____
Name _____ Title _____
Signature _____ Date _____

Certificate of Noncompliance with Buy America Steel or Manufactured Products Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Company _____
Name _____ Title _____
Signature _____ Date _____