
Brazos Transit District

Request for Proposals RFP # 04232017

Bulk Fuel and Lubricants

**Submitted By
Brazos Transit District
1759 N. Earl Rudder Freeway
Bryan, Texas 77803**

April 23, 2017

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Section 1 Request for Proposals

1.1 Introduction

Brazos Transit District (BTD) is a political subdivision of the State of Texas, created pursuant Chapter 452, Transportation Code of Texas. BTD provides general public transportation in 16 counties in Central and East Texas that include fixed bus routes, ADA Paratransit and demand and response service. BTD is the recipient of Federal Transit Administration (FTA) and Texas Department of Transportation (TxDOT) funding. This project may be financed jointly by federal, state, and local authorities, including FTA and TxDOT.

The Request for Proposals (RFP) process and the performance of the requested services will be in accordance with the guidelines and regulations of the FTA "Third Party Contracting Guidelines", FTA Circular 4220.1F, and all other applicable federal, state and local laws and regulations. BTD is a tax-exempt organization and is free from all state and federal taxes. No such taxes shall be included in the Offeror's charges to BTD. All costs incurred in the preparation of the proposal responding to this RFP will be the responsibility of the Offeror and will not be reimbursed by BTD. Issuance of this RFP and receipt of proposals does not commit BTD to award a contract. BTD reserves the right to postpone the proposal opening for its own convenience, to accept or reject any or all proposals received in response to this RFP, or to cancel all or part of this RFP for sound business reasons, at any time before the Contract is fully executed and approved on behalf of BTD.

BTD is seeking proposals from qualified and experienced firms for the purchase and delivery of bulk fuel and other vehicle lubricants, as described in Section 2, Project Specifications, in this solicitation.

1.2 Vendor Registration

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

1.3 Solicitation Data

Solicitation Schedule

RFP Release Date	April 23, 2017
Questions or Request for Deviation due to BTD.....	May 3, 2017 by 4:00 p.m. CST
BTD Responses to Questions and Deviations due	May 5, 2017 by 4:00 p.m. CST
Proposals Due	May 19, 2017 by 4:00 P.M. CST
Contract Award.....	May 30, 2017

BTD reserves the right to make changes to the above-mentioned schedule. All such changes shall be made by an amendment to the solicitation or a letter to all the firms.

Pre-Proposal Site Visits

Offerors are encouraged to visit BTD to view the site where fuel is to be delivered and supplied.

BTD is located at 1759 N. Earl Rudder Frwy Bryan, Texas 77803. Site visits for the purpose of inspecting BTD's Fuel System must be completed no later than May 3, 2017 at 4:00 p.m. Site visits must be scheduled in advance. Unscheduled and/or unannounced visits to BTD may not be allowed.

The Point of Contact for coordination of a site visit is Alivia Youree, you may contact her at alivia@btd.org or (979) 778-4495.

Procuring Agency:

Brazos Transit District
1759 N. Earl Rudder Freeway
Bryan, Texas 77803

Contracting Officer:

Wendy Weedon, VP for Administration
Phone: 979-450-2660 Fax: 979-778-3606
E-Mail: Wendy@btd.org

Scope

BTD is seeking proposals from highly experienced and professional firms for the purchase and delivery of bulk fuel— gasoline and diesel, as well as other vehicle lubricants. These firms should be authorized to do business in the state of Texas.

Offerors should not submit a proposal unless they can provide at least three references for similar work done within the past five years.

Where two or more Offerors desire to submit a single bid in response to this RFP, they should do so on a prime/Subcontractor basis rather than on a joint venture basis. BTD intends to contract with a single Offeror and not with multiple Offerors doing business as a joint venture.

The selected Offeror will NOT be allowed to utilize a finance company for the purpose of factoring invoices. Payment for services will be in the form of check made out to the company indicated in the contract terms.

1.4 Offeror Communications and Requests

Communication or correspondence in regard to any aspect of this solicitation or offers will only be with the Contracting Officer or her designated representative. Offerors shall not make any contact with or communicate with any other members of BTD, its employees and consultants.

All questions and communication in regard to any aspect of this RFP # 04232017 must be in writing and directed to Wendy Weedon via email at wendy@btd.org. Offerors may request a clarification or interpretation of any aspect, a deviation, or a change to any requirement of the RFP or any addendum to the RFP up to May 3, 2017 by 4:00 pm CST. Deviation requests are to be submitted on the deviation form.

Responses to written requests will be provided by BTD in the form of addendum only. Only written responses provided as addendum shall be official and all other forms of communication with any officer, employee or agent of BTD shall not be binding by BTD. Any clarifications or further instructions to Offerors, whether as a result of questions raised by Offerors or initiated by BTD itself, will be sent to all Offerors in written addendum form.

Addendum to RFP

BTD reserves the right to amend the RFP at any time. Any amendments to or interpretations of the RFP will be in written addendum. Prospective Offerors officially known to have received the RFP will be emailed or mailed the addendum. Offerors are responsible to collect the addendum from the Contracting Officer. Failure of any prospective Offeror to receive addendum will not relieve the Offeror from any obligation under its proposal as submitted or under the RFP, as clarified, interpreted or modified. All addendum issued will become part of the RFP. Prospective Offerors must acknowledge the receipt of each individual addendum in their proposal. Failure to acknowledge any addendum in the submitted proposals may at BTD's sole option disqualify the proposal.

If BTD determines that the addendum may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed to allow Offerors sufficient time to revise their proposals and the new due date shall be included in the addendum.

Conditions, Exceptions, Reservations or Understandings

Proposals stating conditions, exceptions, reservations or understandings (hereinafter "deviations") relating to the RFP may be rejected. Offerors may submit an alternate proposal that states deviations so long as a basic proposal not containing deviations is submitted. Offerors may propose alternates either within one overall proposal or by submitting more than one proposal.

Any and all deviations must be explicitly, fully and separately stated in the proposal by completing the Proposal Deviation Form, setting forth at a minimum the specific reasons for each deviation so that it can be fully considered and, if appropriate, evaluated by BTD. All deviations not found by BTD to be unacceptable

shall be evaluated in accordance with the appropriate evaluation criteria and procedures, and may result in the Offeror receiving a less favorable evaluation than without the deviation.

1.5 Instruction to Offerors

Submission Requirements

Sealed proposals in one original and two copies must be received by Friday, May 19, 2017 by 4:00 pm CST. Proposals and subsequent offers shall be valid for a period of 90 days. Late proposals will be returned to Offeror unopened and will not be considered under any circumstances. Faxed or emailed proposal are not acceptable and will not be considered for award.

The sealed envelope will be addressed as below and must contain the Offerors name and address and be clearly marked: "Brazos Transit District Bulk Fuel RFP # 04232017". All proposals are to be submitted to:

Brazos Transit District
Wendy Weedon, VP for Administration
1759 N. Earl Rudder Freeway
Bryan, Texas 77803

Proposal Format and Contents Requirements

Failure to provide the required information with the Proposal may automatically disqualify the Proposal from consideration for award.

Proposals must be submitted on 8.5 x 11" white paper, using a simple method of fastening. They should be typed and a lengthy narrative is discouraged. To provide for comparability between proposals, all proposals **must be submitted in the following order separated by tabs**. Vendors not addressing these topics or not using the prescribed order may be judged non-responsive and disqualified from the RFP process.

Tab 1 Business Organization. State the full name, address, and phone number of the Offeror and, if applicable, the branch office or division that will perform or assist in performing the work. The capacity of the person submitting the proposal should also be provided. Indicate whether the Offeror is licensed to operate in the State of Texas, Brazos County, Texas, and the City of Bryan, Texas.

If the Offeror is a partnership, limited liability company, limited partnership, or joint venture, the proposal should state the full names and addresses of all partners, members, or joint ventures' who own at least a ten percent interest in the Offeror.

The person signing the proposal must initial any erasures, corrections, or other changes appearing on the proposal form.

Tab 2 Required Forms and Certifications: (Required Forms Section)

- Acknowledgment of Addendum - If addendums have been released.
- Request for Change or Approved Equal
- Proposal Deviation - (Only if Offeror requested deviation)
- Buy America
- DBE Compliance Statement
- DBE Schedule of Utilization
- DBE Good Faith Effort
- Conflict of Interest
- References- Vendor
- Pricing Schedule
- Suspension and Debarment Certification Form
- Delinquent State Business Tax Certification
- Offer
- PTN-130

- Tab 3 Purpose of Proposal.** State in precise terms the means by which the Scope of Services will be fulfilled.
- Tab 4 Statement of Qualifications:** The Offerors’ experience and history relevant to BTB’s needs should be discussed, including a description of the Offeror’s direct experience where services comparable in size and scope has been performed in the last five (5) years. Offeror shall provide the name, address and telephone numbers of persons who may be contacted as references. Offeror shall also include dates, locations, costs and project managers for these previous projects.
- Tab 5 Criminal Background:** For all persons and entities mentioned in any of the foregoing responses, indicate whether they (1) have ever been convicted of, (2) have an indictment pending for, or (3) have during the last five years been investigated for a criminal offense that is not related to the operation of an automobile. Convictions, indictments, or investigations for the crime of driving while intoxicated shall be disclosed. Convictions indictments, or investigations shall be disclosed regardless of whether for a violation of federal, state, local or non-U.S. laws.
- Tab 6 Willingness to Contract:** State that the Offeror is willing to enter into a Contract consistent with the terms herein.
- Tab 7 Delivery Requirements:**
1. **Delivery Times**
 - a. Is delivery available 24 hours a day, 7 days per week?
 - i. Please answer the following:
 1. What are Standard Delivery Hours?
 2. What, if any, delivery changes may be applicable for ‘Standard Delivery Hours’?
 3. What are ‘After Hour’ delivery times?
 4. What ‘premium charges’ may be required for ‘After Hour’ deliveries?
 5. Is weekend delivery available?
 6. Please describe any additional information regarding delivery times that may be important for the BTB to consider.
 7. Please describe any limitations that may surround Holidays.
 2. **Response Time**
 - a. What is the Typical vs Guaranteed Response time for an order?
 - i. *Response time is representative of actual delivery, once the order has been placed
 - b. In the event of an Emergency, what is the response time for an order
 - i. *Emergency is representative of: after regular business hours, inclement weather, and or natural disaster.
 - c. What is the standard business procedure that should be provided/followed in the event of an emergency?
 3. **Size/Shipment Limitations**
 - a. Please describe any limitations that you have encountered when delivering product.
 - b. What are the Standard Delivery Loads for Bulk Fuel?
 - i. Full Load (in Gallons) per Product Type
 - ii. Less than Full Load (in Gallons) per Product Type

4. Spillage and Cleanup

- a. The Offeror is responsible for all spillage that may occur during transit, loading or unloading. Clean up shall be performed in accordance with EPA and State of Texas guidelines and requirements.

Tab 8 Quality: Fuel Quality

1. Please describe the standard testing Procedures of each fuel type.
2. Have you experienced any quality Issues in the past 24 months? Please describe.
3. Please provide the process and remedies available to any Customer that may receive a delivery with quality issues.
4. It shall be at the Entity's discretion to request samples be provided at the time of delivery.

Tab 9 Pricing Structure

1. Pricing Schedule
 - a. Form 3.10- Please complete the form with the Profit and Total cost per gallon depending on the size of the load.
2. Miscellaneous Charges
 - a. Please describe any charges above and beyond the cost of fuel that may be applied.
 - i. Trip Charges (Single or Multiple Deliveries)
 - ii. Fuel Surcharges
 - iii. Delivery Fees
 - iv. Government Fees
 - v. Service Fees
 - vi. Etc.
3. Fuel Index
 - a. Are your prices reflective of any fuel index? (Please Specify)
 - b. Are your prices adjusted per any fuel index? (Please Specify)

Tab 10 Insurance: (Section 2.6)

Liability Insurance. Attach Certificate of Liability insurance.

Workman's Compensation. Attach Information Page from Worker's Compensation policy.

Employee Dishonesty Bond. Attach proof of Dishonesty Bond.

If Offeror does not have the above insurances in the minimum amounts required, a letter from an underwriter confirming that the Offeror can be insured for the required minimum amounts is to be submitted.

Tab 11 Qualification Requirements

- Financial Statements must be made available upon request. Offeror's Financial Statements: Must be prepared in accordance with the United States Generally Accepted Accounting Principles (GAAP) and audited by an independent certified public accountant authorized to practice in the jurisdiction of either BTD or the Offeror OR Financial statements that have been reviewed or compiled by an accountant.
- Financial Guaranty: Willingness of any parent company to provide the required financial guaranty evidenced by a letter of commitment signed by an officer of the parent company having the authority to execute the parent company guaranty.

Equipment & Supplies

The Offeror at its own expense furnish all labor, supplies, equipment and machinery necessary to fulfill the Scope of Services.

Tax Exempt

The Offeror recognizes that BTD is exempt from the payment of certain Federal, State and local taxes, and that such taxes are not to be included in the proposal price. BTD will furnish a Contractor with the necessary tax-exempt certificates.

Inspection

All supplies, equipment, machinery and labor furnished in performance of the Scope of Services shall be subject to inspection at any time by BTD.

Modification or Withdrawal of Proposals

A modification of a proposal already received will be accepted by BTD only if the modification is received prior to the proposal due date, or is specifically requested by BTD. All modifications shall be made in writing and executed and submitted in the same form and manner as the original proposal.

An Offeror may withdraw a proposal prior to the proposal due date by submitting a written request for withdrawal executed by the Offeror's authorized representative. The Offeror may submit another proposal within the time set for receipt of proposals. This provision for modification and withdrawal of proposals may not be utilized by an Offeror as a means to submit a late proposal and, as such, will not alter BTD's right to reject a proposal.

Confidentiality of Proposals

When the award is made and an agreement is executed proposals are subject to review under the "Public Information Act". To the extent permitted by law, Offerors may designate those portions of the offer which contain proprietary information, trade secrets or confidential commercial and financial information that an Offeror believes should be exempted from disclosure are to remain confidential. Such information shall accompany the proposal, be readily separable from the proposal, and shall be clearly marked "CONFIDENTIAL". Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not assure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

1.6 Evaluation Criteria and Procedures

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

Prior Experience, Qualifications & Company History	15%
References	20%
Delivery Time	15%
Pricing Structure	40%
Quality/Completeness/Adhering to Instructions.....	10%

All aspects of the evaluations of the proposals and any discussions/negotiations, including documentation, correspondence and meetings, will be kept confidential during the evaluation and negotiation process.

Proposals will be analyzed for conformance with the instructions and requirements of the RFP and Contract documents. Proposals that do not comply with these instructions and do not include the required information may be rejected as insufficient or not be considered for the competitive range. BTD reserves the right to request an Offeror to provide any missing information and to make corrections. Offerors are advised that the detailed evaluation forms and procedures will follow the same proposal format and organization specified in Instructions to Offerors. Therefore, Offerors shall pay close attention to and strictly follow all instructions. Submittal of a proposal will signify that the Offeror has accepted the whole of the Contract documents, except such conditions, exceptions, reservations or understandings explicitly,

fully and separately stated on the forms and according to the instructions of Form for Proposal Deviation. Any such conditions, exceptions, reservations or understandings which do not result in the rejection of the proposal are subject to evaluation under the criteria of Proposal Evaluation Criteria.

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

Evaluations of Competitive Proposals

1. **Qualification of Responsible Offerors.** Proposals will be evaluated to determine the responsibility of Offerors. A final determination of an Offerors responsibility will be made upon the basis of initial information submitted in the proposal, any information submitted upon request by BTD, information submitted in a BAFO if requested by BTD and information resulting from BTD's inquiry of Offeror's references and its own knowledge of the Offeror.
2. **Detailed Evaluation of Proposals and Determination of Competitive Range.** Each proposal will be evaluated in accordance with the requirements and criteria specified in "Proposal Selection Process".

The following are the minimum requirements that must be met for a proposal to be considered for the competitive range. All of these requirements must be met; therefore, they are not listed by any particular order of importance. Any proposal that BTD finds not to meet these requirements, and may not be made to meet these requirements, may be determined by BTD to not be considered for the competitive range. The requirements are as follows:

- a. Offeror is initially evaluated as responsible in accordance with the requirements of "Qualification Requirements", or that BTD finds it is reasonable that said proposal can be modified to meet said requirements. Final determination of responsibility will be made with final evaluations.
- b. Offeror has followed the instructions of the RFP and included sufficient detailed information, such that the proposal can be evaluated. Any deficiencies in this regard must be determined by BTD to be either a defect that BTD will waive in accordance with "Acceptance/Rejection of Proposals" or that the proposal can be sufficiently modified to meet these requirements.
- c. Proposal price would not render this procurement financially infeasible, or it is reasonable that such proposal price might be reduced to render the procurement financially feasible.

BTD will carry out and document its evaluations in accordance with the criteria and procedures of "Proposal Selection Process". Any extreme proposal deficiencies which may render a proposal unacceptable will be documented. BTD will make specific notes of questions, issues, concerns and areas requiring clarification by Offerors and to be discussed in any meetings held with Offerors which BTD finds to be within the competitive range.

Rankings and spreads of the proposals against the evaluation criteria will then be made by BTD as a means of judging the overall relative spread between proposals and of determining which proposals are within the competitive range, or may be reasonably made to be within the competitive range.

3. **Proposals not within the Competitive Range.** Offerors of any proposals that have been determined by BTD as not in the competitive range, and cannot be reasonably made to be within the competitive range, will be notified in writing, including the shortcomings of their proposals.
4. **Discussions with Offerors in the Competitive Range.** The Offerors whose proposals are found by BTD to be within the competitive range, or may be reasonably made to be within the competitive range, will be contacted by BTD to answer any questions and/or requests for clarifications. Each such Offeror may be invited for a private interview(s) and discussions with BTD to discuss answers to written or oral questions, clarifications, and any facet of its proposal.

In the event that a proposal, which has been included in the competitive range, contains conditions,

exceptions, reservations or understandings to any Contract requirements as provided in “Form for Proposal Deviation”, said conditions, exceptions, reservations or understandings may be negotiated during these meetings. However, BTM shall have the right to reject any and all such conditions and/or exceptions, and instruct the Offeror to amend its proposal and remove said conditions and/or exceptions; and any Offeror failing to do so may cause BTM to find such proposal to be outside the competitive range.

No information, financial or otherwise, will be provided to any Offeror about any of the proposals from other Offerors. Offerors will not be given a specific price or specific financial requirements they must meet to gain further consideration, except that proposed prices may be considered to be too high with respect to the marketplace or unacceptable. Offerors will not be told of their rankings among the other Offerors.

5. **Best and Final Offers (BAFO).** Offerors are reminded the BAFO’s may not be requested and therefore their first submission should always be their best possible offer. If BAFO’s are requested, once all interviews have been completed, each of the Offerors in the competitive range will be afforded the opportunity to amend its proposal and make its BAFO. The request for BAFO’s shall include:
 - a. Notice that discussions/negotiations are concluded;
 - b. Notice that this is the opportunity for submission of a BAFO;
 - c. A common date and time for submission of written BAFO’s, allowing a reasonable opportunity for preparation of the written BAFO’s;
 - d. Notice that if any modification to a BAFO is submitted, it must be received by the date and time specified for the receipt of BAFO’s and is subject to the late submissions, modifications, and withdrawals of proposals provisions of the Request for Proposal;
 - e. Notice that if Offerors do not submit a BAFO or a notice of withdrawal and another BAFO, their immediate previous offer will be construed as their BAFO.

Any modifications to the initial proposals made by an Offeror in its BAFO shall be identified in its BAFO. BAFO’s will be evaluated by BTM according to the same requirements and criteria as the initial proposals “Proposal Selection Process”. BTM will make appropriate adjustments to the initial scores for any sub-criteria and criteria which have been affected by any proposal modifications made by the BAFO’s. These final scores and rankings within each criterion will again be arrayed by BTM and considered according to the relative degrees of importance of the criteria defined in “Proposal Evaluation Criteria”.

BTM will make the award to the responsible Offeror whose proposal is most advantageous to BTM. Accordingly, BTM may not necessarily make an award to the Offeror with the highest technical ranking nor award to the Offeror with the lowest price proposal if doing so would not be in the overall best interest of BTM.

BTM reserves the right to make an award to an Offeror whose proposal it judges to be most advantageous to BTM based upon the evaluation criteria, without conducting any written or oral discussions with any Offerors or solicitation of any BAFO’s.

1.7 Response to Proposals

Acceptance/Rejection of Proposals

BTM reserves the right to reject any or all proposals for sound business reasons, to undertake discussions with one or more Offerors, and to accept that proposal or modified proposal which, in its judgment, will be most advantageous to BTM, price and other evaluation criteria considered. BTM reserves the right to consider any specific proposal which is conditional or not prepared in accordance with the instructions and requirements of this RFP to be noncompetitive. BTM reserves the right to waive any defects, or minor informalities or irregularities in any proposal which do not materially affect the proposal or prejudice other

Offerors.

If there is any evidence indicating that two or more Offerors are in collusion to restrict competition or otherwise engaged in anti-competitive practices, the proposals of all such Offerors shall be rejected and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by BTB.

BTB may reject a proposal that includes unacceptable deviations as provided in "Conditions, Exceptions, Reservations or Understandings"

Single Proposal Response

If only one proposal is received in response to this RFP and it is found by BTB to be acceptable, a detailed price/cost proposal may be requested of the single Offeror. A price or cost analysis, or both, possibly including an audit, may be performed by or for BTB of the detailed price/cost proposal in order to determine if the price is fair and reasonable. The Offeror has agreed to such analysis by submitting a proposal in response to this RFP.

Price analysis: An evaluation of a proposed price that does not involve an in-depth evaluation of all the separate cost elements and the profit factors that comprise an Offeror's price proposal. It should be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity, involving similar specifications and in a similar time frame. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto.

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

Cost analysis: A more detailed evaluation of the cost elements in the Offeror's offer to perform. It is conducted to form an opinion as to the degree to which the proposed costs represent what the Offeror's performance should cost. A cost analysis is generally conducted to determine whether the Offeror is applying sound management in proposing the application of resources to the contracted effort and whether costs are allowable, allocable and reasonable.

Any such analyses and the results there from shall not obligate BTB to accept such a single proposal; and BTB may reject such proposal at its sole discretion.

Appeals

Appeals to BTB's decision of approved equals or clarifications of specifications must be in writing and received by BTB by the time specified in the schedule. BTB has no obligation to consider appeals not received within the time specified in the Schedule.

Protests

Protests resulting from the award of a contract through the RFP procedure must be made in writing to BTB's Contracting Officer within three working days of the letter of non-selection to the Offeror. The protest must outline the specific portion of the specification or proposal procedure that had been violated.

Protests by an interested party regarding this procurement shall be made in accordance with Chapter 2155 of the Texas Government Code. After such administrative remedies have been exhausted, an interested party may file a protest with the Federal Transit Administration (FTA) or the U.S. Department of Transportation pursuant to the procedures provided in FTA C 4220.1F, or the Texas Department of Transportation (TxDOT). Alleged violations of certain federal requirements provide a separate complaint procedure. See, for example, Buy America Requirements, 49 CFR 661 and Participation by Disadvantaged Business Enterprise in Department of Transportation Programs, 49 CFR 23.

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

Conflict of Interest

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code (House Bill 914) requires that any vendor or person considering doing business with a local government entity disclose the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. The Conflict of Interest Questionnaire form is included in the Forms Section. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest may automatically result in the disqualification of the Offeror.

Disclosure of Interested Parties

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295), which is available at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm, to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. BTD require the selected Contractor to file Form 1295 electronically with the Commission at the time of Contract Award.

Bid Protest Policy

Protests resulting from the award of a contract through the RFP procedure must be made in writing to BTD's Contracting Officer within three working days of the letter of non-selection to the Offeror or proposer. The protest must outline the specific portion of the specification or proposal procedure that had been violated.

As an FTA funding recipient, BTD is required to notify and keep FTA updated about the status of the protest when it receives a third-party contract protest to which this circular applies an award given by BTD.

The protester must exhaust its administrative remedies by pursuing the recipient's protest procedures to completion before appealing the recipient's decision to FTA.

Protests by an interested party, as in a party that is an actual or prospective Offeror whose direct economic interest would be affected by the award or failure to award the third-party contract at issue, regarding this procurement shall be made in accordance with Chapter 2155 of the Texas Government Code. After such administrative remedies, have been exhausted, an interested party may file a protest with the Federal Transit Administration (FTA) or the U.S. Department of Transportation pursuant to the procedures provided in FTA C 4220.1F. Alleged violations of certain federal requirements provide a separate complaint procedure. See, for example, Buy America Requirements, 49 CFR 661 and Participation by Disadvantaged Business Enterprise in Department of Transportation Programs, 49 CFR 23.

The protester must deliver its appeal to the FTA Regional Administrator within five working days of the date when the protestor has received actual or constructive notice of the recipient's final decision or when the protestor has identified other grounds for appeal to FTA, such as, the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest.

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

In the event of a timely protest received by the Contracting Officer, the following steps are performed:

The Contracting Officer affects a stay of procurement during the protest.

- If the contract has not been awarded, award is delayed until all administrative and judicial remedies have been exhausted. All Offerors or proposers on the vendor mailing list are advised of the protest and of the delay in the procurement.
- The President/CEO may make a determination, in writing, that the award of a contract without delay is necessary to protect the interests of BTD. This written determination is made part of the contract file by the Contracting Officer.
- The Contracting Officer notifies the President/CEO and the affected department head that a

bid or proposal protest has been received.

- The Contracting Officer conducts an investigation into the protest with the assistance of BTB staff or other personnel as required.
- The Contracting Officer may meet with the protesting vendor or request additional information from the vendor during the investigation
- The Contracting Officer issues the findings of the investigation in writing to all interested parties and the written report, including the original protest, is made a part of the contract file.
- The Grants and Budget Department acts as the direct liaison with FTA. The Contracting Officer supplies any records or documents requested by the Grants and Budget Department for FTA.
- The Contracting Officer makes any necessary changes to the procurement process, as pertaining to the protested bid/proposal, resulting from FTA's decision.
- The Contracting Officer makes the written report of FTA, including all related correspondence, a part of the contract file.

Contractor Status

Contractor is an independent Contractor of BTB, and all persons employed to furnish services or to perform work hereunder are employees, agents or Subcontractors of Contractor and not of BTB. No provision of this agreement shall be construed to give rise to a partnership, joint venture, agency, employer/employee relationship, or any relationship between Contractor and BTB other than that of principal and independent Contractor.

Indemnification/Defense of BTB

Contractor agrees to and does hereby assume full liability and responsibility for and hereby releases and covenants and agrees to indemnify, hold harmless and defend BTB and the members of the Board of Directors and executive committee, officers, principals, agents and employees of each of them (hereinafter collectively "Indemnified Persons") from and against any and all damages, payments, costs, losses, expenses, and liability of every kind whatsoever related to all claims for damages or injuries to persons or property of any nature whatsoever (including any claims which may arise on the part of the Contractor, its officers, agents, principals, employees, and subcontractors) arising out of or incident to this solicitation or the contract(s) resulting from this solicitation, or which are in any way related to such solicitation or contract(s) or to Contractor's activities thereunder, or are incident to the grant or exercises of any of the rights and privileges described in such solicitation or contract(s), other than claims resulting solely from the negligence of one or more of the Indemnified Persons. By way of inclusion and not limitation, the liability and responsibility assumed and the claims, damages, payments and expenses released and indemnified against are specifically agreed to include any growing out of or related to libel, slander, and the like, and infringement of patents, copyrights, trademarks, service marks and the like, including claims arising out of the use by any of the Indemnified Persons of any documentation, publication, appliance, tool, equipment or apparatus supplied under such solicitation or contract(s).

BTB will promptly notify Contractor of any such claim and will cooperate with Contractor in defending against any such claim. In the event any suit or legal proceeding of any kind is brought against any of the Indemnified Persons on account of any claim described in the preceding paragraph, Contractor agrees to assume the defense thereof and to pay all expenses relating thereto and in connection therewith and all judgments and levies that may be obtained against any of the Indemnified Persons as a result of any such suit or proceeding, specifically including fines, penalties, attorney's fees, exemplary damages, and interest; and Contractor agrees to at once cause any such judgments and levies to be dissolved and discharged by paying same, giving bond or otherwise.

Contractor also agrees to pay BTB promptly upon receipt of statements therefore, any and all attorney's fees and other expenses reasonably incurred by them directly or indirectly related to any claims.

No Assignment

Any contract resulting from or related to this solicitation and all rights and obligations thereunder are non-assignable in whole or in part by Contractor without the prior express written consent of BTM, and any attempted assignment without such consent shall constitute a material default of Contractor under the underlying contract, and may be considered void for all purposes at the election of BTM.

1.8 Type and Term of Contract

BTM shall negotiate and enter into an agreement which will be one (3) year term with the option to renew in increments of one (1) year terms for up to ten (10) years total. The cost of the options periods will be agreed upon by BTM and the offeror.

1.9 Invoicing and Payment

Invoices are to be submitted to BTM's Administrative Office located at 1759 N. Earl Rudder Freeway, Bryan, Texas 77803. BTM is tax exempt therefore, invoices cannot include any sales taxes.

BTM agrees to pay all invoices on a net 30-day payment cycle or three days after the receipt of State and Federal funds, whichever is later. This Agreement is contingent upon the receipt of State and Federal funds. Loss of such funds will nullify this contract.

1.10 Bonding and Insurance

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

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

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

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

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

1.11 Disadvantaged Business Enterprises

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 5.37%.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as BTM deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

1. The names and addresses of DBE firms that will participate in this contract;

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

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

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

The Contractor must promptly notify BTD, whenever a DBE Subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE Subcontractor and perform that work through.

Section 2 Project Specifications

2.1 Purpose

The purpose of BTB's RFP # 04232017 is to solicit proposals for the purchase and delivery of bulk fuel and other vehicle lubricants used in our fleet of vehicles, and to establish a working contract for a designated period. It is the intent of BTB to select a single vendor to accomplish and/or supply all commodities or services outlined in this bid; however, BTB reserves the right to award separate contracts for any one item listed on the bid sheets. The option to add additional lubricants as needed as well. All Offerors have the option to bid on one or all items listed.

2.2 Specific Delivery and Ordering Information

Orders for delivery shall be made by phone, fax or email and a purchase order number referenced. Deliveries are to be made by the end of the next working day from the date the order is placed. Supplier is required to furnish the name of the person to contact, and the telephone number to place delivery for orders. BTB reserves the right to inspect bulkheads and measure content of tanks before, at the time of and/or after delivery. All deliveries are to be made during normal working hours of 8:00 am to 4:00 pm., Monday through Friday, excluding holidays, and will be made to the following location:

- **BTB Main Office**
 - 1759 N Earl Rudder Frwy Bryan, Texas 77803
 - Tank No. 1- Unleaded 15,000 gallons-above ground
 - Tank No. 2- Diesel 15,000 gallons-above ground

2.3 Product Estimates and Usage

Product that was delivered to BTB in 2016: Types of oil are- 1540W, 5W20, 75W-90 and 0W30.

GALLONS Delivered in 2016					
Month	Unleaded	Diesel	Oil (4 Kinds)	Universal Antifreeze	ATF- Transmission Dextron 3
Jan-16	7002	6400	158		110
Feb-16	7000	7400			
Mar-16	6500	7000	230		
Apr-16	10400	10400		110	
May-16	7000	6500	217		
Jun-16	-				
Jul-16	7200	7400	497		
Aug-16	7000	7600	55	110	110
Sep-16	7001	7000	154		
Oct-16	-	7400	201	110	
Nov-16	7400	7200			
Dec-16	7500	7200	209	110	
TOTAL	74003	81500	1721.00	440.00	220.00
Average	7400.3	7409.091			

Quantities shown below are estimates only, based on previous and anticipated annual usage. A tabulation of bids will be prepared based on the estimated usage.

Estimated Fuel Usage for Contract:

Length of Time	Unleaded	Diesel
Yearly Usage	86,400	86,400
Delivered Every 7 Weeks	12,000	12,000
Monthly Usage	7,200	7,200

2.4 Product Specifications

- Regular unleaded gasoline, with a minimum pump (R+M) 12 octane rating of 87. Octane Rating below 87 will not be acceptable.
- Ultra-Low Sulfur Highway diesel fuel, 15 PPM Sulfur Maximum. Diesel fuel shall meet all specifications of ASTM D975 standard (current year revision) including the EPA specifications for sulfur content (0.0015% mass or 15 PPM maximum)
- Oil- Three different oil products are used:
 - Synthetic Oil OW30
 - 15/40
 - 5W20
 - 75W-90
- Universal Antifreeze
- Dextron 3- ATF- Transmission

2.5 Net Delivery

All fuel delivered shall be on a net gallon basis temperature corrected to API gravity at 60 degrees Fahrenheit. Proper measurement must be verified by Tank Truck Bill of Lading or by temperature adjusted tank strapping's showing net volume at delivery.

2.6 Product Quality

Fuels to be supplied under this contract shall meet the specifications listed above and be free from contamination. The participating entities reserve the right to test fuel quality upon delivery, prior to and after unloading. Should test results show that fuel contains contamination, it will be rejected. The offeror shall be responsible for pumping out of the fuel tank(s), any water and any other associated cost of removal/cleanup of site(s) when notified.

Section 3 Required Forms

ALL FORMS BELOW MUST BE SUBMITTED WITH PROPOSAL

- 1. Acknowledgment of Addendum
- 2. Request for Change or Approved Equal
- 3. Proposal Deviation Form
- 4. Buy America
- 5. DBE Compliance Statement
- 6. DBE Schedule of Utilization
- 7. DBE Good Faith Effort
- 8. Conflict of Interest
- 9. References - Vendor
- 10. Pricing Schedule
- 11. Suspension and Debarment Certification Form
- 12. Delinquent State Business Tax Certification
- 13. Offer
- 14. PTN-130

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

3.1 Acknowledgment of Addendum

RFP # 04232017

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

ACKNOWLEDGMENT OF ADDENDUM

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

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

Authorized Signature

Company Name (print)

Name and Title (print)

Date

3.3 Proposal Deviation Form

RFP # 04232017

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

Deviation #: _____ Page: _____ Section: _____

Complete Description of Deviation:

Rational (Pros & Cons)

Authorized Signature

Company Name (print)

Name and Title (print)

Date

3.4 Buy America

Certificate of Compliance

The Offeror hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Authorized Signature

Company Name (print)

Name and Title (print)

Date

Or

Certificate of Non-Compliance

The Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Authorized Signature

Company Name (print)

Name and Title (print)

Date

3.5 DBE Compliance Statement

RFP # 04232017

Check the statement which applies to your bid.

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

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

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

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

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

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

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

Explanation:

Authorized Signature

Company Name (print)

Name and Title (print)

Date

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

3.6 DBE Schedule of Utilization

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

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

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

Name of prime Contractor (print) **RFP # 04232017**
Bid Number

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

Name of DBE Subcontractor of DBE Prime Contractor:

Address & Telephone Number:

Specify Subcontracting Tier: Type of Work to be Performed:

Dollar Amount for Work: \$ TUCP Certification#:

Name of DBE Subcontractor of DBE Prime Contractor:

Address & Telephone Number:

Specify Subcontracting Tier: Type of Work to be Performed:

Dollar Amount for Work: \$ TUCP Certification#:

Name of DBE Subcontractor of DBE Prime Contractor:

Address & Telephone Number:

Specify Subcontracting Tier: Type of Work to be Performed:

Dollar Amount for Work: \$ TUCP Certification#:

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

Signature

Title

Date

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

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

RFP # 04232017

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

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

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

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

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

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

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

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

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

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

ADDITIONAL INFORMATION

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

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

Authorized Signature

Company Name (print)

Name and Title (print)

Date

3.8 Conflict of Interest Acknowledgment and Certification

RFP # 04232017

Policy: A conflict of interest may occur if outside activities or personal interests influence or appear to influence objective decision making in the course of BTD-related responsibilities and duties. A conflict may also exist if the demands of any outside activities hinder or distract your job performance or cause you to use BTD resources for other than BTD purposes. Employees are expected to exhibit professional loyalty to the BTD. Employees are expected to avoid conflicts of interest and opportunities for personal gain for themselves individually, members of their immediate families and others which may impede their best judgment.

The following are guidelines for Board of Directors and employees regarding interests outside of the business conducted by Brazos Transit District:

- A. Employees, or members of their respective families should not have substantial financial or business interest with a competitor, customer or supplier of Brazos Transit District without first reviewing the nature of activity with BTD's legal counsel.
- B. Each employee's employment should be his/her first business priority. Any other employment or business activity will be considered secondary and should not interfere with individual employee job performance and responsibilities. Approval for secondary employment requires the approval of the BTD's President/CEO.

Disclosures: Your obligation, as a prospective Contractor under this solicitation, is to disclose fully all information you have or may acquire which has to do with any such Benefit, which may come to any Related Person or Other Related Person. In considering the possibility of the existence of such benefit, you also need to consider each person and firm you believe may be involved as a joint venturer, or Subcontractor, or other similar role in carrying out and performing a contract with BTD pursuant to the solicitation. In other words, if you are aware of any business, financial, or other interest, or actual or potential employment relationship between any Related Person or any Other Related Person, on the one hand, and yourself or any other person or firm you believe may be involved in carrying out the contract to be awarded pursuant to this solicitation, on the other hand, you have an affirmative obligation to fully disclose that information to BTD. You are encouraged to contact BTD Director of Administration or the Executive Vice President prior to the deadline for submitting your Response (defined as a bid, proposal or other response to this solicitation), make such disclosure, and request a ruling as to whether any prohibited conflict of interest does in fact exist.

In order for your Response to be considered RESPONSIVE to this solicitation, it is mandatory that you complete and execute the Acknowledgment and Certification below, and include with your Response, written disclosure of all information relative to any potential conflict of interest which may be known to you, and which you have not disclosed to BTD in writing prior to the submission of your Response.

(POTENTIAL CONTRACTOR)

The undersigned potential Contractor of BTD hereby acknowledges receipt and understanding of the Conflict of Interest provisions set out above; and hereby certifies that, except as heretofore or herewith fully disclosed in writing, to the best of potential Contractor's knowledge and belief, no such conflict exists, or is likely to exist in the future pertaining to this procurement should the contract be awarded to potential Contractor; and potential Contractor further hereby promises to promptly notify BTD in writing if such knowledge or belief changes in the future.

By: _____
Signature and Title of Authorized Official of Potential Contractor

Name of Potential Contractor (print)

(RECOMMENDED SUBCONTRACTOR)

The undersigned potential subcontractor of BTD hereby acknowledges receipt and understanding of the Conflict of Interest provisions set out above; and hereby certifies that, except as heretofore or herewith fully disclosed in writing, to the best of potential Subcontractor's knowledge and belief, no such conflict exists, or is likely to exist in the future pertaining to this procurement should the contract be awarded to potential Subcontractor; and potential Subcontractor further hereby promises to promptly notify BTD in writing if such knowledge or belief changes in the future.

By: _____
Signature and Title of Authorized Official of Recommended Subcontractor

Name of Recommended Subcontractor (print)

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

3.9 References - Vendor

RFP # 04232017

Provide a minimum of three references within the past five years in which a similar service was provided. Provide company name, address, contact person, phone, fax, and email. **Be sure to include a valid email as references are check via email.**

Company Name:		
Address:		
Contact Person:		
Email:		
Phone:		Fax:

Company Name:		
Address:		
Contact Person:		
Email:		
Phone:		Fax:

Company Name:		
Address:		
Contact Person:		
Email:		
Phone:		Fax:

3.10 Pricing Schedule

RFP # 04232017

To be accepted, bidders must thoroughly complete all blanks in this section. Offerors must ensure that all calculations are correct. If there are discrepancies in unit price and total, **unit price will prevail.**

Offerors are required to enter the amount in Item B to four (4) decimal places, for "Transport Truck Deliveries" (TTD) and "Less Than Full Transport Truck Deliveries" (LTFTTD) based on the estimated quantities. Offerors must bid on all types of fuel in order to be considered for a contract award.

Bid process must not take into account the State of Texas mandated Petroleum Product Deliver Fee or the State Road Tax. If awarded a contract, the successful vendor will collect these applicable taxes/fees by itemizing each invoice.

Sample Pricing

**Gasoline, Unleaded, 87 Octane
Transport Truck Delivery (TTD)**

Minimum less than transport load in U.S. Gallons: 7000

(A) OPIS \$/ GALLON As of 7/02/14	(B) Profit Per Gallon	(C) Total Unit Price Per Gallon
\$2.9077	\$.023	\$2.9307

.....

**Item #1 Gasoline, UNLEADED, 87 OCTANE
TRANSPORT TRUCK DELIVERY (TTD)**

Minimum less than transport load in U.S. Gallons: _____

(A) OPIS \$/ GALLON As of 3/27/17	(B) Profit Per Gallon	(C) Total Unit Price Per Gallon
\$1.5378	\$ _____	\$ _____

**Item #2 Gasoline, UNLEADED, 87 OCTANE
LESS THAN FULL TRANSPORT TRUCK DELIVERY (LTFTTD)**

Minimum less than transport load in U.S. Gallons: _____

(A) OPIS \$/ GALLON As of 3/27/17	(B) Profit Per Gallon	(C) Total Unit Price Per Gallon
\$1.5378	\$ _____	\$ _____

**Item #3 Diesel, LOW SULFUR
TRANSPORT TRUCK DELIVERY (TTD)**

Minimum less than transport load in U.S. Gallons: _____

(A)	(B)	(C)

OPIS \$/ GALLON As of 3/27/17	Profit Per Gallon	Total Unit Price Per Gallon
\$1.5696	\$ _____	\$ _____

Item #4 Diesel, LOW SULFUR

LESS THAN FULL TRANSPORT TRUCK DELIVERY (LTFTTD)

Minimum less than transport load in U.S. Gallons: _____

(A) OPIS \$/ GALLON As of 3/27/17	(B) Profit Per Gallon	(C) Total Unit Price Per Gallon
\$1.5696	\$ _____	\$ _____

Authorized Signature

Company Name (print)

Name and Title (print)

Date

3.11 Suspension and Debarment Certification Form

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

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

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT PAGE)

The prospective primary Respondent/Contractor certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective primary Respondent/Contractor is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____
RESPONDENT/
CONTRACTOR: _____

INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this proposal, the Respondent/Contractor is providing the certification set out below.

1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Respondent/Contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Owner's determination whether to enter into this transaction. However, failure of the Respondent/Contractor to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
2. The certification in this clause is a material representation of fact upon which reliance was placed when the Owner determined to enter into this transaction. If it is later determined that the Respondent/Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Owner may terminate this transaction for cause or default.
3. The Respondent/Contractor shall provide immediate written notice to the Owner to which this proposal is submitted if at any time the Respondent/Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "bid," "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549 and 12689. You may contact the Owner to which this proposal is submitted for assistance in obtaining a copy of those regulations (2 C.F.R. part 180, 2 C.F.R. part 1200, 2 C.F.R. § 200.213 and 2 C.F.R. part 200 Appendix II (I)).
5. The Respondent/Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a Subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Owner entering into this transaction.
6. The Respondent/Contractor further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transactions," provided by the Owner entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Respondent/Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under paragraph 6 of these instructions, if a Respondent/Contractor in a covered transaction knowingly enters into a lower tier covered transaction with a Subcontractor who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Owner may terminate this transaction for cause or default.
9. The Respondent/Contractor also agrees to include these requirements in each subcontract, or a lower tier covered transaction, exceeding \$25,000 financed in whole or in part with Federal assistance provided by FTA.

3.12 Delinquent State Business Tax Certification

All Offerors shall certify that Offerors is not delinquent in a tax owed the state under Chapter 171, Tax Code, pursuant to the Texas Business Corporation Act, Texas Statutes, Article 2.45.

DATE: _____

SIGNATURE: _____

NAME / TITLE: _____

RESPONDENT/
CONTRACTOR: _____

3.13 Offer

RFP # 04232017

By execution below Offeror hereby offers to furnish equipment and services as specified in BTB's RFP # 04232017 including any addendums that have been issued, and guarantees that the product offered will meet or exceed specifications in this RFP.

Offeror certifies that it has read all of the offer documents and agrees to abide by all of the federal clauses, terms, certifications, and conditions thereof.

The Offeror agrees that the bid pricing will remain valid for a period of not less than ninety (90) days from the date of submission; and

The submitted bid includes all pricing needed for award and that no further options will be needed upon award.

Authorized Signature

Legal Company Name (print)

Name and Title (print)

Date

Address

City, State & Zip

Telephone

E-mail

Tax ID # or SSN

3.14 PTN-130

RFP # 04232017

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

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

Attachment A: OPIS PRICING for 3/28/2017

HEARNE, TX

2017-03-28 10:00:06 EDT

OPIS CONTRACT BENCHMARK FILE
 OPIS GROSS CBOB ETHANOL(10%) PRICES 9.0 RVP

	Terms	Unl	Move	Mid	Move	Pre	Move	Date	Time
Placid	u Net	151.15	+ 2.00	169.65	+ 2.00	177.97	+ 2.00	03/27	18:00
Valero	u N-10	152.70	+ 1.35	168.70	+ 1.35	189.30	+ 1.35	03/27	18:00
Shell	u N-10	153.17	+ 1.95	168.17	+ 1.95	-- --	-- --	03/27	18:00
Global	u 1-10	154.39	+ 5.40	161.62	+ 4.75	182.15	+ 4.75	03/28	00:01
PWI-Gulf	b N-10	155.99	+ 1.23	169.61	+ 1.16	192.12	+ 1.10	03/28	00:01
FlntHlsRs	u N-10	157.50	+ 1.50	171.10	+ 1.50	197.50	+ 1.50	03/27	17:00
Citgo	b 1-10	157.85	+ 2.02	171.48	+ 2.02	193.96	+ 2.02	03/27	18:00
PSX	b 1-10	158.54	+ 1.90	171.67	+ 1.90	194.90	+ 1.90	03/27	18:00
Valero	b 1-10	158.85	+ 1.75	172.55	+ 1.75	194.60	+ 1.75	03/27	18:00
Valero DS	b 1-10	158.85	+ 1.75	172.55	+ 1.75	194.60	+ 1.75	03/27	18:00
XOM	b 1-10	158.95	+ 1.65	172.95	+ 1.65	196.95	+ 1.65	03/27	19:00
Shell	b 125-3	159.22	+ 1.87	174.41	+ 1.87	-- --	-- --	03/27	18:00
Chevron	b 1t45c	159.40	+ 2.10	172.10	+ 2.10	-- --	-- --	03/27	18:00
Texaco	b 1t45c	159.40	+ 2.10	172.10	+ 2.10	-- --	-- --	03/27	18:00
Cenex	b 1-10	159.56	+ .31	174.08	+ 1.10	196.00	+ 1.10	03/27	18:00
LOW RACK		151.15		161.62		177.97			
HIGH RACK		159.56		174.41		197.50			
RACK AVG		157.03		170.85		191.82			
OPIS GULF COAST DELIVERED SPOT (SRI)									
FOB HEARNE		152.50		-- --		168.70			
BRD LOW RACK		155.99		169.61		192.12			
BRD HIGH RACK		159.56		174.41		196.95			
BRD RACK AVG		158.66		172.35		194.73			
UBD LOW RACK		151.15		161.62		177.97			
UBD HIGH RACK		157.50		171.10		197.50			
UBD RACK AVG		153.78		167.85		186.73			
CONT AVG-03/28		157.03		170.85		191.82			
CONT LOW-03/28		151.15		161.62		177.97			
CONT HIGH-03/28		159.56		174.41		197.50			

HEARNE, TX

2017-03-28 10:00:06 EDT

OPIS CONTRACT BENCHMARK FILE
 OPIS GROSS ULTRA LOW SULFUR LED DISTILLATE PRICES

	Terms	No.2	Move	No.1	Move	Pre	Move	Date	Time
Placid	u Net	155.15	+ .50	-- --	-- --	-- --	-- --	03/27	18:00
Shell	u N-10	155.20	+ .50	-- --	-- --	-- --	-- --	03/27	18:00
Renewable	b N-7	155.40	+ .50	-- --	-- --	-- --	-- --	03/27	18:00
Valero	u N-10	155.95	+ .50	-- --	-- --	-- --	-- --	03/27	18:00
PWI-Gulf	b N-10	156.19	+ 1.46	-- --	-- --	-- --	-- --	03/28	00:01
FlntHlsRs	u N-10	157.60	+ 1.00	-- --	-- --	-- --	-- --	03/24	17:00
Shell	b 125-3	157.68	+ .26	-- --	-- --	-- --	-- --	03/27	18:00
PSX	b 1-10	157.95	+ .70	-- --	-- --	-- --	-- --	03/27	18:00
Valero	b 1-10	158.20	+ .40	-- --	-- --	-- --	-- --	03/27	18:00
Valero DS	b 1-10	158.20	+ .40	-- --	-- --	-- --	-- --	03/27	18:00
Citgo	b 1-10	158.21	+ 1.12	-- --	-- --	-- --	-- --	03/27	18:00
Citgo	u 1-10	158.21	+ 1.12	-- --	-- --	-- --	-- --	03/27	18:00
Chevron	b 1t45c	158.30	+ .50	-- --	-- --	-- --	-- --	03/27	18:00
Texaco	b 1t45c	158.30	+ .50	-- --	-- --	-- --	-- --	03/27	18:00
XOM	b 1-10	158.60	+ .50	-- --	-- --	-- --	-- --	03/27	19:00
Cenex	b 1-10	158.88	+ .50	-- --	-- --	-- --	-- --	03/27	18:00
Global	u N-10	159.66	+ 5.04	-- --	-- --	-- --	-- --	03/28	00:01
LOW RACK		155.15		-- --		-- --			
HIGH RACK		159.66		-- --		-- --			
RACK AVG		157.51		-- --		-- --			
OPIS GULF COAST DELIVERED SPOT (SRI)									

FOB HEARNE	150.90	-- --	-- --
BRD LOW RACK	155.40	-- --	-- --
BRD HIGH RACK	158.88	-- --	-- --
BRD RACK AVG	157.81	-- --	-- --
UBD LOW RACK	155.15	-- --	-- --
UBD HIGH RACK	159.66	-- --	-- --
UBD RACK AVG	156.96	-- --	-- --
CONT AVG-03/28	157.51	-- --	-- --
CONT LOW-03/28	155.15	-- --	-- --
CONT HIGH-03/28	159.66	-- --	-- --

Section 4 Required Federal Clauses

4.1 Access

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

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

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

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

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

procurement records as needed for compliance with Federal regulations or to assure proper Project management as determined by FTA.

4.2 Bonding Requirements

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

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

A payment bond on the part of the Contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:

- (1) Fifty percent of the contract price if the contract price is not more than \$1 million;
- (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (3) Two and a half million dollars if the contract price is more than \$5 million.

A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with these criteria.

4.3 Clean Air Act and Federal Water Pollution Control Act

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

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

The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser

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

4.4 Civil Rights

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

- Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. Section 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53 prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- Prohibition Against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended by Executive Order No. 11375, October 13, 1967, that prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

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

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

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

telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

The Common Grant Rules require that third party construction contracts include provisions ensuring compliance with DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Chapter 60, which implement Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," October 13, 1967.

4.5 Disadvantaged Business Enterprises

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 5.37%. A separate contract goal has not been established for this procurement.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as BTD deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

The Contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 10 days after the Contractor's receipt of payment for that work from BTD. In addition, the Contractor may not hold retainage from its Subcontractors.

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

BTB requires prime Contractors to send to BTB copies of checks payable from our Contractors to their vendors. The purpose of our receiving copies of their vendor checks is

to verify they are adhering to our contract which stipulates payment to their vendors within 10 days of receipt of payment from us. In order for us to be able to confirm our Contractors receipt of our payment, we will also need to include that our payments to Contractors will either be sent via Fed-X or wired directly to the Contractor.

4.6 Employee Protections

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

- **Prevailing Wages.** Under 49 U.S.C. Section 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Common Grant Rules require third party contracts for construction, alteration, or repair at any contract tier exceeding \$2,000 to include provisions requiring compliance with the Davis-Bacon Act, 40 U.S.C. Sections 3141 *et seq.*, and implementing DOL regulations "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction," 29 CFR Part 5. The Davis-Bacon Act requires that Contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires Contractors to pay wages not less than once a week. The recipient must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination. These requirements are in addition to the separate Wage and Hour Requirements addressed in paragraph 2.c(1) of this Chapter IV.
- **Contract Work Hours and Safety Standards Act,** as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and
- **Copeland "Anti-Kickback" Act** - Section 1 of the Copeland "Anti-Kickback" Act, at 18 U.S.C. Section 874, prohibits anyone from inducing, by any means, any person employed on construction, prosecution, completion, or repair of a federally assisted building or work, to give up any part of his or her compensation to which he or she is

otherwise entitled. Section 2 of that Act, at 40 U.S.C. Section 3145, as amended, and implementing DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 CFR Part 3, impose record keeping requirement on all third party contracts for construction, alteration, or repair exceeding \$2,000. The Common Grant Rules also requires provisions for compliance with the Copeland "Anti-Kickback" Act, as amended, and implementing DOL regulations.

- **Construction Safety.** The Common Grant Rules require provisions to ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous as prohibited by the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3704, and its implementing DOL regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926. Notably, Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. Section 3701(b)(3)(A)(iii), increased the threshold for construction safety protections to \$100,000 from \$2,000 as set forth in the Common Grant Rules, so that a federally assisted construction contract must exceed \$100,000 before these construction safety requirements apply to that contract.

4.7 Government-Wide Debarment and Suspension

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

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

By signing and submitting its bid or proposal, the bidder or Offeror certifies as follows:

The certification in this clause is a material representation of fact relied upon by BTD. If it is later determined by BTD that the bidder or Offeror knowingly rendered an erroneous certification, in addition to remedies available to BTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Offeror or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The Offeror or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

4.8 Third Parties

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

4.9 Program Fraud and False or Fraudulent Statements or Related Acts

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

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

the Contractor, to the extent the Federal Government deems appropriate.

4.10 Termination

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

Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, BTD may terminate this contract for default. BTD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

Upon written notice, the Offeror agrees that the Federal Government may suspend or terminate all or any part of Federal assistance if terms of the project agreement are violated, if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project, if reasonable progress on the Project is not made, if there is a violation of the project agreement that endangers substantial performance of the Project, or if the Federal Government determines that Federal assistance has been willfully misused by failing to make appropriate use of Project property. Termination of Federal assistance for the Project will not typically invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled. The Federal Government reserves the right to require the refund of the entire amount of Federal assistance provided for the Project or a lesser amount.

4.11 Buy America

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or

the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A Contractor must submit to the FTA recipient the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Responses, bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

With the implementation of the Fixing America's Surface Transportation (FAST) Act, new requirements for domestic content are phased in based on the date of delivery of the rolling stock. The increased domestic content percentage requirement for rolling stock for:

- i. FY16 & FY17 is more than 60% domestic content;
- ii. FY18 & FY19 is more than 65% domestic content; and
- iii. FY20 & beyond is more than 70% domestic content.

For rolling stock purchases for which the average cost of the vehicle is more than \$300,000, the FAST Act allows the cost of steel or iron produced in the U.S. and used in the rolling stock frames or car shells to be included in the domestic content calculation, regardless of whether the frame or car shell is produced in the U.S.

FTA does not require the inclusion of these requirements in subcontracts.

4.12 Lobbying

Contractors who apply for an award of \$100,000 or more shall file the Certification Regarding Lobbying, required by 49 CFR Part 20, New Restrictions on Lobbying, with the Owner. Each Subcontractor shall file the Certification Regarding Lobbying with the Contractor that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

The Contractor and Subcontractors shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from Subcontractors to Contractor to BTB. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

The certification regarding Lobbying to be completed by

the Contractor and Subcontractor(s) is provided herein under Certifications and Forms Section.

4.13 Energy Conservation

The Contractor agrees to 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.

4.14 Interest of Members of, or Delegates to, Congress

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

4.15 Prohibited Interest

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

4.16 Policies for all Tiers

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

4.17 Federal Changes

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

4.18 Incorporation of FTA Terms

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

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

4.19 Disputes

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

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

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

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

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

4.20 Drug and Alcohol Testing/Use

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

4.21 Privacy Act

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

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