

BRAZORIA COUNTY TOLL ROAD AUTHORITY

STANDARD TERMS AND CONDITIONS

- 1. FUNDING:** Funds for payment have been provided through the Brazoria County Toll Road Authority budget approved by the Brazoria County Toll Road Authority Board of Directors for the current fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current Brazoria County Toll Road Authority fiscal year shall be subject to budget approval.
- 2. DELIVERY:** Items ordered from this offer may require delivery to various locations throughout Brazoria County, as specified in this offer or at time of order. All delivery and freight charges (F.O.B. Brazoria County designated location) are to be included in the offer price except as noted herein. Place of delivery shall be set forth in the “Ship To” block of the purchase order.
- 3. ACCEPTANCE:** These Standard Terms and Conditions (“Terms and Conditions”) govern all orders issued by Brazoria County Toll Road Authority to the Vendor identified on the order. Fulfillment of any part of an order, or any other conduct by Vendor which recognizes the existence of an agreement pertaining to the subject matter of such order, shall constitute acceptance by Vendor of such order and all of the Terms and Conditions. The Terms and Conditions constitute the complete and exclusive statement of the terms and conditions between Vendor and the Brazoria County Toll Road Authority. No revisions to this order or to the Terms and Conditions shall be valid unless made in writing and signed by an authorized representative of the Brazoria County Toll Road Authority. Brazoria County Toll Road Authority accepts liability only for purchases of goods and services made through the Brazoria County Purchasing Department or Brazoria County Toll Road Authority and evidenced by a purchase order.
- 4. EQUAL EMPLOYMENT:** All contracts will be awarded by Brazoria County Toll Road Authority without consideration as to race, religion, sex, national origin or disability of Vendor. Vendors are required to adhere to the provisions of 42 USCA Sec. 12101 et seq., Americans with Disabilities Act.
- 5. CONTRACT:** The Contract consists of the Specifications/Statement of Work, Purchase Order Standard Terms & Conditions, and Quotations, and all other documents, including drawings and other specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract, and modifications issued after execution of the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. No invoices will be paid prior to acceptance of Contract by Brazoria County Toll Road Authority. No different or additional terms will become a part of this Contract, except as agreed upon by all parties hereto.
- 6. DEFAULT OF VENDOR:** If Vendor defaults by failing to supply payment and performance bonds and/or certificate of insurance within the ten (10) day period allotted, order may be terminated or reassigned to an alternate Vendor who provides the best value to Brazoria County Toll Road Authority.

 - 6.1** Vendor, in submitting this offer, agrees that Brazoria County Toll Road Authority shall not be liable for damages in the event that the Brazoria County Toll Road Authority declares the Vendor is in default.
- 7. ADDENDA:** Any interpretations, corrections or changes to these Contract documents and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the Brazoria County Purchasing Director. Addenda will be mailed to all that are known to have received a copy of the offer package and/or Contract. Vendors shall acknowledge receipt of all addenda.
- 8. SALES TAX:** Brazoria County Toll Road Authority is exempt by law from payment of Texas Sales Tax and Federal Excise Tax.
- 9. ETHICAL CONDUCT:** Vendor shall not offer or accept gifts or anything of value, nor enter into any business arrangement with any employee, official, or Director of Brazoria County Toll Road Authority. No public official shall have interest in this Contract, in accordance with Texas Local Government Code Annotated Title 5, Subtitle C, Chapter 171.

9.1 The Vendor affirms that the only person or parties interested in this offer as principals are those named herein, and that this offer is made without collusion with any other person, firm, or corporation.

10. MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE VENDORS: A prospective Vendor must affirmatively demonstrate their responsibility. A prospective Vendor must meet the following requirements:

- 1) Have adequate financial resources, or the ability to obtain such resources as required;
- 2) Be able to comply with the required or proposed delivery schedule;
- 3) Have a satisfactory record of performance;
- 4) Have a satisfactory record of integrity and ethics;
- 5) Be otherwise qualified and eligible to receive an order for commodities or services

10.1 Brazoria County Toll Road Authority may request representation and other information sufficient to determine Vendor's ability to meet these minimum standards listed above.

11. REFERENCES: During an analysis of all offers, Brazoria County Toll Road Authority may request Vendor to supply a list of three (3) references to which like services or materials have been supplied by Vendor. If requested, references should include name of firm, address, telephone number and name of representative.

12. INSURANCE: Prior to acceptance of contract by Brazoria County Toll Road Authority, Vendor must furnish a Certificate of Insurance from an approved insurance carrier for the coverage indicated.

13. SILENCE OF SPECIFICATIONS: The apparent silence of the specifications contained as a part of this purchase order as to any detail or to the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

14. INDEMNIFICATION: Vendor shall defend, indemnify, and hold harmless Brazoria County Toll Road Authority and all its officers, Directors, officials, agents, and employees from all suits, actions, or other claims of any character, name, and description brought for or on account of any injuries or damages of any negligent act or fault of Vendor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act of omission, neglect, or misconduct of said Vendor; or because any claims or amount recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising recovered under the Worker's Compensation Act, or any other law, ordinance, order, or decree; or of any Director, employee, subcontractor, or supplier in the execution of, or performance under, any Contract which may result from the offer.

14.1 Further, Vendor indemnifies and will indemnify and hold harmless Brazoria County Toll Road Authority from liability, claim or demand on their part, their Directors, servants, customers, employees, subcontractors, or any employees or agents of subcontractors, whether such liability, claim, or demand arise from event or casualty happening within the job site itself or elsewhere. Vendor shall pay any judgment with costs which may be obtained against Brazoria County Toll Road Authority growing out of such injury or damages.

14.2 Money due the Vendor under and by virtue of his Contract as may be considered necessary by the Brazoria County Toll Road Authority for such purpose may be retained for the use of the Brazoria County Toll Road Authority, or in case no money is due, his surety may be held until such suit or suits action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to the effect furnished to the Brazoria County Toll Road Authority, except that money due the Vendor will not be withheld when the Vendor produces satisfactory evidence that he is adequately protected by public liability and property damage insurance.

15. THIRD PARTY BENEFICIARY CLAUSE: It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create with the public or any member thereof a third-party beneficiary or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

- 16. PURCHASE ORDERS REQUIRED:** All orders for materials or work must be authenticated by a purchase order issued by the Brazoria County Purchasing Department. Invoices not bearing a purchase order number will not be paid.
- 17. TESTING:** All materials being used in fulfillment of this Contract are subject to inspection or test at any time during their preparation, delivery, or use. At the option of the Brazoria County Purchasing Director, they may be sampled and tested in order to determine compliance with the governing specifications. Materials not conforming to the requirements of these specifications shall not be used in fulfillment of this Contract with the Brazoria County Toll Road Authority. The Brazoria County Toll Road Authority reserves the right to immediately terminate any Contract found not to comply with governing specifications as a result of testing by the Brazoria County Toll Road Authority.
- 18. WAGES:** Vendor shall pay or cause to be paid, without cost or expense to the Brazoria County Toll Road Authority, all Social Security, Unemployment and Federal Income Withholding Taxes of all employees; and all such employees shall be paid wages and benefits as required by Federal and/or State law. Contracts involving construction work or supply of materials in place shall abide by the provisions of Article 5159d Texas Revised Civil Statutes Annotated.
- 19. CANCELLATION:** Brazoria County Toll Road Authority shall have the right to cancel for default all or any part of the undelivered portion of this order if Vendor breaches any of the terms hereof including warranties of Vendor or if the Vendor becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies, which Brazoria County Toll Road Authority may have in law or equity.
- 20. TERMINATION OF CONTRACT:**
- Termination with Cause:
“Upon written notice to the Vendor of a defect or breach of this Agreement, Vendor has five (5) business days to cure any defect(s) or breach(es) cited in said notice. If Vendor fails to cure the defect(s) or breach(es) within the five (5) business days allowed, Brazoria County Toll Road Authority may terminate this Agreement. Nevertheless, Brazoria County Toll Road Authority reserves the right to provide written notice to the Vendor that this Agreement shall continue if Vendor has in good-faith commenced efforts to cure said defect(s) or breach(es) and Vendor agrees, in writing, to continue to act without undue delay to cure said defect(s) or breach(es).”
- Termination Without Cause:
This contract may be terminated by either the Brazoria County Toll Road Authority or the Vendor at any time, without cause, by providing the other Party at least thirty (30) calendar days’ prior written notice.
- 21. DELIVERY OF NOTICES:** Any notice provided by this Contract (or required by law) to be given to the Vendor by Brazoria County Toll Road Authority shall be conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail in Angleton, Texas, by Registered or Certified mail with sufficient postage affixed thereto, addressed to the - Vendor at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.
- 22. DELIVERY TICKETS:** Delivery tickets shall accompany each order shipped, and shall show Vendor’s name and address, delivery location, Brazoria County Toll Road Authority purchase order number and descriptive information as to item and quantity delivered.
- 23. SELLER TO PACKAGE GOODS:** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly marked and permanently packed as follows: (a) Seller’s name and address; (b) Consignee’s name, address and purchase order number. Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packing unless otherwise agreed to in writing. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. Buyer’s count or weight shall be final and conclusive on shipment not accompanied by packing lists.
- 24. FREE ON BOARD (F.O.B.) DELIVERY:** All products offered shall be FOB final destination, with all delivery charges to be prepaid by the Vendor. The Brazoria County Toll Road Authority does not accept C.O.D. or collect shipments. The agreed upon price shall include all charges, including delivery, installation and set-up

fees. All packing, crating, or other debris resulting from the delivery or set-up of the commodity purchased shall be removed and properly disposed by the Vendor at no additional cost to the Brazoria County Toll Road Authority.

25. HAZARDOUS SUBSTANCES: State law requires that shipments of hazardous substances shall include MATERIAL SAFETY DATA SHEETS (MSDS). MSDS must be supplied with the first order shipped under any contract, and at any time MSDS is revised.

26. PAYMENT: Payment shall be made upon receipt and/or acceptance in accordance with the terms of this Contract by the Brazoria County Toll Road Authority of items(s) ordered, and receipt of a valid invoice in accordance with Texas Government Code chapter 2251. Vendor is required to pay subcontractors within ten (10) days.

27. VENDOR'S LIABILITY: The Vendor shall be responsible for all damage or injury to property of any character during the execution of the work, resulting from any act, omission, neglect, or misconduct in Vendor's manner or method of executing the work, including the Vendor's agents, employees, subcontractors, and any employees or agents of subcontractors, or at any time due to defective work or materials, and said responsibility will not be released until the project is complete and accepted in its entirety by the Brazoria County Toll Road Authority.

27.1 When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the non-execution thereof by the Vendor, including the Contractor's agents, employees, subcontractors, and any employees or agents of subcontractors, Vendor shall restore, at Vendor's own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as Vendor may be directed, or Vendor shall make good such damage or injury in an acceptable manner.

28. DEFECTIVE MATERIALS: Unless otherwise stated herein, items supplied under this Contract shall be subject to the Brazoria County Toll Road Authority's approval. Items found defective or not meeting specifications shall be picked up and replaced by the Contractor at the next service day at no expense to the Brazoria County Toll Road Authority. If item is not picked up within one (1) week after notification, the item will become a donation to the Brazoria County Toll Road Authority for disposition.

29. WARRANTY: Contractor/Vendor shall warrant that all items and services shall conform to the proposed specifications, all warranties as stated in the Uniform Commercial Code, and be free from all defects in material, workmanship and title. Contractor/Vendor and the Brazoria County Toll Road Authority agree that both parties have all rights, duties, and remedies available as stated in the Uniform Commercial Code. Further, Contractor/Vendor shall provide additional warranty requirements as defined in the Scope of Work attached. Vendors must provide all warranty terms and conditions in response package.

30. WARRANTY OF PRICE:

30.1 The price to be paid by the Brazoria County Toll Road Authority shall be that agreed to in writing by the Brazoria County Toll Road Authority which Vendor warrants to be no higher than Vendor's current prices on orders for products of the kind and specification covered by the purchase order for similar quantities under similar or like conditions and methods of purchase. In the event Vendor breaches this warranty, the prices of the items shall be reduced to the Vendor's current prices on orders by others, or in the alternative, Brazoria County Toll Road Authority may cancel this purchase order without liability to the Vendor for breach or Vendor's actual expense.

30.2 Pricing from Interlocal and Cooperative purchasing agreements may be considered.

31. ASSIGNMENT: Contractor shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the Brazoria County Toll Road Authority.

32. GOVERNING LAW: Contractor is advised that these requirements shall be fully governed by the laws of the State of Texas and that Brazoria County Toll Road Authority may request and rely on advice, decisions and opinions of the Attorney General of Texas and the Brazoria County District Attorney's Office concerning any portion of these requirements. All disputes arising out of this agreement will be resolved in Brazoria County, Texas. All documents are subject to the Public Information Act requirements.

- 33. DRAWINGS:** All drawings, plans, and specifications are hereby attached and made a part of this Contract.
- 34. RIGHT TO AUDIT:** At any time during the term of this Contract and for a period of four (4) years thereafter, the State of Texas, Brazoria County, Brazoria County Toll Road Authority, and/or other federal, State and local agencies which may have jurisdiction over this contract and/or purchase order, at reasonable times and at its expense reserve the right to audit Vendor's records and books. If needed for audit, original or independently certified copies of off-site records will be provided to auditors at Vendor's expense within two (2) weeks of written request.
- 35. PERFORMANCE AND PAYMENT BONDS:** (Public Works Contract or as Required by the Brazoria County Toll Road Authority Board of Directors) In the event the total accepted price exceeds \$25,000, Vendor must provide to the office of the Brazoria County Purchasing Director, a payment bond, and if the price exceeds \$100,000, Vendor must also provide a performance bond, each in the amount of one hundred percent (100%) of the total contract sum within ten (10) calendar days after receipt of the order. Such bonds shall be executed by a corporate surety or corporate sureties in accordance with Article 7.19-1, Vernon's Texas Insurance Code. Such corporate surety/sureties shall be duly authorized and admitted to do business in the State of Texas and licensed in the State of Texas to issue fidelity and surety bonds with a Best Rating of "A" or better and have a bonding capacity adequate for the prescribed amount. Brazoria County Toll Road Authority reserves the right to accept or reject any surety company proposed by Vendor. In the event Brazoria County Toll Road Authority rejects the proposed surety company, Vendor will be afforded five (5) additional days to submit the required bonds issued by a surety company acceptable to Brazoria County Toll Road Authority.
- 36. APPLICABLE LAW:** All applicable laws and regulations of the State of Texas and ordinances and regulations of Brazoria County, Texas shall apply.
- 37. COMPLIANCE WITH APPLICABLE LAWS:** Vendor shall at all times observe and comply with all federal, state, local and municipal ordinances, rules, regulations, relating to the provision of the services contracted to be provided by Vendor hereunder or which in any manner affect this Contract.
- 38. FORCE MAJEURE:** Neither the Brazoria County Toll Road Authority nor the Vendor shall be deemed in violation of this Agreement if either is prevented from performing its obligations hereunder for any reason beyond its control, including but not limited to, acts of God, civil or military authority, acts of public enemy, war riots, rebellions, accidents, fires, explosions, earthquakes, floods, or catastrophic failure of public transportation; provided however, that in the event of strikes or labor disputes, an inability to procure raw materials, equipment, power or supplies, or the enactment of any law, order, proclamation, regulation, ordinance, demand, or other requirement of any governmental agency or intergovernmental body, which prevents, restricts, interferes or delays with the performance of this Contract, the party so affected, upon giving notice to the other party, shall be excused from such performance to the extent of such prevention, restriction, delay or interference, so long as the party so affected shall use reasonable efforts under the circumstance to avoid or remove such causes of nonperformance, and shall continue performance hereunder with the utmost dispatch whenever such causes are removed.
- 39. SEVERABILITY:** If any provision of these Terms and Conditions are held to be unenforceable for any reason, the unenforceability thereof shall not affect any other provision contained herein, and the remainder of the Contract shall remain in full force and effect, and enforceable in accordance with its terms.
- 40. QUANTITIES:** Brazoria County Toll Road Authority requests purchase prices for the items identified in this offer, and in accordance with the specifications provided herein. The quantities provided are given as a guideline only for the purpose of offer preparation. These quantities shall not be construed as the total number of purchases for the Contract. This estimated figure may increase and/or decrease throughout the year. No guarantee is expressed or implied as to the total quantity of items to be purchased under this Contract.
- 40.1** Brazoria County Toll Road Authority reserves the right to add or delete like or related items at any time during the term of this Contract. The additions or deletions shall be incorporated into the contract in the form of an addendum. Additional items shall be priced in accordance with this contract with appropriate discounts being applied.
- 41. PURCHASE FROM OTHER SOURCES:** Brazoria County Toll Road Authority reserves the right to purchase goods and/or services specified herein, or of equal or like kind, through contracts established by other governmental agencies or thorough separate procurement actions due to the unique or special needs of Brazoria

County Toll Road Authority. Further, the Brazoria County Toll Road Authority reserves the right to obtain such goods and/or services from others without penalty or prejudice to the Brazoria County Toll Road Authority or Vendor and such action shall not invalidate in whole or in part this Contract or any rights or remedies Brazoria County Toll Road Authority may have hereunder.

- 42. AGREEMENT TO NOT BOYCOTT ISRAEL:** By agreeing to this Purchase Order [or if no formal agreement, by providing the good(s) / services(s)] the Vendor verifies it does not boycott Israel and will not boycott Israel, as defined by Chapter 808 of the Texas Government Code, during the term of this contract [during the time necessary to provide the good(s) / services(s)].
- 43. TEXAS GOVERNMENT CODE 552, SUBCHAPTER J:** Effective January 1, 2020, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 44. PROHIBITED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES AND EQUIPMENT CERTIFICATION:** By agreeing to this purchase order (or if no formal agreement, by providing goods/services) the Vendor represents and warrants that the equipment, systems, and/or services which it will provide to Brazoria County Toll Road Authority do not use covered telecommunications equipment or services (as defined in Section 889 John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018)) as a substantial or essential component of any system, or as critical technology of any system. Additionally, the Vendor represents and warrants that the equipment, systems, and/or services it will provide are not prohibited from being procured using grant funds under section 889 of the FY 2019 NDAA.
- 45. AGREEMENT TO NOT BOYCOTT ENERGY COMPANIES:** By agreeing to this Purchase Order [or if no formal agreement, by providing the good(s) / services(s)] the Vendor verifies it does not boycott energy companies and will not boycott energy companies, as defined by Chapter 809 of the Texas Government Code, during the term of this contract [during the time necessary to provide the good(s) / services(s)].
- 46. AGREEMENT TO NOT DISCRIMINATE AGAINST A FIREARM ENTITY OR TRADE ASSOCIATION:** By agreeing to this Purchase Order [or if no formal agreement, by providing the good(s) / services(s)] the Vendor verifies it does not discriminate against a firearm entity or trade association and will not discriminate against a firearm entity or trade association, as defined by Chapter 2274 of the Texas Government Code, during the term of this contract [during the time necessary to provide the good(s) / services(s)].