

**REQUEST FOR QUALIFICATIONS & PROPOSALS  
FOR  
CONSTRUCTION MANAGER-AT-RISK**

**FOR  
LAMAR STATE COLLEGE-PORT ARTHUR  
PORT ARTHUR, TEXAS**

**COMMERCIAL DRIVER  
EDUCATION AND EXAMINATION  
CENTER**

**RFQ/P No.:**

**758-22-04016**

**EDA Grant No.**

**08-79-05460**

**Submission Date:**

**April 12, 2022 – 2:00 p.m. (C.D.T.)**

**Prepared By:**

Peter Maass, Director of Capital Projects Administration  
The Texas State University System  
601 Colorado Street  
Austin, TX 78701 - 512-463-1808  
[Peter.Maass@tsus.edu](mailto:Peter.Maass@tsus.edu)

## **Table of Contents**

### **Section 1 - General Information & Requirements**

- 1.1 General Information
- 1.2 Public Information
- 1.3 Type of Contract
- 1.4 Clarifications and Interpretations
- 1.5 Submission of Qualifications Proposal, and HUB Commitment Letter
- 1.6 Point-Of-Contact
- 1.7 Evaluation of Qualifications and Proposal
- 1.8 Owner's Reservation of Rights
- 1.9 Acceptance of Evaluation Methodology
- 1.10 No Reimbursement for Costs
- 1.11 Mandatory Pre-Submittal Conference
- 1.12 Eligible Respondents
- 1.13 Historically Underutilized Businesses Submittal Requirements
- 1.14 Certain Proposals and Contracts Prohibited
- 1.15 Sales and Use Taxes
- 1.16 Certification of Franchise Tax Status
- 1.17 Required Notices of Workers' Compensation Insurance Coverage
- 1.18 Insurance Requirements
- 1.19 Prevailing Minimum Wage Rate Determination
- 1.20 Delinquency in Paying Child Support
- 1.21 Nondiscrimination
- 1.22 Non-Boycott Israel Verification
- 1.23 Cybersecurity Training Program
- 1.24 Certification Regarding Business with Certain Countries and Organizations
- 1.25 Non-Discrimination of Firearm Industry Verification
- 1.26 Anti-Boycott Energy Companies Verification
- 1.27 Vaccine Passport Prohibition
- 1.28 Critical Infrastructure Affirmation

### **Section 2 - Executive Summary**

- 2.1 Historical Background
- 2.2 Mission Statement
- 2.3 Project Description, Scope and Budget
- 2.4 Facility Program
- 2.5 Project Planning Schedule
- 2.6 Owner's Special Conditions

### **Section 3 - Requirements for Statement of Qualifications**

- 3.1 Respondent's Ability to Provide Construction Management Services
- 3.2 Qualifications of the Respondent and the Execution of Services
- 3.3 Respondent's Past Performance on Representative Construction Manager-at-Risk Projects
- 3.4 Respondent's Ability to Establish Budgets and Control Costs
- 3.5 Respondent's Ability to Meet Schedules
- 3.6 Respondent's Knowledge of Current Construction Methodologies, Technologies, and Best Practices
- 3.7 Respondent's Ability to Identify and Resolve Problems
- 3.8 Respondent's Ability to Manage Construction Safety Risks
- 3.9 Respondent's Warranty and Service Support Program for this Project
- 3.10 Execution of Offer

**Section 4 - Pricing and Delivery Proposal**

- 4.1 General Information
- 4.2 Evaluation of Proposal
- 4.3 Requirements for Proposal

**Section 5 - Format for Statement of Qualifications and Proposal**

- 5.1 General Instructions
- 5.2 Page Size, Binding, Dividers and Tabs
- 5.3 Table of Contents
- 5.4 Pagination
- 5.5 Submission Packaging

**Attachments to this RFQ/P**

- 1. Attachment A - Allowable General Condition Line Items
- 2. Attachment B - Exhibit "F" CM's Personnel and Monthly Salary Rates
- 3. Attachment C - Sample HUB Commitment Letter
- 4. Attachment D - EDA Contracting Provisions for Construction Projects
- 5. Attachment E - Certification Regarding Lobbying Lower Tier Covered Transactions
- 6. Attachment F - Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity
- 7. Attachment G – Project Scope Summary

**REQUEST FOR QUALIFICATIONS AND PROPOSALS  
FOR  
CONSTRUCTION MANAGER-AT-RISK  
LAMAR STATE COLLEGE-PORT ARTHUR  
PORT ARTHUR, TEXAS  
COMMERCIAL DRIVER EDUCATION AND EXAMINATION CENTER  
RFQ/P No.: 758-22-04016  
EDA Grant No. 08-79-05640**

**SECTION 1 – GENERAL INFORMATION & REQUIREMENTS**

- 1.1 **GENERAL INFORMATION:** The Texas State University System (“Owner”) on behalf of **Lamar State College-Port Arthur**, is soliciting Statements of Qualifications (“Qualifications”) and Pricing and Delivery Proposals (“Proposals”) for the selection of a Construction Manager-at-Risk firm for the **Commercial Driver Education and Examination Center** (“Project”), for Lamar State College-Port Arthur, Port Arthur, Texas. This solicitation sets forth the terms, conditions, and requirements for prospective Construction Manager-at-Risk entities (“CMR” or “CMRs”) to be considered for this work. (Prospective CMRs submitting their Qualifications and Proposals in response to this solicitation are hereinafter referred to as “Respondents”). **The Owner is requiring that the Qualifications, Proposals and HUB Commitment Letter (HCL) be submitted at the same time, but in separate, sealed packages.**
- 1.1.1 **Federal Participation Disclosure:** This project will be partially funded with Federal funds from the United States Department of Commerce, Economic Development Administration (“EDA”) and therefore is subject to the Federal laws and regulations associated with that program.
- 1.1.1.1 The successful Respondent will be required to comply with the EDA’s Contracting Provisions for Construction Projects, see Attachment D.
- 1.1.1.2 All Respondents must complete the EDA’s Certification Regarding Lobbying Lower Tier Covered Transactions – Form CD-512, see Attachment E. **This certification must be signed and included with the Respondent’s Qualifications package submittal.**
- 1.1.1.3 The successful Respondent will be required to comply with the Equal Opportunity Clause and Standard Federal Equal Employment Opportunity Construction Contract Specifications. See Attachment F, Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity.
- 1.1.2 The evaluation of Qualifications is the first step the Owner will take in a two-step process for selecting a CMR for the Project as provided by *Texas Education Code* §51.782(e). This Request for Qualifications/Proposals (“RFQ/P”) solicitation package provides the information necessary to prepare and submit Qualifications for consideration and initial ranking by the Owner. During this first step in the selection process, Owner will evaluate and rank Respondents according to fixed evaluation criteria, considering only their qualifications and independent of any cost and compensation considerations.

- 1.1.3 In the second step of the process, Owner will open and evaluate the Proposals submitted in accordance with Section 4 of this RFQ/P. The results of the Qualifications and the Proposals evaluations will then be combined to determine the “most qualified” Respondent providing the “best value” proposition for the Owner. The Owner may select up to five (5) of the most qualified Respondents to participate in an interview with the Owner to confirm their Qualifications and Proposal and answer additional questions. The Owner will then rank the interviewed Respondents in order to determine a single most qualified Respondent providing the best value proposition to the Owner. **The Owner reserves the right to conclude the evaluations and make a best value selection without conducting interviews.**
- 1.2 **PUBLIC INFORMATION:** All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, *et seq.*) after the solicitation is completed. The Owner complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFQ/P information. Additionally, pursuant to the provisions of *Texas Government Code* Section 2261.253, the contract resulting from this solicitation will be posted on the Owner’s website.
- 1.3 **TYPE OF CONTRACT:** Any contract resulting from this solicitation will be in the form of the Owner’s Standard Construction Management-at-Risk Agreement (“Agreement or “Contract”), a copy of which is posted on Owner’s website at: <http://www.tsus.edu/offices/finance/capital-projects.html>
- 1.3.1 The Agreement should be viewed as a draft and is subject to change. The Uniform General Conditions for Construction Projects referenced in the Agreement may be viewed on the Owner’s website at:  
<http://www.tsus.edu/offices/finance/capital-projects.html>
- 1.4 **CLARIFICATIONS AND INTERPRETATIONS:** Discrepancies, omissions or doubts as to the meaning of RFQ/P documents shall be communicated in writing to the Owner for interpretation. Any responses to inquiries, clarifications, or interpretations of this RFQ/P that materially affect or change its requirements will be issued formally by the Owner as a written addendum. All such addenda issued by the Owner before the Qualifications are due, become part of the RFQ/P. Respondents shall acknowledge receipt of and incorporate each addendum in its Qualifications submittal. Respondents shall be required to consider only those clarifications and interpretations that the Owner issues by addenda. Interpretations or clarifications obtained in any other form, including oral statements, will not be binding on the Owner, and should not be relied on in preparing Qualifications. It is the responsibility of all Respondents to check the status of formal addenda regularly and five (5) days before the submission deadline.
- 1.4.1 The deadline for the receipt of written questions is stated in Section 2.5.
- 1.4.2 **ADDENDA AND AWARD INFORMATION, WILL BE ISSUED BY THE OWNER FOR THIS RFQ/P VIA THE ELECTRONIC STATE BUSINESS DAILY WEBSITE AT THE FOLLOWING LINK:** <http://www.txsmartbuy.com/sp>  
REFERENCE “BOARD OF REGENTS/TEXAS STATE UNIVERSITY SYSTEMS – 758”  
AND THE RFQ/P NUMBER PROVIDED IN THIS RFQ/P.

1.5 SUBMISSION OF QUALIFICATIONS, PROPOSAL, AND HUB COMMITMENT LETTER:

1.5.1 The Qualifications, Proposals, and HCL must be received **at the address specified in Section 1.5.2 prior to the stated deadline**. Please note that overnight deliveries such as FedEx and UPS arrive at a central campus location but are not usually delivered to the specified location until after the time deadline. Respondents are advised to use other methods of delivery or, if using an overnight delivery service, to send the responses a day earlier than usual. The Owner will not consider any response to this solicitation that is not received at the address specified by the deadline, regardless of whether it has been received by the College.

1.5.2 DEADLINE AND LOCATION: The Owner will receive Qualifications, Proposals, and HCL at the time and location described below.

**April 12, 2022 – 2:00 p.m. (C.D.T.)**

Maria D. Garcia, Director of Purchasing and Contracts  
Lamar State College Port Arthur  
1501 Procter Street, Business Office, Room No. 117  
Port Arthur, Texas 77641

1.5.3 Submit **one (1)** signed electronic version of the Qualifications, Proposal and HCL documents on separate and individual disc or thumb drives in Adobe Acrobat PDF format. The individual disc or thumb drives containing the Qualifications, Proposal, and HCL must be submitted in separate, sealed packages. **Do not include the Proposal information on the electronic Qualifications or HCL files.**

1.5.4 Submit one (1) original and four (4) signed, identical copies of the Qualifications. This is the response to Section 3 of the RFQ/P and include the Execution of Offer (see 3.10. Provide **two (2)** copies of the Proposal as identified in 4.3.2. An original signature must be included on the “Execution of Offer” document submitted with each copy and on the Pricing and Delivery Proposal. **The Proposal must be submitted in a separate, sealed package apart from the Qualifications package and from the HCL.**

1.5.5 Submit **one (1)** original and **one (1)** copy of the HCL as a separate package to both the Qualifications and the Proposal packages as described in Section 1.13.

1.5.6 Qualifications and/or Proposals received after the stated official submittal deadline will be returned to the Respondent unopened. The Point-of-Contact identified in Section 1.5 will identify the official time clock at the RFQ/P submittal location identified above.

1.5.7 The Owner will not acknowledge or receive Qualifications, Proposals or HCL that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).

1.5.8 Properly submitted Qualifications, Proposals, HCL and electronic media will not be returned to Respondents.

1.5.9 Respondent materials must be enclosed in a sealed envelope (box or container) addressed to the Point of Contact person and include the Qualification, Proposal, and HCL. The packages must clearly identify the contents, the submittal deadline, the RFQ/P title and number, and include the name and email address of the Respondent’s contact person. The

Qualifications, Proposal, and HCL materials and electronic media must be packaged in separate, sealed envelopes within the sealed envelope (box or container).

- 1.5.10 The names of the submitting Respondent(s) will be read aloud immediately following the date and time published in Section 1.5.2.
- 1.5.11 Submitting Respondents' HCLs will be reviewed for completeness prior to evaluations of Qualifications. Disqualified HCLs will be returned to the submitting Respondent after the selection and negotiation of the successful Respondent.
- 1.5.12 After the evaluation and ranking of the Qualifications, Proposals will be opened and read aloud at the time, date and location noted below:

**April 22, 2022 – 2:00 p.m. (C.D.T.)**

The Texas State University System  
O. Henry Hall  
601 Colorado Street- 1<sup>st</sup> Floor Conference Room  
Austin, Texas 78701  
[https://en.parkopedia.com/parking/locations/503%20Colorado%20St\\_9v6kpy0g6p/?arriving=201807121300&leaving=201807121500](https://en.parkopedia.com/parking/locations/503%20Colorado%20St_9v6kpy0g6p/?arriving=201807121300&leaving=201807121500)

- 1.6 **POINT-OF-CONTACT:** The Owner designates the following person as its representative and Point-of-Contact for this RFQ/P. Respondents shall restrict all contact with the Owner and direct all questions regarding this RFQ/P, including questions regarding terms and conditions, in writing to the Point-of-Contact person, **via email only**.

Maria D. Garcia, Director of Purchasing and Contracts  
Lamar State College Port Arthur  
Email: [garciamd@lamarpa.edu](mailto:garciamd@lamarpa.edu)

- 1.7 **EVALUATION OF QUALIFICATIONS AND PROPOSAL:** The evaluation of the Qualifications and Proposals shall be based on the requirements described in this RFQ/P. All properly submitted Qualifications and Proposals will be reviewed, evaluated, and ranked by a Selection Committee approved by the Owner. The top five (5) or fewer ranked Respondents may be selected by the Owner to participate in an interview process.

- 1.7.1 Qualifications packages shall not include any information regarding Respondent's fees, pricing, or other compensation. Such information shall be kept separate from the Qualifications and must be submitted as a separate Proposal package according to this RFQ/P.

- 1.8 **OWNER'S RESERVATION OF RIGHTS:** The Owner may evaluate the Qualifications based on the anticipated completion of all or any portion of the Project. The Owner reserves the right to divide the Project into multiple parts, to reject any and all responses to the current solicitation and reissue a completely new solicitation involving the same Project, or to simply reject any and all responses and temporarily or permanently abandon the Project. Owner makes no representations, written or oral, that it will enter into any form of agreement for any project with any Respondent to this RFQ/P and no such representation is intended or should be construed by the issuance of this RFQ/P.



- 1.9 ACCEPTANCE OF EVALUATION METHODOLOGY: By submitting its Qualifications, Proposal, and HCL in response to this RFQ/P, Respondent accepts the evaluation process and acknowledges and accepts that determination of the “most qualified” firm(s) will require subjective judgments by the Owner. The results of this most qualified determination will be combined with the Proposal evaluation results to determine the best value proposition for the Owner. Determinations by the Selection Committee will be subjected to routine administrative review by the Owner’s executive officers but, once a selection is announced, it will not be subjected to further review.
- 1.10 NO REIMBURSEMENT FOR COSTS: Respondent acknowledges and accepts that any costs incurred from the Respondent’s participation in this RFQ/P process shall be at the sole risk and responsibility of the Respondent. Respondents submit Qualifications, Proposals, and HCL at their own risk and expense.
- 1.11 MANDATORY PRE-SUBMITTAL CONFERENCE: A mandatory pre-submittal conference will be held at the time and location described below.

**March 24, 2022 – 2:00 p.m. (C.D.T)**

Lamar State College Port Arthur  
Student Center, Room 422  
1520 Procter Street  
Port Arthur, Texas 77641

Questions regarding the Pre-Submittal conference may contact **Ms. Maria Garcia** at:  
garciamd@lamarpa.edu.

- 1.11.1 A guided tour of the Project site will be included as a part of the conference agenda. This may be the only opportunity for potential Respondents to view the Project site before the submittal of Qualifications. The Project site location is 3606 F.M. 3514, Beaumont, Texas, 77705.
- 1.12 ELIGIBLE RESPONDENTS: Only individual firms or lawfully formed business organizations may apply. (This does not preclude a Respondent from using consultants.) The Owner will contract only with the individual firm or formal organization that submits a Qualification, Proposal and HCL.
- 1.13 HISTORICALLY UNDERUTILIZED BUSINESSES SUBMITTAL REQUIREMENTS: It is the policy of the Owner and each of its component institutions, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUB) in all contracts. Accordingly, specific plans and representations by Respondents that appear to facilitate the State’s commitment to supporting HUB enterprises are required in the selection process. Failure to submit specific plans and representations regarding HUB utilization, or failure to address the subject at all, will be interpreted by the Selection Committee as an intention not to support the program and will disqualify the Respondent. A HUB Subcontracting Plan (HSP) is not required by Respondents as part of the RFQ/P submission. The HSP will be required by the selected Respondent only, following the Owner’s approval of a Guaranteed Maximum Price (“GMP”). Submit a Letter of HUB Commitment (“HCL”) to describe how Respondent will participate and demonstrate a good faith effort in achieving the Owner’s HUB goals.



- 1.13.1 STATEMENT OF PROBABILITY. The Owner has determined that subcontracting opportunities are probable in connection with this procurement solicitation. Therefore, a HCL is required as a part of the Respondent's Qualifications.
- 1.13.2 A sample HUB Commitment Letter is attached to this solicitation.
- 1.13.3 Submit one (1) original, one (1) copy, (one (1) electronic copy of the HCL **in a separate attachment apart from the submittal of qualifications and apart from the proposal, and disc or thumb drive** as stated in Sections 1.5.3 and 1.5.5 of this RFQ/P.
- 1.14 CERTAIN PROPOSALS AND CONTRACTS PROHIBITED: Under Section 2155.004, *Texas Government Code*, a state agency may not accept a proposal or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the proposal or contract is based. All vendors must certify their eligibility by acknowledging the following statement, "Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate." If a state agency determines that an individual or business entity holding a state contract was ineligible to have the contract accepted or awarded as described above, the state agency may immediately terminate the contract without further obligation to the vendor. This section does not create a cause of action to contest a proposal or award of a state contract.
- 1.15 SALES AND USE TAXES: Section 151.311, *Texas Tax Code*, permits the purchase free of state sales and use taxes of tangible personal property to be incorporated into realty in the performance of a contract for an improvement to realty for certain exempt entities that include the Owner. The section further permits the purchase tax-free of tangible personal property (other than machinery or equipment and its accessories and repair and replacement parts) for use in the performance of such a contract if the property is "necessary and essential for the performance of the contract" and "completely consumed at the job site. "In addition, the section permits the purchase tax-free of a tangible service for use in the performance of such a contract if the service is performed at the job site and if "the contract expressly requires the specific service to be provided or purchased by the person performing the contract" or "the service is integral to the performance of the contract."
- 1.16 CERTIFICATION OF FRANCHISE TAX STATUS: Respondents are advised that the successful Respondent will be required to submit certification of franchise tax status as required by State Law (*Texas Tax Code* Chapter 171). The contractor agrees that each subcontractor and supplier under contract will also provide a certification of franchise tax status.
- 1.17 REQUIRED NOTICES OF WORKERS' COMPENSATION INSURANCE COVERAGE: The Texas Workers' Compensation Commission has adopted a rule, Texas Administrative Code Title 28, Part 2, Chapter 110, Subchapter B, Rule 110.110, relating to REPORTING REQUIREMENTS FOR BUILDING OR CONSTRUCTION PROJECTS FOR GOVERNMENTAL ENTITIES. The rule implements sec. 406.096, *Texas Labor Code*, which requires workers' compensation insurance coverage for all persons providing services on a building or construction project for a governmental entity. The requirements of the rule are set forth in the Uniform General and Supplementary General Conditions for the Texas State University System Building Construction Contracts.
- 1.18 INSURANCE REQUIREMENTS: Bonds and insurance requirements are provided in Article 5 of the Uniform General Conditions and in the Owner's Standard Contractor Agreement as denoted in Section 1.3 of this RFQ/P.

- 1.19 PREVAILING MINIMUM WAGE RATE DETERMINATION: Respondents are advised that the Texas Prevailing Wage Law will be administered. The penalty for violation of prevailing wage rates has been increased from \$10.00 per underpaid worker per day or portion thereof to \$60.00. The Prevailing Wage Rate for Jefferson County, Texas, can be found on the following website: <https://beta.sam.gov/>
- 1.20 DELINQUENCY IN PAYING CHILD SUPPORT: Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 1.21 NONDISCRIMINATION: In their execution of this agreement, Respondent, consultants, their respective employees, and others acting by or through them shall comply with all federal and state policies and laws prohibiting discrimination, harassment, and sexual misconduct. Any breach of this covenant may result in termination of the Agreement.
- 1.22 NON-BOYCOTT ISRAEL VERIFICATION: To the extent required in Chapter 271, Texas Government Code, by executing this Agreement, Respondent hereby certifies that it does not boycott Israel and will not boycott Israel during the term of the Agreement. "Boycott Israel" shall have the meaning set forth in Section 808.001, *Texas Government Code*.
- 1.23 CYBERSECURITY TRAINING PROGRAM: Pursuant to Section 2054.5192, *Texas Government Code*, Respondent and its subcontractors, officers, and employees who are provided credentials granting access to Component's computer system also known as Component's information system, must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* as selected by the Component. The cybersecurity training program must be completed during the term and any renewal period of this Agreement. Respondent shall verify in writing completion of the program to the Component within the first thirty (30) calendar days of the term and any renewal period of the Agreement. Failure to comply with the requirements of this section are grounds for termination for cause of the Agreement.
- 1.24 CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS: Pursuant to Subchapter F, Chapter 2252.152, *Texas Government Code*, Respondent hereby certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Respondent acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 1.25 NON-DISCRIMINATION OF FIREARM INDUSTRY VERIFICATION: Pursuant to Chapter 2274, *Texas Government Code* (as enacted in SB 19 in the 87<sup>th</sup> Regular Legislative Session [2021]), Respondent hereby verifies that either (i) it has less than ten (10) full time employees; or (ii), it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association (as defined under Section 2274.001, Texas Government Code) and will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.
- 1.26 ANTI-BOYCOTT ENERGY COMPANIES VERIFICATION: Pursuant to Chapter 2274.002, *Texas Government Code* (as enacted in SB 13 in the 87<sup>th</sup> Regular Legislative Session [2021]), Respondent hereby certifies that either (i) it has less than ten (10) full time employees or (ii) it does not "boycott energy companies" (as defined under Section 809.001, Texas Government Code) and will not "boycott energy companies" during the term of the Agreement.

- 1.27 VACCINE PASSPORT PROHIBITION: Pursuant to Section 161.0085, *Texas Health and Safety Code* (as enacted in SB 968 in the 87<sup>th</sup> Regular Legislative Session [2021]), Respondent hereby certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Respondent's business. Respondent acknowledges that such a vaccine or recovery requirement would make Respondent ineligible for a state-funded contract and shall be grounds for termination of the Agreement for cause.
- 1.28 CRITICAL INFRASTRUCTURE AFFIRMATION: Pursuant to Section 2274.0102, *Texas Government Code*, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is (i) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103, *Texas Government Code*, or headquartered in any of those countries.

## SECTION 2 – EXECUTIVE SUMMARY

- 2.1 HISTORICAL BACKGROUND: John W. Gates of New York City, one of the founders of Texaco, established Port Arthur Business College in 1909, to train people for the petrochemical industry, then in its infancy. The college became Port Arthur Collegiate Institute in 1911, when the school was presented to the Board of Education of the Methodist Episcopal Church North, a forerunner of the present United Methodist Temple. The church operated the growing campus until 1918, when it was turned over to a non-profit Texas corporation. This corporation had no capital stock and was overseen by a self-perpetuating board of trustees. The name of the school was changed back to Port Arthur Business College and finally, in 1932, to Port Arthur College.

On July 31, 1974, another milestone in the school's history was reached. W. Sam Monroe, then President of Port Arthur College and a Lamar University regent, presented his fellow members of the Lamar board a resolution seeking merger of Port Arthur College into Lamar University. The 21 trustees of the school agreed that the merger would be in the best interests of both institutions and their constituencies.

The 64th Legislature of the State of Texas authorized the merger and appropriated \$600,000 for creation of the Lamar University Center at Port Arthur. On Aug. 21, 1975, the trustees presented the deed for Port Arthur College to the Lamar University Board of Regents. Classes began on the Port Arthur campus on Aug. 28, 1975. Since the merger in 1975, enrollment increased from 151 students to a peak of more than 3,000 and the curriculum has been expanded to more than 50 areas of study.

House Bill 1297 was signed into law in June 1999, changing the name of the institution to Lamar State College-Port Arthur. Lamar State College - Port Arthur is a member of The Texas State University System and an equal opportunity/affirmative action educational institution.

- 2.2 MISSION STATEMENT: Lamar State College-Port Arthur provides learning experiences that prepares students to continue their education or enter the workforce.
- 2.3 PROJECT DESCRIPTION, SCOPE AND BUDGET: The College's new Commercial Driver Education and Examination Center is needed to support the timely flow of commercial drivers from training to licensing, and to help overcome the backlog for skills examination. The scope for this Project includes site development of the approximate 24-acre parcel of land, to include on-site storm water detention and storm water management, and approximately 6.5 acres of rolled concrete

paving for real-world truck driving skills training, six lanes for truck parking, and four lanes of testing. A new 5,600 square foot classroom building will support two new classrooms and one examination lab for testing that function independently, and administrative spaces to help facilitate the function of the building. A new 900 square foot office building for the instructors will provide a “bullpen” seating arrangement allowing the instructors access to the secure data network.

Although an A/E has already prepared 90% complete Construction Documents, the successful Respondent will be asked to review these documents for constructability considerations and to align a Guaranteed Maximum Price with available project funding.

**The total Construction Cost Limitation for the project is \$4,000,000.**

2.4 **FACILITY PROGRAM:** See Attachment G – Project Scope Summary.

2.5 **PROJECT PLANNING SCHEDULE:** Key Project planning schedule milestones are:

2.5.1	Owner publishes RFQ/P for CMR Services .....	03/18/2022
2.5.2	Mandatory Pre-Submittal Conference (2:00 p.m.).....	03/24/2022
2.5.3	RFQ/P submittal of questions deadline (12:00 p.m.).....	03/29/2022
2.5.4	Deadline for submittal of Qualifications, Proposal and HCL (2:00 p.m.).....	04/12/2022
2.5.5	Respondents name read aloud at Component’s Office.....	04/12/2022
2.5.6	Proposals read aloud at Owner’s Office (2:00 p.m.).....	04/22/2022
2.5.7	Interview of shortlisted Respondent (if required).....	05/03/2022
2.5.8	Owner selects CMR .....	05/03/2022
2.5.9	Execute CMR Agreement.....	05/27/2022
2.5.10	Notice to Proceed for Pre-Construction Services .....	05/30/2022
2.5.11	Owner approves Guaranteed Maximum Price Proposal .....	06/27/2022
2.5.12	A/E completes Construction Documents .....	07/08/2022
2.5.13	Notice to Proceed for Construction Phase issued .....	07/11/2022
2.5.14	Owner accepts Substantial Completion of Construction .....	03/10/2023
2.5.15	Occupancy .....	04/10/2023
2.5.16	Final Completion .....	04/10/2023

The schedule of events presented above represent a basic timeline for the Project. A final Project timeline will be developed with the Owner at a later time. The Owner can be expected to work with the A/E and the CMR to validate and improve on this initial schedule.

2.6 **OWNER’S SPECIAL CONDITIONS:** The Owner requires full compliance with specification Division 0: Contract Requirements and Division 1: General Requirements, which will be integrated into the specifications for the Project and become a part of the contract. These specifications sections shall be a part of the Agreement. They are available for review at: <https://www.tsus.edu/offices/finance/capital-projects.html>

### **SECTION 3 – REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS**

Respondents shall carefully read the information contained in the following criteria and submit a complete statement of Qualifications responding to all questions in Section 3 formatted as directed in Section 5. Incomplete Qualifications will be considered non-responsive and subject to rejection. Qualifications shall constitute up to Fifty Percent (50%) of the total Respondent evaluation score.

- 3.1 CRITERION ONE: RESPONDENT'S ABILITY TO PROVIDE CONSTRUCTION MANAGEMENT SERVICES: (Criterion Weight: 5%)
- 3.1.1 Provide a brief history of Respondent's firm.
- 3.1.2 Provide the following information on your firm for the past **five** (5) fiscal years:
- 3.1.2.1 Volume:
- 3.1.2.1.1 Annual number, value, and percent change of contracts in Texas per year
- 3.1.2.1.2 Annual number, value, and percent change of contracts nationally per year
- 3.1.2.2 Revenues: Annual revenue totals and percent change per year
- 3.1.2.3 Bonding:
- 3.1.2.3.1 Total bonding capacity
- 3.1.2.3.2 Available bonding capacity and current backlog
- 3.1.3 Attach a letter of intent from a surety company indicating ability to bond Respondent for the entire construction cost of the Project. The surety shall acknowledge that the Respondent may be bonded for each stage/phase of the Project (if applicable), with a potential maximum construction cost of **Four Million Dollars (\$4,000,000)**. Bonding requirements are set forth in Article 17 of the Agreement and the Uniform General Conditions for Construction Contracts.
- 3.1.4 State whether Respondent is currently for sale or involved in any transaction to expand or to become acquired by another business entity. If so, explain the impact both in organization and company direction.
- 3.1.5 Provide details of any past or pending litigation, or claims filed, against Respondent that may affect its performance under an Agreement with the Owner.
- 3.1.6 State whether Respondent is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If so, specify date(s), details, circumstances, and prospects for resolution.
- 3.1.7 State whether Respondent has ever failed to complete any work which it was awarded.
- 3.2 CRITERION TWO: QUALIFICATIONS OF THE RESPONDENT AND THE EXECUTION OF SERVICES: (Criterion Weight: 20%)
- 3.2.1 Provide resumes of all Respondent's team members that will be directly involved in the Project, including their experience with similar projects, definition of that person's specific role in the Pre-Construction and Construction phases for the Project, the number of years with the Respondent, and their city of residence.
- 3.2.2 For each of the proposed Respondent's team members identified in 3.2.1, describe their responsibilities in each of the representative projects presented in 3.3 and compare them with their anticipated responsibilities in this Project.
- 3.2.3 Identify any consultants that are included as part of the proposed team, their role related experience for this Project. List projects for which the consultant(s) have previously worked with the Respondent.



- 3.2.4 Describe, in graphic and written form, the proposed Project organizational chart indicating assignments and lines of authority and communication for each team member to be directly involved in the Project. Indicate the estimated percent of time these team members will be involved in the Project for Pre-Construction, Construction, Close-Out, and Warranty services.
  - 3.2.5 Describe Respondent's construction management and execution plan for providing Pre-Construction Phase Services required for this Project.
  - 3.2.6 Describe what Respondent perceives as the critical issues for this Project, whether in the pre-construction or construction phase.
  - 3.2.7 Describe Respondent's procedures, objectives, and personnel responsible for reviewing design and Construction Documents and for providing feedback regarding cost, schedule and constructability to the A/E and the Owner on this Project.
  - 3.2.8 Describe Respondent's Bid/Proposal Package Strategy for completion of the Construction Documents and for procuring the work from subcontractors, vendors, suppliers, etc.
  - 3.2.9 Describe Respondent's constructability program for this Project and how it will be implemented.
  - 3.2.10 Describe Respondent's philosophy for maximizing Project scope for the Owner during Pre-Construction services, minimizing risk, and identifying when savings can be returned to the Owner during construction.
  - 3.2.11 For Pre-Construction and Construction services, provide examples of records, reports, monitoring systems, and information management systems Respondent will use on this Project.
  - 3.2.12 Declare if Respondent, or any other company within the same holding group of companies, desires to self-perform work on this Project, and describe the method for determining itself as the "best value" through a competitive proposal process.
  - 3.2.13 Describe Respondent's approach to coordinating inspections and approvals with the Texas Department of Licensing and Regulation regarding Texas Accessibility Standards, the State Fire Marshal and other authorities having jurisdiction over the Project.
- 3.3 **CRITERION THREE: RESPONDENT'S PAST PERFORMANCE ON REPRESENTATIVE CONSTRUCTION MANAGER-AT-RISK PROJECTS:** (Criterion Weight: 20%)
- 3.3.1 Identify and describe the proposed team's past experience for providing CMR services that are **MOST RELATED TO THIS PROJECT within the last five (5) years.** Provide not less than three (3) but not more than five (5) examples. List the projects in order of priority, with the most relevant project listed first. Provide the following information for each project listed:
    - 3.3.1.1 Project name, location, and description

- 3.3.1.2 Photographic color images of exterior, interior, and floor plans and site plans if applicable
- 3.3.1.3 Construction cost estimates at Design Development, final GMP amount and final construction cost. Explain the reasons for any deviations.
- 3.3.1.4 Final project size in gross square feet
- 3.3.1.5 Type of construction (new, renovation, or expansion)
- 3.3.1.6 Notice to Proceed date for Pre-Construction Services
- 3.3.1.7 Originally planned and actual Notice to Proceed, Substantial Completion, and Final Payment dates for Construction Services. Explain reasons for any deviation.
- 3.3.1.8 Name of project manager (individual responsible to the owner for the overall success of the project)
- 3.3.1.9 Name of project superintendent(s) (individual responsible for coordinating the day-to-day work)
- 3.3.1.10 Names of mechanical, plumbing, and electrical subcontractors
- 3.3.2 References (for each project listed above, identify the following):
  - 3.3.2.1 The owner's name and representative who served as the day-to-day liaison during the design and construction phases of the project, including telephone number and email address
  - 3.3.2.2 The A/E's name and representative who served as the day-to-day liaison during the construction phase of the project, including telephone number and email address
  - 3.3.2.3 Length of business relationship with the owner

References shall be considered relevant based on specific project participation and experience with the Respondent. The Owner reserves the right to contact any other references at any time during the RFQ/P process.

3.4 **CRITERION FOUR: RESPONDENT'S ABILITY TO ESTABLISH BUDGETS AND CONTROL COSTS:** (Criterion Weight: 15%)

- 3.4.1 Describe Respondent's methodology for working with the the Owner, Project A/E and their consultants to deliver a GMP and to maintain the GMP throughout the design and construction phases including any processes for establishing, tracking, and reporting during the course of the Project.
- 3.4.2 Describe Respondent's cost control methods during construction and how Respondent procures subcontracts, confirms scope, amounts, and ensures proper payment.
- 3.4.3 If the Owner intends to accept a GMP prior to completion of Construction Documents; describe: 1) Respondent's process for ensuring that the design documents provide the information necessary to arrive at a complete GMP, including all Owner requirements with reasonable contingencies, and 2) Respondent's process for subsequently ensuring that the one hundred percent (100%) Construction Documents align with the project scope in the previously accepted GMP proposal documents.
- 3.4.4 Describe the percentage for construction contingency desired at GMP, and how these contingencies will be managed through the completion of Construction Phase services.



3.4.5 Describe the bonds Respondent requires of subcontractors including if Subguard will be used.

3.4.6 Identify a maximum of three (3) projects from Section 3.3 of this RFQ/P, with GMP contracts, and the amount of savings (if any) returned to the owner.

3.5 CRITERION FIVE: RESPONDENT'S ABILITY TO MEET SCHEDULES:  
(Criterion Weight: 15%)

3.5.1 Describe how Respondent will develop, maintain, and update the project schedule during design and construction. Identify the specific resources (i.e., personnel, hardware, software, etc.) to be used on this Project.

3.5.2 Describe Respondent's approach to assuring timely completion of this Project, including methods for schedule recovery, if necessary. From any three (3) of the projects listed in response to Section 3.3 of this RFQ/P, provide examples of how these techniques were used, including specific scheduling challenges/requirements and actual solutions.

3.5.3 Describe Respondent's experience with Critical Path Method ("CPM") scheduling. From any of three (3) of the projects listed in response to Section 3.3 of this RFQ/P, provide one (1) sample of the monthly schedule reports, including identified milestones, and any schedule recovery plans.

3.5.4 Provide a simple CPM Milestone schedule on how Respondent perceives this Project could be built. Identify specific critical process, phases, milestones, approvals, and procurements anticipated. Include the ten percent (10%) total project float that will be required in the critical path during the Construction Phase. If Respondent proposes to improve the schedule, describe the impact on quality of services, materials or workmanship that may occur.

3.6 CRITERION SIX: RESPONDENT'S KNOWLEDGE OF CURRENT CONSTRUCTION METHODOLOGIES, TECHNOLOGIES, QUALITY AND BEST PRACTICES: (Criterion Weight: 10%)

3.6.1 Describe Respondent's quality assurance program. Explain the methods used to ensure quality control during the Construction phase of a project. Provide a specific example from one (1) of the representative projects, listed in response to Section 3.3 of this RFQ/P, of how Respondent's quality control program overcame a difficult constructability issue and/or resulted in higher quality workmanship.

3.6.2 Describe Respondent's procedures for implementing industry's "best practices" as defined by the Construction Industry Institute or similar organizations for:

3.6.2.1 Establishing and tracking project objectives.

3.6.2.2 Using project scope definition resources (i.e., Project Definitions Rating Index (PDRI)) in order to obtain complete and accurate design and construction documents from the A/E.

3.6.2.3 Partnering.

3.6.2.4 Cost tracking.

3.6.2.5 Change (order) management systems.

- 3.6.2.6 Building systems commissioning including coordination with the A/E and the Owner's commissioning agent.
- 3.6.2.7 Total quality management for each phase of the Project, including coordinating with the Owner's project inspectors, testing, training, close-out, and warranty service.
- 3.6.3 Describe Respondent's implementation of a quality control process for this Project during the Design Development stage through completion of Construction Documents stage.
- 3.6.4 Describe how Respondent's quality control team will measure the quality of construction and commissioning performed by all trades, but in particular, by mechanical and electrical subcontractors and how Respondent will address non-conforming work.
- 3.6.5 As the CMR, describe Respondent's relationship with the local subcontracting community.
- 3.7 CRITERION SEVEN: RESPONDENT'S ABILITY TO IDENTIFY AND RESOLVE PROBLEMS: (Criterion Weight: 5%)
  - 3.7.1 Describe Respondent's understanding of the administrative challenges and opportunities associated with providing Pre-Construction and Construction services for Owner on this Project, and Respondent's strategy for addressing these issues.
  - 3.7.2 Understanding the schedule limitations, provide an analysis of the Owner's project planning schedule in Section 2.5 of this RFQ/P, describe Respondent's plan for communicating constructability, phasing, value engineering and other budget options in a form that will quickly facilitate the Owner's decision making.
  - 3.7.3 For any combination of three (3) projects listed in response to Section 3.3 of this RFQ/P, describe any conflicts with the Owner, consultants, A/E, or subcontractors and describe the methods used by the Respondent to resolve those conflicts.
- 3.8 CRITERION EIGHT: RESPONDENT'S ABILITY TO MANAGE CONSTRUCTION SAFETY RISKS: (Criterion Weight: 5%)
  - 3.8.1 Briefly describe Respondent's approach for anticipating, recognizing, and controlling safety risks and note the safety resources that Respondent provides for each project's safety program.
  - 3.8.2 Describe the level of importance for enforcement and support of project safety that Respondent includes in performance evaluations for superintendents and project managers.
  - 3.8.3 Identify the proposed safety management team members for construction services. Include their previous titles, duties, city(s) of residence, experience, and expertise; also, their intended percent of monthly involvement and duration for this Project. Include all details necessary to demonstrate the credentials required by project safety specifications.
  - 3.8.4 Describe the methodology, including any technology or other assets that Respondent intends to use for prevention and/or control of incidents and insurance claims on this Project.

- 3.8.5 Describe the safety and insurance claims history information and weighting that Respondent includes in the submission and award process for “best value” subcontracts.
- 3.8.6 For all projects that Respondent has managed (or co-managed) in the past five (5) years, list and describe all events or incidents that have reached any of the following levels of severity:
- 3.8.6.1 Any occupational illness or injury that resulted in death or total and permanent disability.
  - 3.8.6.2 Three (3) occupational illnesses or injuries that resulted in hospital admittances.
  - 3.8.6.3 Explosion, fire, or water damage that claimed five percent (5%) or more of the project’s construction value.
  - 3.8.6.4 Failure, collapse, or overturning of a scaffold, excavation, crane, or motorized mobile equipment when workers were present at the project.
- 3.8.7 Identify the Respondent’s Experience Modification Rate (“EMR”) for the three (3) most recent annual insurance-year ratings.
- 3.8.8 Identify Respondent’s annual OSHA Recordable Incident Rates (“RIR”) for all work performed during the past three (3) calendar years.
- 3.8.9 Identify Respondent’s annual OSHA Lost Workday Case Incident Rates (“LWCIR”) for all work performed during the past three (3) calendar years.
- 3.9 **CRITERION NINE: RESPONDENT’S WARRANTY AND SERVICE SUPPORT PROGRAM FOR THIS PROJECT:** (Criterion Weight: 5%)
- 3.9.1 Describe Respondent’s warranty service support philosophy and warranty service implementation plan for this Project.
  - 3.9.2 Describe how Respondent will measure the quality of warranty service provided to the Owner for this Project.
  - 3.9.3 Provide reference letters from three (3) owners identified in Sections 3.3 of this RFQ/P, that describe Respondent’s response to, and performance on, warranty services AFTER substantial completion.
- 3.10 **EXECUTION OF OFFER:**

NOTE TO RESPONDENTS: **SUBMIT ENTIRE SECTION WITH RESPONSE.**

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED, AND RETURNED WITH THE RESPONDENT’S QUALIFICATIONS. **FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE QUALIFICATIONS MAY RESULT IN REJECTION OF THE QUALIFICATIONS.**

SIGNING A FALSE STATEMENT MAY VOID THE SUBMITTED QUALIFICATIONS OR ANY AGREEMENTS OR OTHER CONTRACTUAL ARRANGEMENTS, WHICH MAY RESULT FROM THE SUBMISSION OF RESPONDENT’S QUALIFICATIONS, AND THE RESPONDENT MAY BE REMOVED FROM ALL PROPOSER LISTS. A FALSE CERTIFICATION SHALL BE DEEMED A MATERIAL BREACH OF CONTRACT AND, AT

OWNER'S OPTION, MAY RESULT IN TERMINATION OF ANY RESULTING CONTRACT OR PURCHASE ORDER.

- 3.10.1 By signature hereon, Respondent acknowledges and agrees that (1) this RFQ/P is a solicitation for Qualifications and Proposal and is not a contract or an offer to contract; (2) the submission of Qualifications and Proposal by Respondent in response to this RFQ/P will not create a contract between the Owner and Respondent; (3) the Owner has made no representation or warranty, written or oral, that one or more contracts with the Owner will be awarded under this RFQ/P; and (4) Respondent shall bear, as its sole risk and responsibility, any cost which arises from Respondent's preparation of a response to this RFQ/P.
- 3.10.2 By signature hereon, Respondent offers and agrees to furnish to the Owner products and/or services more particularly described in its Qualifications and to comply with all terms and conditions and requirements set forth in the RFQ/P documents and contained herein.
- 3.10.3 By signature hereon, Respondent affirms that it has neither given, nor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a public servant in connection with the submitted Qualifications and Proposal.
- 3.10.4 By signature hereon, Respondent affirms that it is a "taxable entity" under Section 171.0002 of the *Texas Tax Code* and certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, *Texas Tax Code*.
- 3.10.5 By signature hereon, Respondent hereby certifies that neither the Respondent nor anyone acting on behalf of Respondent has violated the antitrust laws of this state, codified in Section 15.01, et. seq., *Texas Business and Commerce Code*, or the Federal antitrust laws. Respondent further certifies that it has not communicated directly or indirectly the Qualifications and Proposal submitted to any competitor or any other person engaged in a similar line of business.
- 3.10.6 By signature hereon, Respondent represents and warrants that:
- 3.10.6.1 Respondent is a reputable company regularly engaged in providing products and/or services necessary to meet the terms, conditions, and requirements of the RFQ/P;
  - 3.10.6.2 Respondent has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the terms, conditions and requirements of the RFQ/P;
  - 3.10.6.3 Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances;
  - 3.10.6.4 Respondent understands the requirements and specifications set forth in this RFQ/P and the terms and conditions set forth in the Contract under which Respondent will be required to operate;
  - 3.10.6.5 Respondent, if selected by the Owner, will maintain insurance as required by the Agreement; and

- 3.10.6.6 All statements, information and representations prepared and submitted in response to this RFQ/P are current, complete, true, and accurate. Respondent acknowledges that the Owner will rely on such statements, information, and representations in selecting the successful Respondent. If selected by the Owner as the successful Respondent, Respondent will notify the Owner immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.
- 3.10.7 By signature hereon, Respondent certifies that the individual signing this document and the documents made part of the RFQ/P is authorized to sign such documents on behalf of the company and to bind the company under any agreements or other contractual arrangements, which may result from the submission of Respondent's Qualifications and Proposal.
- 3.10.8 By signature hereon, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Resident bidder as defined in *Texas Government Code* Section 2252.001(4).
- 3.10.9 By signature hereon, Respondent certifies as follows:
- 3.10.9.1 "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- 3.10.9.2 "Under Section 2155.004, *Texas Government Code*, the vendor or applicant certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
- 3.10.9.3 Under Section 2254.004, *Texas Government Code*, the vendor or applicant certifies that each individual or business entity which is an engineer or architect proposed by Respondent as a member of its team was selected based on "demonstrated competence and qualifications" only.
- 3.10.10 By signature hereon, Respondent certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship exist between Respondent and an employee of Owner or any component, or Respondent has not been an employee of Owner or any component within the immediate twelve (12) months prior to Respondent's RFQ/P response. All such disclosures will be subject to administrative review and approval prior to the Owner entering into any contract with Respondent.
- 3.10.11 By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFQ/P. (ref. Section 2155.004 *Texas Government Code*).
- 3.10.12 Respondent represents and warrants that all articles and services quoted in response to this RFQ/P meet or exceed the safety standards established and promulgated under the Federal

Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this solicitation.

- 3.10.13 By signature hereon, Respondent signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 3.10.14 By signature hereon, Respondent agrees to defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Respondent or any agent, employee, subcontractor, or supplier of Respondent in the execution or performance of any agreements or other contractual arrangements which may result from the submission of Respondent's Qualifications and Proposal.
- 3.10.15 By signature hereon, Respondent agrees to complete a Cybersecurity Training Program. Pursuant to Section 2054.5192, *Texas Government Code*, Respondent and its subcontractors, officers, and employees who are provided credentials granting access to Component's computer system also known as Component's information system, must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* as selected by the Component. The cybersecurity training program must be completed during the term and any renewal period of this Agreement. Contractor shall verify in writing completion of the program to the Owner within the first thirty (30) calendar days of the term and any renewal period of this Agreement. Failure to comply with the requirements of this section are grounds for termination for cause of the Agreement.
- 3.10.16 By signature hereon, Respondent agrees that any payments that may become due under any agreements or other contractual arrangements, which may result from the submission of Respondent's Qualifications and Proposal, will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.
- 3.10.17 By signature hereon, Respondent certifies that no member of the Board of Regents of the Texas State University System, or the Executive Officers of the Owner or its component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of the contract, and that no member of the Board of Regents has a "substantial interest" (as that term is defined in Section 51.923 of the *Texas Education Code*) in the Respondent.
- 3.10.18 Pursuant to Chapter 2274, *Texas Government Code*, Respondent certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity of firearm trade association; and will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.
- 3.10.19 Pursuant to Chapter 2274, *Texas Government Code*, Respondent certifies that it does not boycott energy companies as defined in Section 809.001(1)(a), *Texas Government Code*, (i.e., fossil fuel companies); and will not boycott energy companies during the term of the Agreement.
- 3.10.20 Respondent certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery, on entry

to, to gain access to, or to receive service from the Respondent's business. Respondent acknowledges that such a vaccine or recovery requirement would make Respondent ineligible for a state-funded contract.

- 3.10.21 Pursuant to Section 2274.0102, *Texas Government Code*, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent is majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103, *Texas Government Code*, or headquartered in any of those countries.

[Execution of Offer continues next page]



**3.10.22 Execution of Offer: RFQ/P No. 758-22-04016 – RFQ/P for Construction Manager-At-Risk for Commercial Driver Education and Examination Center at Lamar State College-Port Arthur; EDA Grant No. 08-79-05460**

The Respondent must complete, sign, and return this Execution of Offer as part of their Qualifications submittal response. The Respondent's company official(s) who are authorized to commit to such a submittal must sign submittals. Failure to sign and return this form will disqualify the submittal.

Respondent's Company Name: \_\_\_\_\_

Respondent's State of Texas Tax Account No.: \_\_\_\_\_  
(This 11 digit number is mandatory)

If a Corporation:

Respondent's State of Incorporation: \_\_\_\_\_

Respondent's Charter No: \_\_\_\_\_

Identify each person who owns at least 10% of the Respondent's business entity by name:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

Submitted and Certified By:

\_\_\_\_\_  
(Respondent's Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Fax Number)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Email address for RFQ/P Notification)

**END OF QUALIFICATIONS PACKAGE.  
SUBMIT THE ABOVE SEPARATELY FROM THE HUB COMMITMENT LETTER,  
ELECTRONIC MEDIA AND THE PRICING AND DELIVERY PROPOSAL  
IN A SEALED PACKAGE**

## SECTION 4 – PRICING AND DELIVERY PROPOSAL

- 4.1 **GENERAL INFORMATION:** This Proposal is the second step in a two-step process for selecting a CMR for the Project as provided by *Texas Education Code* §51.782(e). Unlike other solicitations of this type, in this solicitation **Owner is requiring that the Proposal package accompany the Qualifications package, and HUB Commitment Letter (HCL) but the three documents shall be submitted in separate, sealed packaging and delivered at the same time.** Include the name and email address of the Respondent's contact person on all envelopes. Mark the exterior of all envelopes to identify whether the Proposal, Qualifications, or HCL are contained therein. The Owner may conduct interviews with up to five (5) of the most qualified Respondents in order to finalize the best value rankings; however, Owner also reserves the right to select the best value Respondent without interviews. Observe the following guidelines:
- 4.1.1 Submit one (1) original, one (1) copy identical copies of the Proposal.
  - 4.1.2 Proposals received after the deadline will be returned to the Respondent unopened.
  - 4.1.3 The Owner will not acknowledge or receive Proposals that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).
  - 4.1.4 Properly submitted Proposals will not be returned to Respondents.
  - 4.1.5 Proposal materials must be enclosed in a sealed envelope (box or container) addressed to the Point-of-Contact person; the package must clearly identify the submittal deadline, the RFQ/P number, and the name and return address of the Respondent.
  - 4.1.6 Properly submitted Proposals will be opened publicly and the names of the Respondents and pricing information will be read aloud at the time, date and location identified in Section 1.5.12 of this RFQ/P.
- 4.2 **EVALUATION OF PROPOSAL:** The evaluation of the Proposal shall be based on the Respondent's actual Pre-Construction Phase Fee, Construction Phase Fee, General Conditions Costs and other requirements as described in this RFQ/P. Proposals shall constitute up to Fifty Percent (50%) of the total Respondent evaluation score.
- 4.3 **REQUIREMENTS FOR PROPOSAL:** Respondents shall carefully read the information contained in the following criteria and submit a complete response. Incomplete responses will be considered non-responsive.
- 4.3.1 **CRITERION ONE: RESPONDENT'S SAFETY MANAGEMENT PROGRAM FOR THIS PROJECT:**
- 4.3.1.1 Identify (in separate figures) the percentage of the Construction Cost that is to be included in the Project General Conditions for each of the following pieces of the project safety program:
    - on-site safety education & training
    - personal protective equipment, signage, and hardware
    - first aid and emergency response equipment
    - safety incentives and recognition
    - contingency for post incident drug testing and incident management costs
    - miscellaneous other safety-related expenses (NOTE: DO NOT LIST items that will appear elsewhere in the Project's General Conditions; office equipment, salaries, etc.)
- 4.3.2 **CRITERION TWO: RESPONDENT'S PRICING AND DELIVERY PROPOSAL:**  
Complete the attached "Pricing and Delivery Proposal" form.

**RESPONDENT'S PRICING AND DELIVERY PROPOSAL**

Proposal of: \_\_\_\_\_  
(Respondent's Company Name)

To: Brian McCall, Ph.D.  
Chancellor  
Texas State University System  
Austin, Texas

Project Name: **RFQ/P for Construction Manager-At-Risk for Commercial Driver Education and Examination Center at Lamar State College-Port Arthur.**

RFQ/P No.: **758-22-04016**  
EDA Grant No.: **08-79-05460**

Having carefully examined all the requirements of this RFQ/P, the proposed form of Contract, and any attachments to them, the undersigned proposes to furnish Construction Manager-At-Risk services as required for this Project on the following terms:

4.3.2.1 ESTABLISHMENT OF THE CONSTRUCTION MANAGER'S BUDGET LIMITATION: The Owner has established a Construction Cost Limitation (CCL) amount for the project of **Four Million Dollars (\$4,000,000)** which includes a construction manager contingency commensurate with the current stage of project development. This is the Owner's current target for the Guaranteed Maximum Price ("GMP") for the project.

4.3.2.2 RESPONDENT'S PRE-CONSTRUCTION PHASE FEE: The Respondent shall identify a Pre-Construction Phase Fee, pursuant to Article 5 of the Contract.

\$ \_\_\_\_\_

4.3.2.3 RESPONDENT'S CONSTRUCTION PHASE FEE: Using the Anticipated GMP identified above, the Respondent shall identify a Construction Phase Fee percentage, pursuant to Article 14 of the Agreement:

Respondent's Proposed Construction Phase  
Fee **Percentage**: \_\_\_\_\_ %

Respondent's Equivalent Estimated Construction  
Phase Fee **Amount** (*percentage times the  
anticipated GMP above*): \$ \_\_\_\_\_

4.3.2.4 RESPONDENT'S NOT-TO-EXCEED GENERAL CONDITIONS COSTS: Using the Project Planning Schedule, the Respondent shall identify a General Conditions not-to-exceed percentage amount as defined by Article 13 and Exhibit C of the Agreement and the Owner's Uniform General Conditions for Construction Contracts.

Respondent's Proposed General Conditions **Percentage:** \_\_\_\_\_ %

Respondent's Equivalent Estimated General Conditions **Amount** (percentage times the anticipated GMP above): \$ \_\_\_\_\_

Additional fees or services required by any business policies adopted by a Respondent that are not specifically identified in Attachment A (attached) shall be included in the fee proposed in Section 4.3.2.3.

**Total Construction Duration** (Notice to Proceed for Construction: 07/11/2022, to Substantial Completion: 03/10/2023): **242 Days / 8 Months.**

4.3.2.5 **LIQUIDATED DAMAGES:** Liquidated Damages as defined by the Contract are set at: Five Hundred Dollars (\$500) per calendar day.

4.3.2.6 Using the not-to-exceed General Conditions costs identified above, the Respondent shall identify all project management, bonds, insurance, field office and office supply costs for the Project as listed below:

Allowable General Condition Line Item Category		Estimated Total Cost	
On-Site Project Management Staff		subtotal	
Bonds and Insurance		subtotal	\$
Temporary Project Utilities		subtotal	\$
Field Offices & Office Supplies		subtotal	\$
Estimated On-Site Project Management Staff and Rates			
Position	Quantity	Months	Monthly Salary Rate
Project Executive			\$
Project Manager			\$
Superintendent(s)			\$
Assistant Superintendent(s)			\$
Project Engineer/Expeditors(s)			\$
Field/Office Engineer(s)			\$
Field Office Support Staff			\$
CPM Scheduler			\$
Safety Coordinator/Assistant(s)			\$
<b>TOTAL:</b>			<b>\$</b>

\*WHEN THE DESIGNATED POSITION IS UTILIZED LESS THAN FULL TIME FOR THE PROJECT, THE QUANTITY SHALL BE REFLECTED AS A PERCENTAGE OF THE POSITION'S TIME ON THE PROJECT (I.E. 50% TIME UTILIZATION ON THE PROJECT WOULD REFLECT A QUANTITY OF ONE HALF).

4.3.2.7 ADDENDA: Receipt is hereby acknowledged of the following addenda to this RFQ/P (initial if applicable).

Addendum	Initial	Addendum	Initial
No. 1		No. 4	
No. 2		No. 5	
No. 3		No. 6	

4.3.2.8 AWARD OF CONTRACT AND COMMENCEMENT OF SERVICES: The undersigned agrees to execute the Contract after notification that the Respondent has been identified by the Owner as the Respondent with the “best value” Proposal, and to commence services on or before the commencement date stated by the Owner in a Notice to Proceed. The Owner reserves the right to accept or reject any and all Proposals and to waive Proposal irregularities. Proposals shall be valid and not withdrawn for a period of ninety (90) days from the date of opening thereof.

**Respectfully Submitted and Certified By:**

\_\_\_\_\_  
(Respondent's Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Date)

State of Texas Tax Account No. \_\_\_\_\_

**SUBMIT THE ABOVE SEPARATELY FROM THE HUB COMMITMENT LETTER  
AND THE QUALIFICATIONS SUBMITTAL IN A SEALED PACKAGE**

## SECTION 5 – FORMAT FOR STATEMENT OF QUALIFICATIONS AND PROPOSAL

### 5.1 GENERAL INSTRUCTIONS:

- 5.1.1 Qualifications and Proposal shall be prepared SIMPLY AND ECONOMICALLY, providing a straightforward, CONCISE description of the Respondent's ability to meet the requirements of this RFQ/P. Emphasis shall be on the QUALITY, completeness, clarity of content, responsiveness to the requirements, and an understanding of Owner's needs.
- 5.1.2 Qualifications and Proposal shall each be a MAXIMUM OF FIFTY (50) PRINTED PAGES (25 sheets printed double-sided or 50 sheets single-sided). The cover, table of contents, divider sheets, HCL (Section 1.13), Attachment E, and Execution of Offer do not count as printed pages.
- 5.1.3 Respondents shall carefully read the information contained in this RFQ/P and submit a complete response to all requirements and questions as directed. Incomplete Qualifications, Proposal and/or HCL will be considered non-responsive and subject to rejection.
- 5.1.4 Qualifications, Proposal and/or HCL and any other information submitted by Respondents in response to this RFQ/P shall become the property of the Owner.
- 5.1.5 Qualifications, Proposal and/or HCL that are qualified with conditional clauses, alterations, and/or items not called for in the RFQ/P documents, or irregularities of any kind are subject to rejection by the Owner, at its option.
- 5.1.6 The Owner makes no representations of any kind that an award will be made as a result of this RFQ/P. The Owner reserves the right to accept or reject any or all Qualifications, Proposals, and/or HCLs, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFQ/P when deemed to be in Owner's best interest.
- 5.1.7 Qualifications shall consist of responses to questions identified in Section 3 of the RFQ/P. The Proposal shall consist of responses to questions identified in Section 4 of the RFQ/P. It is not necessary to repeat the question in Sections 3 and 4; however, it is essential to reference the question numbers with the corresponding response.
- 5.1.8 Failure to comply with all requirements contained in this RFQ/P may result in the rejection of the Qualifications, Proposal, and/or HCL.

### 5.2 PAGE SIZE, BINDING, DIVIDERS AND TABS:

- 5.2.1 Qualifications, Proposal and HCL shall be printed on letter-size (8-1/2" x 11") paper and assembled with spiral-type bindings or staples. DO NOT USE METAL-RING HARD COVER BINDERS.
- 5.2.2 Additional attachments shall NOT be included with the Qualifications, Proposal or HCL. Only the responses provided by the Respondent to the questions identified in Sections 3 and 4 of this RFQ/P will be used by the Owner for evaluation.
- 5.2.3 Separate and identify each criterion response to Sections 3 and 4 of this RFQ/P by use of a divider sheet with an integral tab for ready reference.

- 5.3 TABLE OF CONTENTS: Submittals shall include a “Table of Contents” with page numbers for each page of each submittal (Qualifications and Proposal).
- 5.4 PAGINATION: Number all pages of the submittal sequentially using Arabic numbers (1, 2, 3, etc.)
- 5.5 SUBMISSION PACKAGING: The Owner is requiring that the Qualifications, Proposal and HCL be submitted at the same time, but in separate, sealed packages.

- **END OF REQUEST FOR QUALIFICATIONS / PROPOSALS** -



## **ATTACHMENT A**

### **ALLOWABLE GENERAL CONDITION LINE ITEMS**

#### **On-Site Project Management Staff**

Safety Coordinator/Assistant(s)  
Project Executive  
Office Engineer(s)  
Project Expeditor(s)  
Assistant Superintendent(s)

CPM Scheduler  
Superintendent(s)  
Project Manager(s)  
Project Support Staff  
Out-of-State Project Specific Travel\*

#### **Bonds and Insurance**

Builder's Risk Insurance  
General Liability Insurance  
Payment and Performance Bonds  
Other Project Insurance as Required by Contract

#### **Temporary Project Utilities**

Non-LEED Recycling Dumpsters  
  
Project Electricity  
Monthly Telephone / Internet Service  
Street Rental and Barricades  
Fencing and Covered Walkways  
Temporary Water Distribution and Meters  
Temporary Electrical Distribution and Meters  
Site Erosion Control (BMP) and Project Entrance(s)

Project Water, Ice and Supplements to prevent dehydration  
Temporary Toilets  
Temporary Fire Protection  
Telephone / Internet System Installation

#### **Field Offices & Office Supplies**

Partnering Costs  
Job Photos/Videos  
Project Specific Signage  
Postage/Special Shipping  
Project/As-Built (Record) Drawings  
Project Milestone Event(s)\*  
Move-In/Out and Office Setup  
Employee Identification System  
Small Tools and Storage Trailers  
Monthly Office Trailer Rental Costs  
Mobilization and Demobilization (Equipment Only)

First Aid Supplies  
Reproduction Services  
Monthly Office Supplies  
Remote Parking Expenses  
Project Reference Manuals  
Security System/Watchman  
Safety Material and Equipment  
Drinking Water and Accessories(including Ice)  
Office Clean-Up/Janitorial Services  
Field Engineering

\* Specific justification and all estimated costs shall be submitted and approved by the Owner prior to any travel or event.

## **END OF ATTACHMENT 1**

## **ATTACHMENT B**

### **EXHIBIT F CM'S PERSONNEL AND MONTHLY SALARY RATES**

Project No. & Name: \_\_\_\_\_ - \_\_\_\_\_  
[CM - Insert Project No.] [CM - Insert Project Name]

*The following Monthly Salary Rate (MSR) shall identify the estimated billable rate prior to execution of the Contract, and shall be confirmed during the Guaranteed Maximum Price Proposal phase for use throughout Construction Phase Services on the Standard Schedule of Values Format for all salaried General Conditions type personnel pursuant to the Contract. The MSR shall include the employee's estimated monthly direct salary expense (including possible future salary increases), plus any employer payroll taxes and/or fringe benefit contributions as identified below. Any additional employer contributions not identified below shall be included in the Construction Phase Fee pursuant to Article 15 of the Contract.*

Employee		Estimated Employer's Monthly Contributions						Monthly Salary Rate
Name and Title	Estimated Monthly Direct Salary Expense	Federal & State Unemployment (Less than 1%)	Social Security & Medicare (Less than 7.65%)	Worker's Compensation	Health & Insurance	Pension / 401(k)	Vacation / Holiday	
1.	\$	\$	\$	\$	\$	\$	\$	\$
2.	\$	\$	\$	\$	\$	\$	\$	\$
3.	\$	\$	\$	\$	\$	\$	\$	\$
4.	\$	\$	\$	\$	\$	\$	\$	\$
5.	\$	\$	\$	\$	\$	\$	\$	\$
6.	\$	\$	\$	\$	\$	\$	\$	\$
7.	\$	\$	\$	\$	\$	\$	\$	\$
8.	\$	\$	\$	\$	\$	\$	\$	\$
9.	\$	\$	\$	\$	\$	\$	\$	\$
10.	\$	\$	\$	\$	\$	\$	\$	\$
11.	\$	\$	\$	\$	\$	\$	\$	\$
12.	\$	\$	\$	\$	\$	\$	\$	\$

**CM shall certify, to the best of his knowledge, that the above referenced salary information is accurate.**

**CM signature:** \_\_\_\_\_ (same individual who signs contract)

### **END OF ATTACHMENT 2**

## Attachment C

*With your RFQ/P submit, a Letter of HUB Commitment, see sample letter below, and include how your firm will participate and demonstrate a good faith effort in achieving the College's HUB goals. Provide recent examples where your firm has met or exceeded HUB goals on previous projects.*

*(BUSINESS LETTERHEAD)*

SAMPLE

Letter of HUB Commitment for RFQ/P for Construction Manager-At-Risk

*Date*

Maria D. Garcia, Director of Purchasing and Contracts  
Lamar State College-Port Arthur  
1501 Procter Street, Business Office, Room No. 117  
Port Arthur, Texas 77641

Re: Historically Underutilized Business Plan for Commercial Driver Education Center  
for Lamar State College-Port Arthur, Port Arthur, Texas  
Project Number 758-22-04016  
EDA Grant No. 08-79-05460

Dear Ms. Garcia:

In accordance with the requirements outlined in the specification section 1.13 "HISTORICALLY UNDERUTILIZED BUSINESSES SUBMITTAL REQUIREMENTS" I am pleased to forward this HUB Commitment letter as an integral part of our proposal in connection with your invitation for request for this proposal.

I have read and understand the State of Texas' policy on Utilization of Historically Underutilized Businesses (HUBs).

If awarded this contract, we understand that we will be required to attend a meeting with the College's HUB coordinator to discuss HSP requirements in soliciting for subsequent subcontractors for this project. Good Faith Effort will be documented and will contain a completed HUB Subcontracting Plan for each subcontracting opportunity.

Documentation of subcontracted work will be provided with each pay request on the Monthly Progress Assessment Report.

Sincerely,

*Contractor's Name*

**U. S. DEPARTMENT OF COMMERCE  
ECONOMIC DEVELOPMENT ADMINISTRATION**



**EDA CONTRACTING PROVISIONS  
FOR CONSTRUCTION PROJECTS**

These EDA Contracting Provisions for Construction Projects (EDA Contracting Provisions) are intended for use by recipients receiving federal assistance from the U. S. Department of Commerce - Economic Development Administration (EDA). They contain provisions specific to EDA and other federal provisions not normally found in non-federal contract documents. The requirements contained herein must be incorporated into all construction contracts and subcontracts funded wholly or in part with federal assistance from EDA.

## **TABLE OF CONTENTS**

1. Definitions
2. Applicability
3. Federally Required Contract Provisions
4. Required Provisions Deemed Inserted
5. Inspection by EDA Representatives
6. Examination and Retention of Contractor's Records
7. Construction Schedule and Periodic Estimates
8. Contractor's Title to Material
9. Inspection and Testing of Materials
10. "OR EQUAL" Clause
11. Patent Fees and Royalties
12. Claims for Extra Costs
13. Contractor's and Subcontractor's Insurance
14. Contract Security Bonds
15. Labor Standards - Davis-Bacon and Related Acts
16. Labor Standards - Contract Work Hours and Safety Standards Act
17. Equal Employment Opportunity
18. Contracting with Small, Minority and Women's Businesses
19. Health, Safety and Accident Prevention
20. Conflict of Interest and Other Prohibited Interests
21. New Restrictions on Lobbying
22. Historical and Archaeological Data Preservation
23. Clean Air and Water
24. Use of Lead-Based Paints on Residential Structures
25. Energy Efficiency
26. Environmental Requirements
27. Debarment, Suspension, Ineligibility and Voluntary Exclusions
28. EDA Project Sign
29. Buy America

## 1. **DEFINITIONS**

*Agreement* – The written instrument that is evidence of the agreement between the Owner and the Contractor overseeing the Work.

*Architect/Engineer* - The person or other entity engaged by the Recipient to perform architectural, engineering, design, and other services related to the work as provided for in the contract.

*Contract* – The entire and integrated written agreement between the Owner and the Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

*Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

*Contractor* – The individual or entity with whom the Owner has entered into the Agreement.

*Drawings or Plans* – That part of the Contract Documents prepared or approved by the Architect/Engineer that graphically shows the scope, extent, and character of the Work to be performed by the Contractor.

*EDA* - The United States of America acting through the Economic Development Administration of the U.S. Department of Commerce or any other person designated to act on its behalf. EDA has agreed to provide financial assistance to the Owner, which includes assistance in financing the Work to be performed under this Contract. Notwithstanding EDA's role, nothing in this Contract shall be construed to create any contractual relationship between the Contractor and EDA.

*Owner* – The individual or entity with whom the Contractor has entered into the Agreement and for whom the Work is to be performed.

*Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

*Recipient* – A non-Federal entity receiving a Federal financial assistance award directly from EDA to carry out an activity under an EDA program, including any EDA-approved successor to the entity.

*Specifications* – That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

*Subcontractor* – An individual or entity having direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

*Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## 2. **APPLICABILITY**

The Project to which the construction work covered by this Contract pertains is being assisted by the United States of America through federal assistance provided by the U.S. Department of Commerce - Economic Development Administration (EDA). Neither EDA, nor any of its departments, entities, or employees is a party to this Contract. The following EDA Contracting Provisions are included in this Contract and all subcontracts or related instruments pursuant to the provisions applicable to such federal assistance from EDA.

## 3. **FEDERALLY REQUIRED CONTRACT PROVISIONS**

(a) All contracts in excess of the simplified acquisition threshold - currently fixed at \$150,000 (*see* 41 U.S.C. §§ 134 and 1908) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(b) All contracts in excess of \$10,000 must address termination for cause and for convenience by the Recipient including the manner by which it will be effected and the basis for settlement.

(c) All construction contracts awarded in excess of \$10,000 by recipients of federal assistance and their contractors or subcontractors shall contain a provision requiring compliance with Executive Order 11246 of September 24, 1965, *Equal Employment Opportunity*, as amended by Executive Order 11375 of October 13, 1967, and Department of Labor implementing regulations at 41 C.F.R. part 60.

(d) All prime construction contracts in excess of \$2,000 awarded by Recipients must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148) as supplemented by Department of Labor regulations at 29 C.F.R. part 5. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) as supplemented by Department of Labor regulations at 29 C.F.R. part 3.

(e) All contracts awarded by the Recipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704 (the Contract Work Hours and Safety Standards Act) as supplemented by Department of Labor regulations at 29 C.F.R. part 5.

(f) All contracts must include EDA requirements and regulations that involve a requirement on the contractor or sub-contractor to report information to EDA, the Recipient or any other federal agency.



- (g) All contracts must include EDA requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- (h) All contracts must include EDA requirements and regulations pertaining to copyrights and rights in data.
- (i) All contracts and subgrants in excess of \$150,000 must contain a provision that requires compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1251 *et seq.*), and Executive Order 11738, *Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans*.
- (j) Contracts must contain 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 (42 U.S.C. § 6201).
- (k) Contracts must contain a provision ensuring that contracts are not to be made to parties on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180.
- (l) Contracts must contain a provision ensure compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) under which contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- (m) If the Recipient is a state agency or agency of a political subdivision of a state, any contract awarded must contain a provision ensuring compliance with section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), as amended by the Resource Conservation and Recovery Act related to the procurement of recovered materials.

#### 4. **REQUIRED PROVISIONS DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion of correction.

5. **INSPECTION BY EDA REPRESENTATIVES**

The authorized representatives and agents of EDA shall be permitted to inspect all work, materials, payrolls, personnel records, invoices of materials, and other relevant data and records.

6. **EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

(a) The Owner, EDA, or the Comptroller General of the United States, or any of their duly authorized representatives shall, generally until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders that do not exceed \$10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Owner, EDA, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

7. **CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES**

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in a form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due to the Contractor in accordance with the progress schedule. The Contractor also shall furnish the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only to determine the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

8. **CONTRACTOR'S TITLE TO MATERIAL**

No materials, supplies, or equipment for the work shall be purchased by the Contractor or by any subcontractor that is subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants and guarantees that he/she has good title to all work, materials, and equipment used by him/her in the Work, free and clear of all liens, claims, or encumbrances.

9. **INSPECTION AND TESTING OF MATERIALS**

All materials and equipment used in the completion of the Work shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses.

10. **"OR EQUAL" CLAUSE**

Whenever a material, article, or piece of equipment is identified in the Contract Documents by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard. Any material, article, or equipment of other manufacturers and vendors that will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. However, such substitution material, article, or equipment shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

11. **PATENT FEES AND ROYALTIES**

(a) Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Architect/Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents.

(b) To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner and the Architect/Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

12. **CLAIMS FOR EXTRA COSTS**

No claims for extra work or cost shall be allowed unless the same was done in pursuance of a written order from the Architect/Engineer approved by the Owner.

### 13. **CONTRACTORS AND SUBCONTRACTORS INSURANCE**

(a) The Contractor shall not commence work under this Contract until the Contractor has obtained all insurance reasonably required by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved.

(b) Types of insurance normally required are:

- (1) Workmen's Compensation
- (2) Contractor's Public Liability and Property Damage
- (3) Contractor's Vehicle Liability
- (4) Subcontractors' Public Liability, Property Damage and Vehicle Liability
- (5) Builder's Risk (Fire and Extended Coverage)

(c) **Scope of Insurance and Special Hazards:** The insurance obtained, which is described above, shall provide adequate protection for the Contractor and his/her subcontractors, respectively, against damage claims that may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him/her and also against any of the special hazards that may be encountered in the performance of this Contract.

(d) **Proof of Carriage of Insurance:** The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates, and dates of expiration of applicable insurance policies.

### 14. **CONTRACT SECURITY BONDS**

(a) If the amount of this Contract exceeds \$150,000, the Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and also a payment bond in an amount equal to one hundred percent (100%) of the Contract price or in a penal sum not less than that prescribed by State, Territorial, or local law, as security for the payment of all persons performing labor on the Work under this Contract and furnishing materials in connection with this Contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law. Before final acceptance, each bond must be approved by EDA. If the amount of this Contract does not exceed \$150,000, the Owner shall specify the amount of the payment and performance bonds.

(b) All bonds shall be in the form prescribed by the Contract Documents except as otherwise provided in applicable laws or regulations, and shall be executed by such sureties as are named in the current list of *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies* as published in Treasury Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's

authority to act. Surety companies executing the bonds must also be authorized to transact business in the state where the Work is located.

15. **LABOR STANDARDS - DAVIS-BACON AND RELATED ACTS**  
**(as required by section 602 of PWEDA)**

(a) **Minimum Wages**

(1) All laborers and mechanics employed or working upon the site of the Work in the construction or development of the Project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act at 29 C.F.R. part 3, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, which is attached hereto and made a part hereof, regardless of any contractual relationship that may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates determined under 29 C.F.R. § 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics to be employed under the Contract, but not listed in the wage determination, shall be classified in conformance with the wage determination. EDA shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(A) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(B) The classification is utilized in the area by the construction industry; and

(C) The proposed wage rate, including any bona fide fringe benefits, bears a

reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and EDA or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by EDA or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and EDA or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), EDA or its designee shall refer the questions, including the views of all interested parties and the recommendation of EDA or its designee, to the Administrator for determination.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(2)(ii) or (iii) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) **Withholding**

EDA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper employed or working on the site of the Work in the construction or development of the Project, all or part of the wages required by the Contract, EDA or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations

have ceased. EDA or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

(c) **Payrolls and basic records**

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work in the construction or development of the Project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, the plan or program is financially responsible, and the plan or program has been communicated in writing to the laborers or mechanics affected, and provide records that show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (i) For each week in which Contract work is performed, the Contractor shall submit a copy of all payrolls to the Owner for transmission to EDA or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose. It may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402; or downloaded from the U.S. Department of Labor's website at <https://www.dol.gov/whd/forms/wh347.pdf>. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(A) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. § 5.5(a)(3)(i) and that such information is correct and complete;

(B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 C.F.R. part 3; and

(C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 15(c)(2)(ii) of this section.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 3729 of Title 31 of the U.S. Code.

(3) The Contractor or subcontractor shall make the records required under paragraph 15(c)(1) of this section available for inspection, copying, or transcription by authorized representatives of EDA or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, EDA or its designee may, after written notice to the Contractor or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.

(d) **Apprentices and Trainees.**

(1) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training (Bureau), or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any



apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) **Trainees.** Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program that has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity

requirements of Executive Order 11246, *Equal Employment Opportunity*, as amended, and 29 C.F.R. part 30.

(e) **Compliance with Copeland Anti-Kickback Act Requirements.** The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States”). The Act provides that the Contractor and any subcontractors shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The Owner shall report all suspected or reported violations to EDA.

(f) **Subcontracts.** The Contractor and any subcontractors will insert in any subcontracts the clauses contained in 29 C.F.R. §§ 5.5(a)(1) through (10) and such other clauses as EDA or its designee may require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. § 5.5.

(g) **Contract termination; debarment.** The breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

(h) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this contract.

(i) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and EDA or its designee, the U.S. Department of Labor, or the employees or their representatives.

(j) **Certification of Eligibility.**

(1) By entering into this Contract, the Contractor certifies that neither it nor any person or firm that has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

(2) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

16. **LABOR STANDARDS - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.

(a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which that person is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) **Violation; liability for unpaid wages, liquidated damages.** In the event of any violation of the clause set forth in paragraph (a) of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) **Withholding for unpaid wages and liquidated damages.** EDA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such Contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (c) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (c) of this section.

17. **EQUAL EMPLOYMENT OPPORTUNITY**

(a) The Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. chapter 60, which is paid for in whole or in part with funds obtained from EDA, the following equal opportunity clause:

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

Economic Development Administration

Contracting Provisions for Construction Projects

RFQ/P for Construction Manager-At-Risk (posted 03/18/2022)

Lamar State College-Port Arthur - Commercial Driver Education and Examination Center

RFQ/P No. 758-22-04016 / EDA Grant No. 08-79-05460

Page No. 47 of 63

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

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

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

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of

this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph 17(a)(1) and the provisions of paragraphs 17(a)(1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as EDA or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by EDA or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(9) The Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally-assisted construction work. Provided, however, that if the Recipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the Contract.

(10) The Recipient agrees that it will assist and cooperate actively with EDA and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish EDA and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist EDA in the discharge of the EDA's primary responsibility for securing compliance.

(11) The Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by EDA or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Recipient agrees that if it fails or refuses to comply with these undertakings, EDA may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this EDA financial assistance; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case

to the Department of Justice for appropriate legal proceedings.

(b) Exemptions to Above Equal Opportunity Clause (41 C.F.R. chapter 60):

(1) Contracts and subcontracts not exceeding \$10,000 (other than Government bills of lading, and other than contracts and subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes) are exempt. The amount of the Contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding \$10,000 for standard commercial supplies or raw materials are exempt.

18. **CONTRACTING WITH SMALL, MINORITY AND WOMEN'S BUSINESSES**

(a) If the Contractor intends to let any subcontracts for a portion of the work, the Contractor shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services.

(b) Affirmative steps shall consist of:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

(4) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises;

(5) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies;

(6) Requiring each party to a subcontract to take the affirmative steps of this section; and

(7) The Contractor is encouraged to procure goods and services from labor surplus area firms.

19. **HEALTH, SAFETY, AND ACCIDENT PREVENTION**

(a) In performing this contract, the Contractor shall:

- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
- (2) Protect the lives, health, and safety of other persons;
- (3) Prevent damage to property, materials, supplies, and equipment; and
- (4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 C.F.R. part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708); and
- (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 C.F.R. part 1904.

(d) The Owner shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the Work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Owner may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as EDA, or the Secretary of Labor shall direct as a means of enforcing such provisions.

20. **CONFLICT OF INTEREST AND OTHER PROHIBITED INTERESTS**

(a) No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof.

(b) No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

(c) The Contractor may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the Contract Documents has a corporate or financial affiliation with the supplier or manufacturer.

(d) The Owner's officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, may be involved. Such a conflict may arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in the Contractor. The Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from the Contractor or subcontractors.

(e) If the Owner finds after a notice and hearing that the Contractor, or any of the Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the Owner or EDA in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, the Owner may, by written notice to the Contractor, terminate this Contract. The Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which the Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.

(f) In the event this Contract is terminated as provided in paragraph (e) of this section, the Owner may pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, the Owner may pursue exemplary damages in an amount (as determined by the Owner) which shall not be less than three nor more than ten times the costs the Contractor incurs in providing any such gratuities to any such officer or employee.



## 21. **RESTRICTIONS ON LOBBYING**

(a) This Contract, or subcontract is subject to 31 U.S.C. § 1352, regarding lobbying restrictions. The section is explained in the common rule, 15 C.F.R. part 28 (55 FR 6736-6748, February 26, 1990). Each bidder under this Contract or subcontract is generally prohibited from using federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this EDA Award.

(b) **Contract Clause Threshold:** This Contract Clause regarding lobbying must be included in each bid for a contract or subcontract exceeding \$100,000 of federal funds at any tier under the EDA Award.

(c) **Certification and Disclosure:** Each bidder of a contract or subcontract exceeding \$100,000 of federal funds at any tier under the federal Award must file Form CD-512, *Certification Regarding Lobbying – Lower Tier Covered Transactions*, and, if applicable, Standard Form-LLL, *Disclosure of Lobbying Activities*, regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the Contractor or subcontractor at the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.

(d) **Continuing Disclosure Requirement:** Each Contractor or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.

(e) **Indian Tribes, Tribal Organizations, or Other Indian Organizations:** Indian tribes, tribal organizations, or any other Indian organizations, including Alaskan Native organizations, are excluded from the above lobbying restrictions and reporting requirements, but only with respect to expenditures that are by such tribes or organizations for lobbying activities permitted by other federal law. An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide EDA with the citation of the provision or provisions of federal law upon which it relies to conduct lobbying activities that would otherwise be subject to the prohibitions in and to the Certification and Disclosure requirements of 31 U.S.C. § 1352, preferably through an attorney's opinion. Note, also, that a non-Indian subrecipient, contractor, or subcontractor under an award to an Indian tribe, for example, is subject to the restrictions and reporting requirements.

## 22. **HISTORICAL AND ARCHAEOLOGICAL DATA PRESERVATION**

The Contractor agrees to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction. Any excavation by the Contractor that uncovers an historical or archaeological artifact shall be immediately reported to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the State Historic

Preservation Officer (SHPO) for recovery of the items. *See* the National Historic Preservation Act of 1966 (54 U.S.C. § 300101 *et seq.*, formerly at 16 U.S.C. § 470 *et seq.*) and Executive Order No. 11593 of May 31, 1971.

23. **CLEAN AIR AND WATER**

Applicable to Contracts in Excess of \$150,000

(a) **Definition.** “Facility” means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the United States Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

(b) In compliance with regulations issued by the EPA, 2 C.F.R. part 1532, pursuant to the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); and Executive Order 11738, the Contractor agrees to:

(1) Not utilize any facility in the performance of this contract or any subcontract which is listed on the Excluded Parties List System, part of the System for Award Management (SAM), pursuant to 2 C.F.R. part 1532 for the duration of time that the facility remains on the list;

(2) Promptly notify the Owner if a facility the Contractor intends to use in the performance of this contract is on the Excluded Parties List System or the Contractor knows that it has been recommended to be placed on the List;

(3) Comply with all requirements of the Clean Air Act and the Federal Water Pollution Control Act, including the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all applicable clean air and clean water standards; and

(4) Include or cause to be included the provisions of this clause in every subcontract and take such action as EDA may direct as a means of enforcing such provisions.

24. **USE OF LEAD-BASED PAINTS ON RESIDENTIAL STRUCTURES**

(a) If the work under this Contract involves construction or rehabilitation of residential structures over \$5,000, the Contractor shall comply with the Lead-based Paint Poisoning Prevention Act (42 U.S.C. § 4831). The Contractor shall assure that paint or other surface coatings used in a residential property does not contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight. For purposes of this section, “residential property” means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not

including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

- (b) As a condition to receiving assistance under PWEDA, recipients shall assure that the restriction against the use of lead-based paint is included in all contracts and subcontracts involving the use of federal funds.

25. **ENERGY EFFICIENCY**

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201) for the State in which the Work under the Contract is performed.

26. **ENVIRONMENTAL REQUIREMENTS**

When constructing a Project involving trenching and/or other related earth excavations, the Contractor shall comply with the following environmental constraints:

- (1) **Wetlands.** When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert wetlands.
- (2) **Floodplains.** When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency (FEMA) Floodplain Maps, or other appropriate maps, i.e., alluvial soils on Natural Resource Conservation Service (NRCS) Soil Survey Maps.
- (3) **Endangered Species.** The Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of the Contractor, the Contractor will immediately report this evidence to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the U.S. Fish and Wildlife Service.

27. **DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSIONS**

As required by Executive Orders 12549 and 12689, *Debarment and Suspension*, 2 C.F.R. Part 180 and implemented by the Department of Commerce at 2 C.F.R. part 1326, for prospective participants in lower tier covered transactions (except subcontracts for goods or services under the \$25,000 small purchase threshold unless the subrecipient will have a critical influence on or substantive control over the award), the Contractor agrees that:

- (1) By entering into this Contract, the Contractor and subcontractors certify, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared

Economic Development Administration

Contracting Provisions for Construction Projects

RFQ/P for Construction Manager-At-Risk (posted 03/18/2022)

Lamar State College-Port Arthur - Commercial Driver Education and Examination Center

RFQ/P No. 758-22-04016 / EDA Grant No. 08-79-05460

Page No. 55 of 63

ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

(2) Where the Contractor or subcontractors are unable to certify to any of the statements in this certification, the Contractor or subcontractors shall attach an explanation to this bid.

*See also 2 C.F.R. part 180 and 2 C.F.R. § 200.342.*

28. **EDA PROJECT SIGN**

The Contractor shall supply, erect, and maintain in good condition a Project sign according to the specifications provided by EDA. To the extent practical, the sign should be a free standing sign. Project signs shall not be located on public highway rights-of-way. Location and height of signs will be coordinated with the local agency responsible for highway or street safety in the Project area, if any possibility exists for obstructing vehicular traffic line of sight. Whenever the EDA site sign specifications conflict with State law or local ordinances, the EDA Regional Director will permit such conflicting specifications to be modified so as to comply with State law or local ordinance.

29. **BUY AMERICA**

To the greatest extent practicable, contractors are encouraged to purchase American-made equipment and products with funding provided under EDA financial assistance awards.

## CERTIFICATION REGARDING LOBBYING LOWER TIER COVERED TRANSACTIONS

Applicants should review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 28, "New Restrictions on Lobbying."

### LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

In any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

**As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.**

NAME OF APPLICANT

AWARD NUMBER AND/OR PROJECT NAME

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE

**NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION  
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY  
(EXECUTIVE ORDER 11246 AND 41 CFR PART 60-4)**

**Attachment F**

The following Notice shall be included in, and shall be a part of all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000.

The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

<b>Timetables</b>	<b>Goals for minority participation for each trade</b>	<b>Goals for female participation for each trade</b>
	<b>%</b>	<b>6.9%</b>

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is:

State of \_\_\_\_\_

County of \_\_\_\_\_

City of \_\_\_\_\_

## **Attachment G**

### Project Scope Summary



**SITE PLAN AND BUILDING PLACEMENT ON THE SITE:** The existing site consists of 23.69 acres of land located on FM 3514 in Jefferson County. This facility features a LSCPA monument sign with manual rolling gates, bollards, and approximately 287,600 square feet (6.5 acres) of rolled concrete with painted striping. The use of rolled concrete is custom-built for truck driver training and allows for higher compressive strength (psi) over traditional poured concrete reinforced with rebar all while saving costs and reducing construction time. The site features painted striping and bollards needed to operate a truck properly and safely for real-world truck driving skills such as backing, turning, and hooking/unhooking an industry standard 53-foot trailer. There are six lanes for the trucks to park and four lanes for the testing areas with turning radius designed for the commercial trucks. The site drains any excess rainwater to the southeast portion of the site with a 10' wide drainage swale and 24" culverts. Onsite parking and lighting are provided.

**BUILDING FLOOR PLAN AND SPACE LAYOUT:** Spaces at the Classroom building can be broken down into the following functions: classrooms, a testing lab, administrative offices, storage areas, a student lounge, dedicated men's and women's restrooms. There are two classrooms with support for projectors, with each room housing up to twenty-four students and a testing lab for up to twenty students with two teachers in each room. The student lounge features tables with seating and a countertop for students to rest with window views to the outside. The Office building serves as a space for the examiner bullpen with a restroom, janitor's closet, and an IT closet. The office building is adjacent to the two 100' wide lanes used as testing areas for the truck drivers. The examiner bullpen space seats up to 11 examiners with window views and direct access to the outside covered sidewalk where truck drivers dock in one of the four restricted entrance lanes leading up to the testing areas.

**EXTERIOR MATERIALS:** The new Classroom and Office buildings consist of Pre-Engineered Metal Building with metal panels, windows, standing metal seam roofs, and canopy systems to shield the people from outdoor weather elements. The exterior design uses prominent exterior design elements that highlight the interior space functionality and respects the

**Attachment G**  
Project Scope Summary

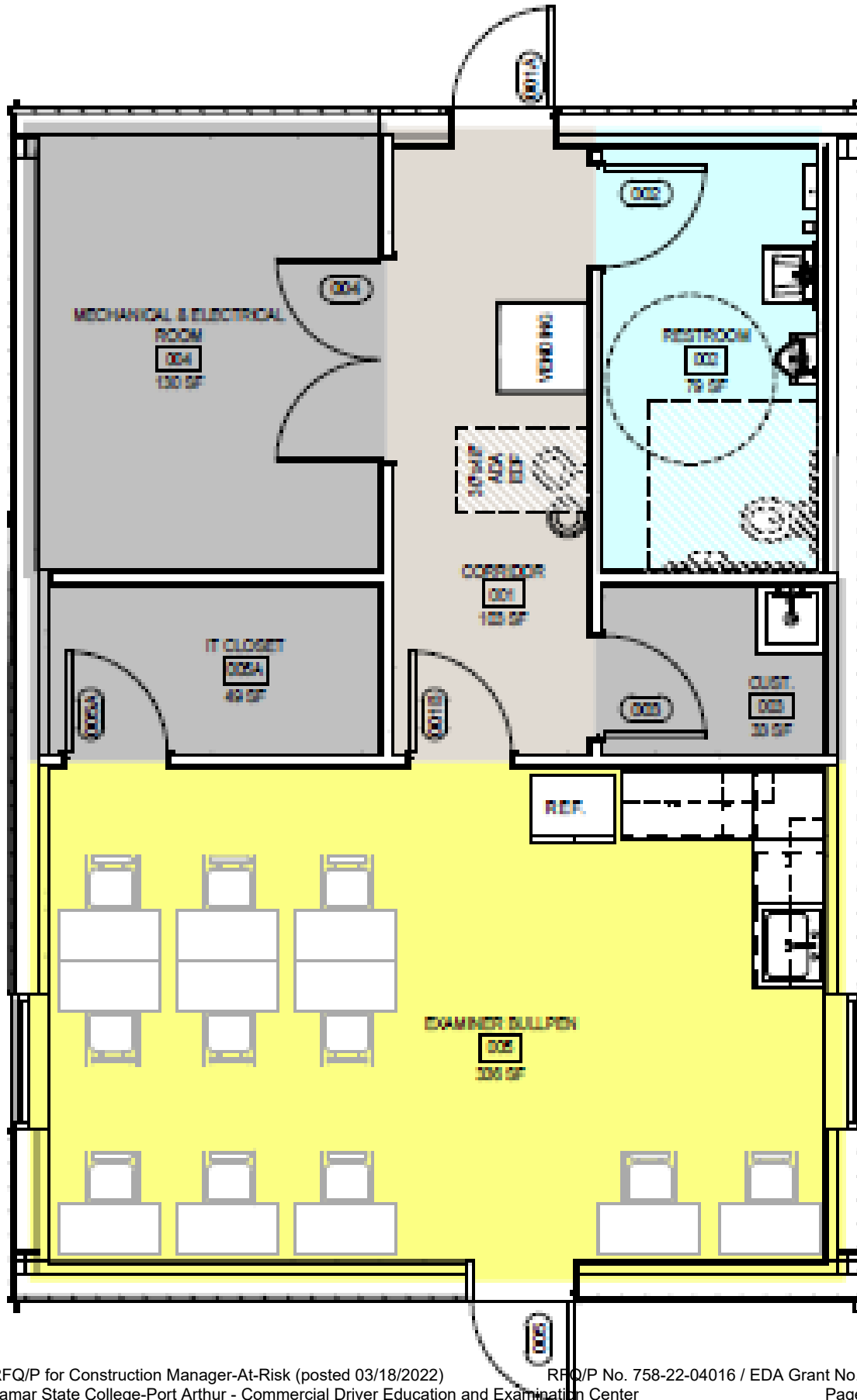
prominent campus materials. The overall design is meant to be functional, purposefully simple, and provides an engaging building through its function and use of materials.

**INTERIOR MATERIALS:** The Commercial Driver Education and Examination Center is a training and examination center thus will have materials that mimic such functional spaces, such as exposed under roof structure, painted and bold way-finding graphics, exposed concrete flooring, porcelain tile, and neutral with accent paint colors utilized throughout. All chosen materials are durable, easily maintained. LED lighting has been selected to provide appropriate lighting for selected unconditioned space-to-volume areas down to ambient light and task light to the offices as required.





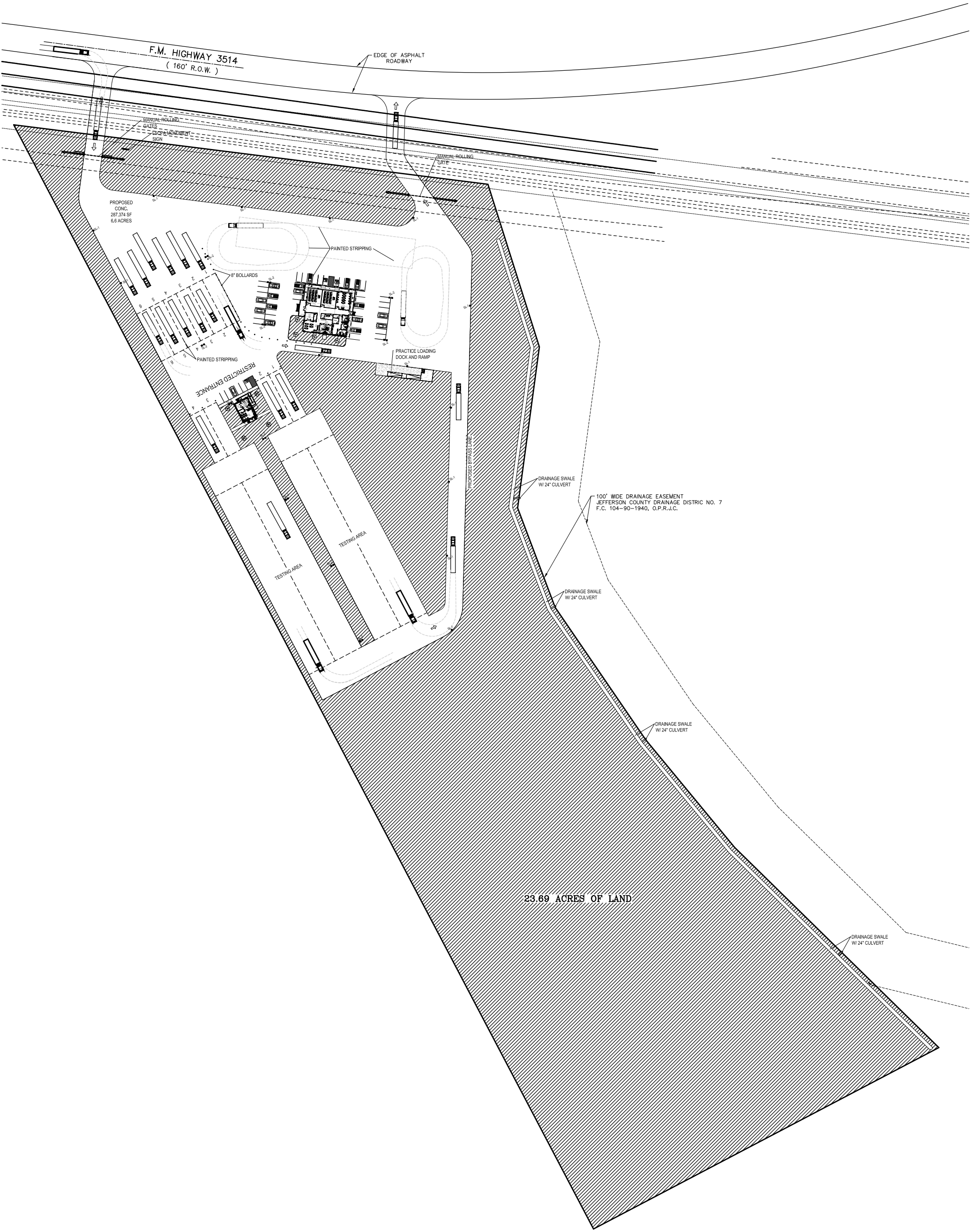
**Attachment G**  
Project Scope Summary



**Attachment G**  
**Project Scope Summary**



**Attachment G**  
Project Scope Summary



# **Addendum No. 1**

**Issued March 30, 2022**

**REQUEST FOR QUALIFICATIONS & PROPOSALS  
FOR  
CONSTRUCTION MANAGER-AT-RISK  
FOR  
LAMAR STATE COLLEGE-PORT ARTHUR  
PORT ARTHUR, TEXAS**

**COMMERCIAL DRIVER  
EDUCATION AND EXAMINATION  
CENTER**

**RFQ/P No.:**

**758-22-04016**

**EDA Grant No.**

**08-79-05460**

**Submission Date:**

**~~April 12, 2022 – 2:00 p.m. (C.D.T.)~~**

**April 14, 2022 – 2:00 p.m. (C.D.T.)**

**Notice To All Respondents:**

The following is Addendum No. 1 to the Request for Qualifications/Proposals (RFQ/P)  
ESBD Posting No. 758-22-04016 was posted on March 18, 2022

**Prepared By:**

Peter Maass, Director of Capital Projects Administration  
The Texas State University System  
601 Colorado Street  
Austin, TX 78701 - 512-463-1808  
Peter.Maass@tsus.edu

**I. GENERAL:**

**A.** The Mandatory Pre-Proposal Conference was held on March 24, 2022, at the Student Center Building location. The Attendance Sign-In Sheets are included as part of this Addendum along with the questions and answers presented in response to this solicitation:

**1.** **Question:** I'm looking at the RFQ 758-22-04016 for the Commercial Driver Education and examination center. I don't see any of the HVAC spelled out in the RFQ will this be on separate RFQ or will it be including in this project?

**Answer:** Prospective Respondents are reminded that this solicitation is for Construction Manager-at-Risk (CMR) Services. The successful Respondent will be required to review construction documents that are currently underway, provide their constructability review of the design, and provide cost estimates of the design. Through that process, HVAC systems will be evaluated, and final selections identified. As of the date of this Addendum, HVAC systems are composed of direct expansion refrigerant coils with air cooled condensing units, both electrically driven. The direct expansion coils are located in air handling units inside the buildings and extract the heat generated inside the building or being absorbed as skin load. The coils and the condensing units are part of a closed loop refrigerant system with heat transferred to the outdoors by means of the air-cooled condensing units. The indoor units provide primary air distribution through sheet metal ductwork, from the air handler to Variable Air Volume (VAV) boxes. Individual thermal zones like classrooms, conference rooms, or group of offices are proposed. Air returns back to the unit, through the return air plenums.

**B.** Page 6 of 63, SECTION 1.5.2 DEADLINE AND LOCATION: **The Submittal deadline has been extended to April 14, 2022. The time and location remain unchanged.** This date change is also made to the following Sections:

- 1.** Cover Sheet
- 2.** Section 2.5.4
- 3.** Section 2.5.5

**Attachments:**

- (1) Pre-Submittal Attendance Sign-In Sheets

- **END OF ADDENDUM NO. 1** -

**Lamar State College Port Arthur**

**RFQ/P # 758-22-04016**

**Commercial Driver Education and Examination Center**

**EDA Grant No.: 08-79-05460**

**Mandatory Walkthrough: Thursday, March 24, 2022 @ 2 pm**

**Student Center 4<sup>th</sup> Floor Conference Room**

Company	Name	Phone	E-mail
SEDAECO Construction	Logan Maloney	682-816-5072	lmaloney@sedalco.com
ALLCO, LLC	ED MENCHACA FOR J. PING	860-4459 979-820-1007	jping@allco.com
McInnis Construction	Daniel Hess	409-385-5767	daniel@mcinnisprojects.com
N+T Construction	Elaine Gabbia Eduardo Gabbia	409 813 8592	cgabbia@nandtconstruction.com

Lamar State College Port Arthur

RFQ/P # 758-22-04016

Commercial Driver Education and Examination Center

EDA Grant No.: 08-79-05460

Mandatory Walkthrough: Thursday, March 24, 2022 @ 2 pm

Student Center 4<sup>th</sup> Floor Conference Room

Company	Name	Phone	E-mail
O'Donnell/Snijder Construction	Sean Brown	281.839.8383	bbrown@ ODONNELL-SNIJDER .COM
SETEX CONSTRUCTION CORP.	NATHAN RIVERS	409.842.8181	nathan@ setexconstruction.com
Spaw Glass	Jerry Vandervoort	832-473-0653	Jerry.Vandervoort@ Spauglass.com
Nance	Jacob Johnson	409-835-0987 M 409-550-7081	J. Johnson @Nanceinternational .COM

Lamar State College Port Arthur

RFQ/P # 758-22-04016

Commercial Driver Education and Examination Center

EDA Grant No.: 08-79-05460

Mandatory Walkthrough: Thursday, March 24, 2022 @ 2 pm

Student Center 4<sup>th</sup> Floor Conference Room

Company	Name	Phone	E-mail
Nance International	Eddie Byrd	409-460-1056	e.byrd @ Nance International natl.com
Nance International	Jacquetta Walker	409-550-3100	j.walker @ Nance International com
PDG ARCHITECTS	Tom DEARBORN	713-629-6100	TVDEARBORN @ PDGARCHITECTS.COM
" "	ALEJANDRO COLON	713-629-6100	ACOLON @ PDGARCHITECTS.COM