



Purchasing Services
Post Office Box 2570
Waco, Texas 76702-2570
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E-mail: jodyc@ci.waco.tx.us
www.waco-texas.com

CITY OF WACO
REQUEST FOR BIDS
RFB 2012-009

COMPETITIVE SEALED BID

INVITATION COVER SHEET

Commodity/Service: **Diesel Fuel**
Pre-bid Meeting: **3:00 P.M. CST, January 20, 2012**
Closing Time: **3:00 PM CST, January 27, 2012**
Opening Time: **3:01 PM CST, January 27, 2012**
Pre-bid Meeting Location: Operations Center, Purchasing Services Office, 1415 N. 4th St., Waco, Texas 76707
RFB Opening Location: Operations Center, Purchasing Services Office, 1415 N. 4th St., Waco, Texas 76707
For Information Contact: **Jody Copp, 254-750-8062**

Bid packet and other supportive documents can be found at the [City of Waco Purchasing website](#), [Demandstar](#) or the [Electronic State Business Daily](#).

TO BE COMPLETED BY SUBMITTER

Firm: _____

Address: _____

County: _____

Signature of Person Authorized to Sign Bid: _____

Signor's Name and Title (print or type): _____

Date: _____, Telephone: _____, Fax: _____

E-mail: _____

Federal Tax ID#: _____

BID PACKAGE INDEX

This invitation includes the following documents: *(Pages that MUST be returned with bid)

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PROCESS, ANTICIPATED AWARD SCHEDULE

<u>Activity</u>	<u>Projected Date</u>
Advertise RFB	January 12, 2012
Pre-bid Meeting	January 20, 2012
Bid Due Date	January 27, 2012
City Council Action	February 21, 2012
Notice of Award	February 22, 2012

The schedule of events is tentative and may be modified throughout the RFB process as events unfold.

WHOM TO CONTACT WITH QUESTIONS

Questions concerning the RFB should be submitted to the following:

RFB Administrator

Jody Copp
 City of Waco – Purchasing Department
 1415 N. 4th St.
 Waco, Texas 76707
 Phone: (254) 750-8062
 Fax: (254) 750-8063
 E-mail: jodyc@ci.waco.tx.us

QUESTION DEADLINE

All questions **must be** received by **5:00 PM on January 20, 2012** to allow time for answers and an Addendum if warranted. Questions **must be** submitted in writing. E-mails will be considered written requests if addressed to the RFB Administrator.

HOW TO PACKAGE YOUR BID

One (1) clearly marked “Original” **MUST be submitted and either one (1) copy or one (1) CD** of the bid must be submitted: (1) inside a sealed envelope (2) clearly marked on the outside with the bid number, bid opening date, and “**SEALED BID FOR RFB 2012-009 Diesel Fuel**”. **If a CD is submitted in lieu of 1 copy, the file MUST include all signatures or the bid will be considered incomplete!** An Adobe .PDF file is recommended, but not required. Bids may be mailed or hand delivered to:

Via US Mail:	Via Delivery Services:
City of Waco Purchasing Services P.O. Box 2570 Waco, Texas 76702-2570 ATTN: JODY COPP Note: Bids must arrive in Purchasing, to be date and time stamped, before the closing date and time. Mail early to allow for delays in delivery.	City of Waco Operations Center Purchasing Services Office 1415 N. 4 th St. Waco, Texas 76707 ATTN: JODY COPP Note: US Mail does NOT deliver to this street address.

WHAT IS NOT ACCEPTED

A bid or proposal submitted by facsimile transmission (fax) or by electronic mail (email) **will NOT** be accepted. A bid or proposal submitted or postmarked **AFTER** the deadline for submitting a bid (as stated above) will **NOT** be considered under any circumstances and will be returned unopened to the submitter.

NOTICE OF PRE-BID MEETING

A pre-bid meeting will be held at the time and location indicated below to discuss and/or clarify the requirements of the bid request:

RFP Invitation No: 2011-009
Commodity/Service: Diesel Fuel
Location: City of Waco Operations Center
Conference Room
1415 N. 4th Street
Waco, Texas
Time: 3:00 P.M.
Date: January 20, 2012

**Deadline for technical questions is
5:00 p.m., January 20, 2012**

GENERAL SPECIFICATIONS AND REQUIREMENTS

NOTE: As used in this document, the term bidder, vendor, and contractor shall mean a person or entity submitting a response to this RFB. In some cases, as determined by context, the term bidder, vendor, and contractor shall refer to the person or entity that submits the lowest and best responsible bid and/or who is awarded the contract by the City.

1. RFB ADMINISTRATOR

Bidders/vendors must limit their contact to the **RFB Administrator**. All questions, requests for information and other bidder contact will be to the RFB Administrator only. Technical contact will be coordinated with the appropriate department by the RFB Administrator.

RFB Administrator:

Jody Copp
Purchasing Services
Phone 254-750-8062
Fax 254-750-8063
jodyc@ci.waco.tx.us

2. CONTRACT ADMINISTRATOR

The **Contract Administrator** will be that individual (or designee) that will monitor the commodity deliveries, quality and billings during the life of the contract after the award of a contract by the City Council.

Contract Administrator:

Joe Demas
City of Waco Fleet Department
P.O. Box 2570
Waco, Texas 76702-2570
Phone 254-750-8059
Fax 254-750-8053
joed@ci.waco.tx.us

3. SCOPE AND TERM OF CONTRACT

- a. This specification is designed to describe diesel motor fuel as used by all departments of the City of Waco. The contract is to include the furnishing of all plant, labor, materials and equipment, and the performance of all operations required to furnish diesel motor fuel as used by the City of Waco. The intent of the specifications is to describe, for acquisition purposes, material/services providing the best performance at the best total cost. All bids shall meet or exceed these specifications.
- b. Each bid will be evaluated for acceptability with emphasis on the various factors within this document. A staff committee will evaluate bids to ensure compliance with RFB requirements, quality of products and services offered and pricing. The staff committee recommendations are subject to approval by the Waco City Council. Acceptance of any bidder's response will not place the City of Waco under any obligation to accept the lowest priced response. The City of Waco reserves the right to accept the bid from the most qualified contractor(s) that best meets the City's needs.

- c. The City will enter into a 2-year contract, with options to renew for two additional one-year periods. Renewals will be subject to Waco City Council's approval.

4. INTENT

- a. It is the intent of the City of Waco to purchase motor fuels at the lowest cost. To facilitate this, the successful bidder is to make every effort to purchase base fuels from the area's lowest priced terminals. The terminal selected by the successful bidder during the contract period shall not have a posted terminal price higher than the lowest Waco area terminal. Bidder may deliver fuels from other terminals to assure product availability.
- b. A bidder may not, however, price product higher than the lowest Waco area terminal except when posted terminal cannot provide product. A listing of the posted terminal price where the product is pulled and the lowest Waco terminal is to be submitted to the contract administrator with invoice for validation of this requirement.

5. PRICING TERMS

- a. **Definitions:** Information courtesy of the Oil Price Information Service, www.OPISnet.com.
 1. **PADD – Petroleum Administrative Defense District:** Five areas defined by the Federal Government during the 1970's fuel crisis to insure adequate and fair distribution of petroleum products.
 2. **PADD 3:** The gulf coast states of; Alabama, Arkansas, Louisiana, New Mexico and Texas.
 3. **Over the Rack or Rack Market:** Petroleum products sold at the wholesale level from a bulk station/storage facility. Refers to loading racks where tanker trucks fill up.
 4. **Selling Price:** The selling price shall be based on a refiner's posted net terminal (rack) price and bidders profit and overhead (constant).
 5. **Posted Terminal Price:** The posted net terminal rack price for Waco, Texas (OPIS Daily Rack Pricing for padd 3) for date shown on Bid Sheet shall be used to determine terminal rack price.
 6. **Profit and Overhead (constant):** Bidder shall add a profit and overhead rate (constant) in dollars/cents per gallon in the appropriate Bid Sheet column. The profit and overhead rate (constant) shall not change throughout the contract period while posted net terminal rack price may fluctuate. Profit and overhead (constant) shall include all costs associated with the purchase, storage (if applicable) and delivery of product.
 7. **State of Texas Petroleum Delivery Fee:** Fee is NOT part of profit and overhead and shall be added to invoice as an itemized charge per current state of Texas Schedule.
 8. **Pump off Charge:** Bidder shall document in the Bid Sheet the pump off charge if applicable. This will be a determining factor as to which vendor is awarded the contract.
 9. **State and Federal Taxes:** The City is exempt from certain State of Texas and Federal Use Tax, a tax exemption will be provided awarded vendor. Applicable taxes will be added to invoice upon billing.

6. PRODUCT SPECIFICATIONS

- a. **Classification:** Fuel provided under this specification will be used for motor fleets owned and operated by the City of Waco for on or off road purposes. **A copy of refiner's specification is to be submitted with bid.**
- b. **Applicable Specification:** Motor fuel shall meet appropriate designation for fuel type and grade under ASTM (American Society for Testing and Materials) designation ASTM Standard D975-05 diesel and/or latest updates. **(See Appendix A)** Vendor shall provide and deliver diesel motor

fuel in accordance with Federal, State of Texas and City of Waco regulations and ordinances for product of this type. **“Bio-diesel” or other diesel blends MUST be pre-approved by City of Waco Fleet Services BEFORE any such product is delivered to any city facility.**

- c. Diesel Fuel, S15, No.2D, Ultra Low Sulfur, ASTM designation D975, latest issue.

1. Product Property	Specification	ASTM Method
Cetane Number	40 minimum	D-976
Total Sulfur, % weight	15 maximum	D-7309
Distillation: 90% point, deg "F"	540min/640 max	D-86
Flash Point, deg "F"	126min	D-93
Viscosity, centistoke 104 deg "F"	1.9 - 4.1	D445
Copper Strip Corrosion 3 Hrs@ 122 deg "F"	No 3 maximum	D130
Ash, % weight	.01 maximum	D482
Carbon Residue, wt.%	0.35 maximum	D524
Water & Sediment	free of as per ASTM	D975
- d. **Non-compliance of Product:** Bidder is required to provide three independent tests of product for each twelve-month period at bidder’s expense. Testing will be pulled from city tanks and performed by an independent testing lab agreeable to the city. Product not meeting specification shall be removed from tanks and replaced with fuel meeting specification at no charge to the city. Removal of any product shall require re-testing of new product at bidder’s expense.
- e. **MSDS Sheets:** MSDS Sheets will be supplied by the contracted vendor at the time of the **FIRST** delivery of product.

7. REJECTION

- a. In the event the material/services furnished does not meet all of the specification requirements, the Program Administrator reserves the option to require the material supplier to replace, or to reimburse the City of Waco for material/equipment/services found to be unsatisfactory.
- b. In the event that the replacement option is exercised, the material supplier shall be required to remove the unacceptable material/items at no expense to the City of Waco and to deliver an equal quantity of acceptable material/equipment/services. The material/items shall be delivered to the location(s) designated by the Program Administrator within two calendar days from the date of written notification from the City.
- c. In the event that the reimbursement option is exercised, the material supplier shall be required to remove the unacceptable material/items at no cost to the City of Waco. The Program Administrator, in accordance with City of Waco accounting procedures, shall determine the quantity of the unacceptable material/items and the reimbursement shall be determined based upon the unit price as invoiced. The supplier shall reimburse the City of Waco for all expenses including labor, equipment, materials and/or other incidentals to correct the problem. The reimbursement shall be submitted to the City of Waco in the form of a cashier’s check within twenty-eight (28) days from the date of written notification from the City of Waco.

8. USAGE ESTIMATE

- a. Bidder agrees to furnish all requirements of the City of Waco during the contract period. Quantity listed is an estimate only, actual quantity ordered will be determined by fleet requirements and availability of funds. Annual Usage is approximately 791,250 gallons.

9. AVAILABILITY

- a. Bidders are required to quote materials that will meet or exceed the minimum specifications herein. Default in promised availability or delivery without acceptable reasons, or failure to meet the specifications without remedy, shall cause the City at its option to purchase the materials elsewhere, including the next lowest and best responsible bidder, in order, or alternate bidder, and if such next bidder or alternate bidder meets the specifications required. The purpose of this provision is to provide the most advantageous bid to the City, based upon the contractual term that the City will also consider factors other than the price when awarding contracts and may, under the terms of this contract, consider and accept an alternate bid as provided herein when most advantageous to the City. In any event, the City shall have the right to cancel for default all or any part hereof, including vendor's warranties, or vendor's insolvency or commits acts of bankruptcy. In addition, the City—in accordance with the provisions of this contract—may terminate the performance of work under this order in whole or in part.

10. DELIVERY & INVOICING

- a. **Shipping Information:** F.O.B. to the City of Waco
- b. Successful bidder shall deliver the material to the City of Waco locations as per instructions from Fleet Services.
- c. Deliveries shall be made within eight (8) hours of notification. For the purposes of this specification, a working day is from 7:30 a.m. to 5:00 p.m. Monday through Saturday including holidays.
- d. **Delivery sites and tank capacities:**
1. **Location A: 324 Colcord Ave.** Bulk 12,000 gallons above ground off load pump equipped.
Location B: 11400 Old McGregor Road. Tank A Bulk 12,000 gallon above ground off load pump equipped.
 - i **Location B1 a: This tank will require off road (DYED Diesel)** Bulk 7,000 gallon skid mounted pump off required. Split tanker loads will be required at this site.
 2. **Location C:** 301 S 8th Street, Bulk (2 ea.) 12,000 gallon above ground pump off required.
- e. **Invoicing and payment:** Invoicing shall be based on proper measurement, net gallons, corrected for temperature verified by Bill of Lading. A delivery ticket must accompany each shipment and include the posted terminal price for product shipped. Deliveries will be invoiced separately and a copy of posted terminal price shall accompany each invoice on day of delivery. Failure to include required documentation may delay payment or lead to cancellation of contract.
- f. The original invoice is to be sent to Finance at PO Box 2570, Waco, TX, 76702-2570.
- g. One copy of the invoice shall be faxed to Fleet Services at 254-750-8036 or emailed to joed@ci.waco.tx.us within **24 (twenty four) hours** following delivery.

11. EMERGENCY OFF-SITE FUELING

- a. If the submitting bidder maintains fueling stations within the City Limits of the City of Waco, Texas, the City will require access to such fueling stations during Emergency situations to include:
1. Those times when the City owned system is not accessible, i.e., during system maintenance.
 2. During situations where City owned equipment would require fuel and the total fuel requirement is not available at Fleet Services.
 3. Other emergencies as determined by Fleet Services that would require off-site fueling.
 4. Such off-site fueling must be available on a 24 hour, seven days per week basis.
- b. If a situation should arise that the City fuel truck should be out of service, please advise if a "bobtail" would be available to fuel City vehicles.

c. **This information WILL be considered as part of the bid evaluation.**

12. METHOD OF AWARD AND EVALUATION OF FACTORS

a. For this RFB, the City may award the contract to the:

Lowest responsible bidder

Bidder who provides goods or services at the best value for the City.

b. Lowest Responsible Bidder:

1. The contract will be awarded to the lowest responsible bidder based on the base bid plus any selected alternatives provided the amount does not exceed the funds then estimated by the City/Owner as available to finance the contract.

2. If the contract is bid with alternatives, the City/Owner reserves the right to select any combination of alternatives and will compare all bids using the selected alternatives. If the amount of the bids exceeds the funds available to finance the contract, the City/Owner may (a) reject all bids or (b) may award the contract based on the base bid with such deductions as produces a net total which is available within the available funds.

c. Best Value:

1. In determining best value for the City, the City may consider: (1) the reputation of the bidder and of the bidder’s goods or services; (2) the quality of the bidder’s goods or services; (3) the extent to which the goods or services meet the City’s needs, including whether the bidder meets the City’s specifications; (4) the bidder’s past relationship with the City; (5) the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities; (6) the total long-term cost to the City to acquire the bidder’s goods or services; (7) a COMBINATION OF BID PRICE AND BID WORKING DAYS; and (8) any relevant criteria specifically listed in the RFB.

2. Compliance with all bid requirements, delivery and needs of the City are considerations in evaluating bids. The City of Waco reserves the right to contact any offeror, at any time, to clarify, verify or request information with regard to any bid.

13. INSURANCE, BONDING AND INDEMNIFICATION REQUIREMENTS

a. Insurance:

1. Subject to a Bidder’s right to maintain reasonable deductibles in such amounts as are approved by the City, Bidder shall obtain and maintain in full force and effect for the duration of the services to be performed under the contract, and any extension hereof, at Bidder’s sole expense, insurance coverage written on an occurrence basis, IN THE FOLLOWING TYPES AND AMOUNTS:

Type	Amount
Workers' Compensation	Statutory
Employer’s Liability	\$100,000/\$100,000/\$100,000
Comprehensive General Liability Including: <ul style="list-style-type: none"> • Premises/Operations • Independent Contractors * 	\$500,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or

<ul style="list-style-type: none"> • Products/Completed Operations • Personal & Advertising Injury • Explosion, Collapse, Underground * • Broad form property damage, to include fire legal liability <p>* If applicable</p>	<p>Excess Liability Coverage</p>
<p>Comprehensive Automobile Liability, including owned, unowned, and hired car coverage</p> <p>Inland Marine for goods in transit or Equivalent</p>	<p>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</p> <p>\$1,000,000</p>

All insurance policies, except workers' compensation and employer's liability, will name the City of Waco as an additional insured.

- b. **Term of Policy.** The required coverage must remain in effect for a two (2) year period following the expiration of the contract with the City.
- c. **Proof of Insurance Required.**
 1. Examination & Approval. Insurance policies shall be subject to the examination and approval of the City for their adequacy as to form and content, form of protection, and insurance company.
 2. When to Submit. Within ten (10) days after execution of the contract and prior to the commencement of any work or services under this contract, Bidder shall furnish to the Risk Manager for City originals of completed certificates of insurance, policy endorsements, exclusions, and/or relevant extracts from the insurance policy, or copies of the policies, plainly and clearly evidencing such insurance. Thereafter new certificates, policy endorsements, exclusions, and/or relevant extracts from insurance policies, or policies shall be provided prior to the expiration date of any prior certificate, endorsement, or policy.
 3. Insurers. Bidder shall maintain said insurance with insurance underwriters authorized to do business in the State of Texas and satisfactory to the City.
 4. Additional Insured. Except for Workers' Compensation and Employers' Liability, the City, its elected officials, officers, servants, agents, volunteers and employees shall be named as additional insured. No officer or employee, other than the Risk Manager shall have authority to waive this requirement.
 5. Other-Insurance Endorsement. Where the City is an additional insured shown on the policy, there shall be a provision or endorsement stating that any "other insurance" clause shall not apply to the City.
 6. Agent Information. The certificate(s) must be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City.

7. Precondition to Performance & Basis for Termination. The City shall have no duty to pay or perform under the contract until such certificate(s), policy endorsements, exclusions, and/or relevant extracts from the insurance policy shall have been delivered to the City's risk manager. Bidder understands that it is its sole responsibility to provide this necessary information to the City and that failure to timely comply with the requirements of this section shall be a cause for termination of this Agreement. If the City determines that it will deny payment, not perform, or terminate this contract because of the failure to provide certain information or documents, the City shall give Bidder notice of that determination and allow Bidder fifteen days to correct the deficiency.
 8. Waiver of Subrogation. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
 9. Notice of Cancellation, Non-renewal, Material Change. When there is a cancellation, non-renewal, or material change in coverage which is not made pursuant to a request by the City, Bidder shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Bidder knows of said change in advance, or ten (10) days notice after the change, if the Bidder did not know of the change in advance. Such notice must be accompanied by a replacement certificate(s) of insurance, policy endorsements, exclusions, and/or relevant extracts from the insurance policy.
- d. **IF SELECTED BIDDER FAILS TO PROVIDE INSURANCE AS REQUIRED UNDER THIS REQUEST FOR BID NAMING CITY AS ADDITIONAL INSURED, THEN SELECTED BIDDER AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR THE SERVICES RENDERED PURSUANT TO THE CONTRACT AWARDED UNDER THIS REQUEST FOR BID AND HEREBY AGREES TO INDEMNIFY, PROTECT, AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, AGENTS, AND SERVANTS, OF AND FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTIONS OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, PERSONS AND ANY LOSSES FOR DAMAGES TO PROPERTY CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, EITHER DIRECTLY OR INDIRECTLY, OR IN CONNECTION WITH, THE SERVICES TO BE RENDERED HEREUNDER, WHETHER OR NOT SAID CLAIMS, DEMANDS, CAUSES OF ACTIONS ARE CAUSED BY THE SOLE NEGLIGENCE OF THE CITY, ITS EMPLOYEES, AGENTS, OR SERVANTS, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND A PARTY TO THIS AGREEMENT, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND SOME OTHER THIRD PARTY. IF SELECTED BIDDER PROVIDES THE APPROPRIATE INSURANCE NAMING THE CITY AS AN ADDITIONAL INSURED, THEN THIS SECTION SHALL NOT APPLY. SELECTED BIDDER FURTHER AGREES TO WAIVE ANY AND ALL CLAIMS AND SUITS COVERED BY THIS INDEMNIFICATION PROVISION AND AGREES THAT ANY INSURANCE CARRIER INVOLVED SHALL NOT BE ENTITLED TO SUBROGATION UNDER ANY CIRCUMSTANCES AGAINST THE CITY, IT OFFICERS, OFFICIALS, AND EMPLOYEES.**

The following is based upon the U.S. Department of Transportation; Federal Transit Administration, Third Party Contracting Requirements. Circular C 4220.1E, 06-19-03.

1. STATE AND LOCAL LAW DISCLAIMER

- a. The required contract clauses incorporated herein, although based on federal requirements, may have been modified to conform with state and local laws and procurement guidelines.

2. DEFINITIONS

- a. **BID:** This term shall include a response to the pertinent Request for Bids (RFB), Request for Proposals (RFP), Request for Qualifications (RFQ) or other similar solicitation by the City of Waco.
- b. **BIDDER:** Includes any person or entity who submits a response to a City of Waco solicitation including an Invitation for Bids, Request For Proposals, Request For Qualifications or a purchase order.
- c. **CONTRACTOR:** The successful bidder. The person or entity who has been awarded a contract under a City of Waco and or Waco Transit solicitation.
- d. **DOT:** Department of Transportation
- e. **FTA:** Federal Transit Administration
- f. **City:** The City of Waco, Texas
- g. **ROLLING STOCK:** Includes buses, vans, trains, train control, communication and traction power equipment.
- h. **C.F.R.:** Code of Federal Regulations
- i. **U.S.C.:** United States Code
- j. **EPA:** Environmental Protection Agency

3. CONTRACTOR STATUS

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

4. NO OBLIGATION BY THE FEDERAL GOVERNMENT

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

5. FEDERAL CHANGES (49 CFR Part 18)

- a. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement [Form FTA MA (9) dated October 2002] between the City and the FTA, as they may be amended

or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

6. INCORPORATION OF FTA TERMS

- a. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated 06-19-03, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Waco requests, which would cause City of Waco to be in violation of the FTA terms and conditions.

7. NOTIFICATION OF FEDERAL PARTICIPATION

- a. In the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Contractor agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.

8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT [40 U.S.C. 327-333 (1999), 29 C.F.R. 5 (1999), 29 C.F.R.1926 (1998)]

- a. 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 he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1 ½) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- b. In the event of any violation of the clause set forth in Paragraph One (1) 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 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 One (1) of this section, in the sum of ten (10) dollars for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in Paragraph One (1) of this section.
- c. The City shall upon its own action, or upon written invitation 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 Two (2) of this section.

- d. The Contractor or Subcontractor shall insert in any subcontracts the 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 this section.
- e. 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 (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, 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 CFR 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, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which 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.

9. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS 31 U.S.C. 3801 et seq., 49 CFR Part 31 18 U.S.C. 1001, 49 U.S.C. 5307

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

10. ACCESS TO RECORDS AND REPORTS [49 U.S.C. 5325, 18 CFR 18.36, (I) 49, CFR 633.17]

- a. The following access to records requirements apply to this contract:

1. Where the Purchaser is not a state but a local government and is the FTA recipient or a sub-grantee of the FTA recipient in accordance with 49 C.F.R. 18.36(I), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a state and is the FTA recipient or a sub-grantee of the FTA recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at one hundred thousand (100,000) dollars.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA recipient or a sub-grantee of the FTA recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement [defined at 49 U.S.C. 5302(a)(1)] through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

11. CIVIL RIGHTS REQUIREMENTS 29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR PART 1630, 41 CFR PARTS 60 ET SEQ.

- a. The following access to records requirements apply to this contract:
 1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §

6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - (1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

12. TERMINATION [49 U.S.C. PART 18 FTA CIRCULAR 4220.1D (ALSO SEE CHANGE 1)]

- a. The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the City's best interest. The Contractor shall be paid its costs, including contract close out costs and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.
- b. If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract,

or if the Contractor fails to comply with any other provisions of the contract the City may terminate this contract for default. Serving a notice of termination to the Contractor shall effect termination. This will set forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire or flood, events which are not the fault of or are beyond the control of the Contractor, the City, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- c. The City (in its sole discretion) may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.
- d. If Contractor fails to remedy to the City's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- e. In the event that the City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other term, covenant or condition of this contract.
- f. The City, by written notice, may terminate this contract (in whole or in part) when it is in the Government's interest. If this contract is terminated, the City shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- g. If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract (or any extension) or if the Contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
- h. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.
- i. If the Contractor fails to pick up the commodities or to perform the services (including delivery services) within the time specified in this contract (or any extension) or if the Contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in this contract.
- j. If this contract is terminated while the Contractor has possession of City goods, the Contractor shall, upon direction of the City, protect and preserve the goods until surrendered to the City or its agent. The Contractor and the City shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute Clause.

- k. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.
- l. If the Contractor refuses or fails to prosecute the work or any separable part with the diligence that will insure its completion within the time specified in this contract or any extension, or fails to complete the work within this time or if the Contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the City may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the City resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the City in completing the work.
- m. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:
 - 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of nature, acts of the City, acts of another Contractor in the performance of a contract with the City, epidemics, quarantine restrictions, strikes, freight embargoes; and
 - 2. The Contractor, within ten (10) days from the beginning of any delay, notifies the City in writing of the causes of delay. If in the judgment of the City, the delay is excusable, the time for completing the work shall be extended. The judgment of the City shall be final and conclusive on the parties, but subject to appeal under the disputes clauses.
- n. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the City.

13. DISADVANTAGED BUSINESS ENTERPRISE (DBE) 49 CFR Part 26

- a. CITY OF WACO EXPLANATION OF DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND HOW TO RECEIVE A BID THROUGH COMPLIANCE WITH WACO TRANSIT'S DBE POLICY.
 - 1. WACO TRANSIT'S DBE POLICY: It is the policy of the Department of Transportation and Waco Transit that Disadvantaged Business Enterprises (DBEs) shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Further, it is the policy of Waco Transit to involve minority businesses, specifically Small and Disadvantaged Businesses (DBEs) to the fullest extent feasible in all phases of its procurement practices, and to provide them equal opportunities to compete on contracts for construction, professional services, equipment and supplies and other services required by Waco Transit, pursuant to Title 49 CFR Part 26.

14. DEFINITION OF CERTIFIED DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- a. A Disadvantaged Business Enterprise is defined as a small business concern which (a) is at least 51% owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business at least 51% of the stock which is owned by one or more socially and economically disadvantaged individuals, and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged

individuals who own it. Only those DBEs that have been certified by Waco Transit, TxDOT or other approved certifying agency are considered by Waco Transit to be certified DBEs.

- b. TxDOT Website: http://www.dot.state.tx.us/services/business_opportunity_programs/unified.htm

15. HOW TO BE AWARDED A BID BY COMPLYING WITH WACO TRANSIT'S DBE POLICY

- a. Compliance with the DBE Policy and Program of Waco Transit is essential in order for a bidder to be eligible for bid award under this solicitation. You are eligible for award if your bid is one of the following:
1. The lowest, responsive, responsible bid and meets or exceeds the DBE percentage participation goal of 2.64% established for the overall goal for Fiscal Year 2007-2008; or
 2. A bid which fails to equal the DBE percentage participation goal, but is the lowest, responsive, responsible bid that demonstrates, documents, and proves to the satisfaction of Waco Transit that the bidder demonstrated good faith efforts to meet such participation goals, and no other bid that meets or exceeds the DBE percentage participation goal is accepted by Waco Transit as the successful bid; or
 3. A bid which fails to equal the DBE percentage participation goal, but is the lowest, responsive, responsible bid that demonstrates, documents, and proves to the satisfaction of Waco Transit that the solicitation comes within the exception to the DBE percentage participation goals as being a procurement of a standard manufactured item, or a similar procurement not open to subcontracting opportunities.

16. HOW TO DEMONSTRATE AND DOCUMENT GOOD FAITH EFFORTS

- a. See Section 20, c., 1. through 9.

17. ADDITIONAL INFORMATION

- a. For additional information concerning compliance with DBE requirements or to receive the names, addresses and phone numbers of certified DBE firms, please contact Waco Transit's DBE Liaison at (254) 750-1900.

18. WACO TRANSIT DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

- a. **BIDDER INFORMATION**
1. Policy Statement. It is the policy of the Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 applies to this agreement.
 2. **TO ATTAIN THESE POLICY OBJECTIVES, Waco Transit HAS SET A CONTRACT GOAL FOR DBE PARTICIPATION OF 2.64% OF THE CONTRACT AMOUNT IN ALL DOT-ASSISTED PROJECTS FOR FISCAL YEAR 2007-2008.**
 3. DBE Obligation. The City of Waco and its contractors agree to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, Waco Transit and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum

opportunity to compete for and perform contracts. The City of Waco and its contractors shall not discriminate on the basis of race, color, religion, sex, age or national origin, in the award and performance of DOT-assisted contracts.

4. “Disadvantaged Business Enterprise (DBE)” means a small business concern which (a) is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business at least 51 percent of the stock which is owned by one or more socially and economically disadvantaged individuals, and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. Only those DBEs that have been are considered by Waco Transit or the Texas Unified Certification Program are considered to be certified DBEs. Website at: http://www.dot.state.tx.us/services/business_opportunity_programs/unified.htm
5. The City of Waco shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. The City of Waco also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are DBEs.
 - (1) 1. “African Americans”; 2. “Hispanic Americans”; 3. “Native Americans”; 4. “Asian-Pacific Americans”; 5.”Asian-Indian Americans”; 6. “Women,” regardless of race, ethnicity, or origin.
6. Failure to achieve DBE contract goals. If the contractor fails to carry out the contract utilizing at least the same percentage of DBE participation shown on its successful bid or proposal, the contract payments may be reduced at Waco Transit’s option as a liquidated damage, and not as a penalty, by the amount equal to the mathematical dollar difference between the total contract amount multiplied by the DBE percentage goal and the actual dollar amount of documented DBE participation in the contract. However, any authorized adjustment in the percentage of DBE participation approved by Waco Transit may be substituted in this formula for the DBE percentage goal as originally established.
7. Breach of Contract. All subcontractors, subrecipients, or contractors are advised that failure to carry out the requirements set forth in this program shall constitute a breach of contract and, after the notification of DOT may result in termination of the agreement or contract by Waco Transit or such remedy as Waco Transit deems appropriate.
8. Exception. Where the contract will be for procurement of a standard manufactured item or other similar procurement not open to subcontracting opportunities, and no certified DBE has submitted a bid, Waco Transit may consider a bid which does not fully comply with the DBE requirements.
9. The City of Waco has a written document that fully describes its DBE policy and program. The document is available upon request from Waco Transit DBE Liaison, 301 S. 8th Street, Suite 100, Waco, Texas, 76701.

19. DBE ASSISTANCE ORGANIZATIONS

- a. The following agency can provide assistance in identification of DBE firms:
 1. City of Waco
 2. Texas Department of Transportation
- b. DBE’s certifications by the following agencies are automatically approved for this procurement:
 1. Texas Department of Transportation
 2. all Texas regional certification agencies
- c. Website at: http://www.dot.state.tx.us/services/business_opportunity_programs/unified.htm

20. COMPLIANCE REQUIREMENTS

- a. Compliance with the DBE Policy and Program of Waco Transit is essential in order for a Bidder to be eligible for the contract under this solicitation. Compliance consists of: (a) meeting or exceeding the DBE percentage participation goals established for this solicitation; or (b) demonstrating good faith efforts to meet such participation goals; or (c) demonstrating that the solicitation comes within the exception to the DBE percentage participation goals as being a procurement for a standard manufactured item, or other similar procurement not open to sub-contracting opportunities.
- b. In order to demonstrate compliance through its "good faith efforts" to obtain the DBE percentage participation goals, a Bidder must submit before a formal notice to proceed, sufficient information to enable Waco Transit to determine that the efforts made by the Bidder to obtain DBE participation were such efforts that a Bidder actively and aggressively seeking to meet those goals would make. Actions or efforts which are merely "pro forma" or "going through the motions" do not constitute good faith efforts to obtain the participation of DBEs. Similarly, even efforts which are sincerely motivated but which, given all circumstances relevant to the particular solicitation, could not be reasonably expected to produce a level of DBE participation sufficient to meet the goal do not constitute good faith efforts. In determining whether a Bidder has made a good faith effort to obtain the DBE participation percentage goal, Waco Transit will look not only at the different kinds of efforts that the Bidder has made, but also the quality and intensity of these efforts.
- c. To assist Waco Transit in making the required judgment concerning fulfillment of good faith efforts, the Department of Transportation has prepared a list illustrating the kinds of actions which would indicate that a Bidder has made a good faith effort. These kinds of efforts include:
 1. Bidder attended any pre-bid meetings that were scheduled by Waco Transit to inform DBEs of contracting and sub-contracting opportunities;
 2. Bidder selected portions of the work to be performed by certified DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
 3. Bidder advertised in general circulation, trade association, and/or minority focus media concerning the sub-contracting opportunities;
 4. Bidder provided written notice to a reasonable number of specified DBEs that their interest in the procurement was being solicited, in sufficient time to allow such DBEs to participate effectively,
 5. Bidder followed up initial solicitations of interest by contracting DBEs to determine with certainty whether the DBEs were interested;
 6. Bidder provided interested DBEs with adequate information about the plans, specifications and requirement of the solicitation;
 7. Bidder negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on their investigation of the capabilities;
 8. Bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by Waco Transit or the Bidder as prime Contractor;
 9. Bidder effectively used the services of available minority community organizations; minority contractor groups; local, state and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs (such as those DBE Assistance Organizations listed under Section 19.
- d. This is not intended to be an inventory or checklist. DOT does not require Waco Transit to insist that any Bidder do any particular one or any combination of the items on this list. It is not intended to be an exclusive or exhaustive list of all actions a Bidder, acting in good faith actively

and aggressively seeking to obtain DBE participation would make. Other types of efforts or factors may be relevant in appropriate cases.

21. COMPLIANCE DOCUMENTATION

- a. In order to demonstrate compliance with Waco Transit DBE Policy and Program it is essential that full documentation be submitted before a formal notice to proceed. This documentation consists of completion of the relevant statements appearing on pages 53, 54 and 55 to this packet, and attaching additional relevant documentation and information where specified.
- b. Waco Transit DBE COMPLIANCE STATEMENT and Waco Transit SCHEDULE OF DBE UTILIZATION must be completed by all Bidders. Waco Transit SCHEDULE OF DBE UNAVAILABILITY must also be completed by a Bidder who does not meet the DBE percentage participation goals established for this procurement but who wishes to show that it complies with the policy and program because of having made "good faith efforts" to meet those goals.
- c. To be eligible for award of a contract, a bidder must complete and return the statements and schedules provided on pages 53 and 54 of this document. The required statements/schedules are as follows:
 1. Waco Transit DBE Compliance Statement
 2. Waco Transit Schedule of DBE Utilization
 3. In addition, if the bid does not meet the percentage participation goal, Waco Transit Schedule of DBE Unavailability must be completed and returned.
- d. For additional details on completing each form, see the form itself.
- e. Bidders who believe that bid/proposal meets the exception to the DBE Policy and Program as being one for the procurement of a standard manufactured item or other similar procurement not open to sub-contracting opportunities must, in addition, fully explain the facts on which it bases its belief that this solicitation meets the terms of that exception. This should be done on a separate sheet or sheets of paper clearly indicating that the Bidder intends the information to relate to the exception, and headed "WACO TRANSIT DBE COMPLIANCE STATEMENT - EXCEPTION INFORMATION".
- f. All information relative to the particular method of Bidder's compliance as set out in within Section 13 and on pages 53, 54 and 55 must be submitted at bid or proposal due date and time. A bidder may also include any additional information it believes would be helpful in demonstrating to Waco Transit its compliance with Waco Transit DBE Policy Program. All information submitted after the deadline for the submission of bids will not be considered.
- g. In filling out WACO TRANSIT DBE COMPLIANCE STATEMENT Bidders should place a mark next to the statement which correctly describes the method by which Bidder is complying with Waco Transit Policy and Program.
 1. A Bidder which is a certified DBE should place a mark by Statement No. 1 on this statement and complete the first set of questions on WACO TRANSIT SCHEDULE OF DBE UTILIZATION for itself.
- h. If Bidder is not a certified DBE but the bid meets the percentage participation goals either through a joint venture or subcontracting with certified DBE entities, Bidder should place a mark by Statement No. 1 on WACO TRANSIT DBE COMPLIANCE STATEMENT and complete the information on WACO TRANSIT SCHEDULE OF DBE UTILIZATION for all DBE sub-contracting and joint ventures.
 1. If Bidder is not a certified DBE and its bid does not meet the percentage participation goals established for this contract, but Bidder has some DBE participation and wishes to qualify for the contract on the basis of its "good faith efforts" to so comply, Bidder should place a mark by Statement No. 2 on Waco Transit DBE COMPLIANCE STATEMENT, complete Waco

Transit SCHEDULE OF DBE UTILIZATION (including dollar amount of work) for all certified DBE sub-contractors or joint venture participants and complete Waco Transit SCHEDULE OF DBE UNAVAILABILITY giving details as to all other DBEs Bidder contacted in connection with participation in the work to be performed by the winner of this solicitation. In addition, in order to show good faith efforts, Bidder should attach an additional statement showing what other efforts Bidder made in actively and aggressively seeking to meet the percentage participation goals. An illustrative list of some of those actions is included in the discussion under COMPLIANCE REQUIREMENTS Section 20.

- i. If Bidder is not a certified DBE and the percentage participation by certified DBEs in its bid fails to meet the goal set for this contract, but Bidder believes that the subject matter of the contract comes within the exception to the percentage participation goal requirements of the DBE policy, Bidder should place a mark by Statement No. 3 on Waco Transit DBE COMPLIANCE STATEMENT, complete Waco Transit SCHEDULE OF DBE UTILIZATION showing "none", and attach a statement explaining fully the facts on which Bidder bases its belief that the solicitation is for the "procurement of a standard manufactured item or other similar procurement not open to sub-contracting opportunities". The attached statement should be titled "Waco Transit DBE Compliance Statement - Exception Information", or similarly.

22. COUNTING PARTICIPATION TOWARD MEETING DBE GOAL

- a. DBE participation shall be counted toward meeting goals set in accordance with DOT's DBE regulations at 49 CFR Part 26 and Waco Transit's program as follows:
 1. Once a firm is determined to be a certified DBE in accordance with the provisions specified in this program, the total dollar value of the contract or subcontract awarded to it is counted toward the applicable goal, if the contract is a fixed price contract. For other types of contracts, only actual payments to the certified DBE will be counted toward the applicable goal.
 2. The City of Waco or the contractor employing a certified DBE firm may count toward its goals a portion of the total dollar value of a contract with a joint venture eligible under the DBE eligibility criteria specified herein equal to the percentage of the ownership and control of the certified DBE partner in the joint venture.
 3. The City of Waco or a contractor will count toward its goals only expenditures to certified DBEs that perform a commercially useful function in the work of a contract. A certified DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a certified DBE is performing a commercially useful function, Waco Transit or a contractor shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.
 4. Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to rebut this presumption to Waco Transit. The City of Waco's decision on the rebuttal of this presumption is final, subject to review by the Department of Transportation in instances of DOT-assisted contracts.
 5. The City of Waco or a contractor may count toward its DBE goals expenditures for materials and supplies obtained from certified DBE suppliers and manufactures provided that the DBEs assume the actual and contractual responsibility for the provision of the materials and supplies. The City of Waco or a contractor may count its entire expenditure to a certified

DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale). The City of Waco will count 60 percent of its expenditures to certified DBE suppliers that are not manufacturers, provided that such suppliers perform a commercially useful function in the supply process.

23. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS [[FTA Circular 4220.1D](#) (also see [Change 1](#))]

- a. The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1D](#) (also see [Change 1](#)), dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City invitations that would cause the City to be in violation of the FTA terms and conditions.

24. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) (49 CFR - Part 29, Executive Order 12549)

- a. **By signing and submitting this bid, the prospective lower-tier participant is providing the signed certification set out below.**
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower-tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the City may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower-tier participant shall provide immediate written notice to the City if at any time the prospective lower-tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower-tier covered transaction," "participant," "persons," "lower-tier covered transaction," "principal," "bid," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 (49 CFR - Part 29). The prospective lower-tier participant may contact the City for assistance in obtaining a copy of those regulations.
- e. The prospective lower-tier participant agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction - unless authorized in writing by the City.
- f. The prospective lower-tier participant further agrees by submitting this bid that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower-Tier Covered Transaction," without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its

principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

- h. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person - in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph five (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, the City in addition to all remedies available to the federal government, may pursue available remedies including suspension and/or debarment. See Attachment D, (49 CFR - Part 29, Executive Order 12549). Government-Wide Debarment and Suspension (Non-procurement) is located in Attachment E on page forty-one (41).]

25. BREACHES AND DISPUTE RESOLUTION 49 CFR Part 18, FTA Circular 4220.1D

- a. **Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City of Waco. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City of Waco. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City of Waco shall be binding upon the Contractor and the Contractor shall abide by the decision.
 - 1. **Performance During Dispute** - Unless otherwise directed by the City of Waco, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
 - 2. **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
 - 3. **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Waco and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Waco Transit is located.
 - 4. **Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Waco or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. LOBBYING (31 U.S.C. 1352, 49 CFR - Part 19, 49 CFR - Part 200)

- a. **Lobbying** Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352 (b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR 20.110(d). Language in Lobbying Certification is mandated by 49 CFR - Part 19 Appendix A, Section 7,

which provides that contractors file the certification required by 49 CFR - Part 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995. Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR - Part 20, as amended by the "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR - Part 20, Appendix A.

- b. **Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 (to be codified at 2 U.S.C. 1601, et seq.)** Contractors who apply or bid for an award of one hundred thousand (100,000) dollars or more shall file the certification required by 49 CFR - Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant (under the Lobbying Disclosure Act of 1995) who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.
- c. **[Attachment D, 31 U.S.C. 1352, 49 CFR - Part 19, 49 CFR - Part 200, Lobbying Requirements is located in Attachment D on page forty (40).]**

27. CLEAN AIR (42 U.S. C. 7401 et seq., 40 CFR 15.61, 49 CFR - Part 18)

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The Contractor also agrees to include these requirements in each subcontract exceeding one hundred thousand (100,000) dollars financed in whole or in part with federal assistance provided by FTA.

28. CLEAN WATER REQUIREMENTS (33 U.S.C. 1251)

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will (in turn) report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The Contractor also agrees to include these requirements in each subcontract exceeding one hundred thousand (100,000) dollars financed in whole or in part with Federal assistance provided by FTA.

29. ENERGY CONSERVATION REQUIREMENTS 42 U.S.C. 6321 et seq., 49 CFR Part 18

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

30. RECYCLED PRODUCTS (42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873)

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

31. NOTIFICATION OF FEDERAL PARTICIPATION

- a. The City of Waco/Waco Transit hereby notifies all contractors that in regard to any contract entered into pursuant to this RFB, of the **participation** by the federal government.

32. PRIVACY ACT (5 U.S.C. 552)

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

The Contractor also agrees to include these requirements in each subcontract that administers any system of records on behalf of the federal government - financed in whole or in part with federal assistance provided by FTA.

STANDARD INSTRUCTIONS FOR ALL BIDS

1. **PROPOSAL/BID INTERPRETATION:** Any explanation desired by a bidder regarding the meaning or interpretation of the **invitation, drawings, specifications, etc. must be requested in writing to the Purchasing Services Division P.O. Box 2570, Waco, TX, 76702-2570.**
Correspondence shall be submitted with sufficient time allowed for evaluation and reply to all prospective bidders before the submission of their bids. The bid invitation number must appear on all correspondence, inquiries, etc. pertaining to the invitation. Oral explanations or instructions given before the award of the contract are not binding and do not form a part of or alter in any way, the written agreement.
2. **SPECIFICATIONS:** The specifications herein shall be the basis of comparison. Specifications are written to encourage competition. There is no intent to discriminate against any supplier but rather, to set a definite standard of performance. Bidders are required to quote services and/or equipment that will meet or exceed the minimum or maximum specifications herein.
3. **SUBSTITUTIONS:** It is the intention of the City of Waco to purchase equipment similar or equal to that specified. **Variations from the specification must be noted in bid by bidder. Absence of noted variations will be interpreted to mean that the item quoted is in exact accordance with the specification.** Each bidder, if not bidding on specified equipment, is required to furnish with his bid, a complete detailed description and specifications of each item upon which he is bidding, supported by the manufacturer's catalog, photographs, guarantee, complete name and any other pertinent information. An "or equal" item must reflect the general appearance, design, dimensions, or color of the item specified, and must be of equivalent materials, function, quality, construction, performance and suitability of the item(s) specified. **SAMPLES**, if required, shall be furnished free of expense to the City and if not used or destroyed in examination and testing will be returned to the bidder, if requested, at the bidder's expense. Each sample must be marked with bidder's name and address and Bid Number reference. Approval of substitute or "or equal" items remains with the City and in all cases is final. In the event an item is not accepted as "or equal" upon receipt of delivery, bidder may be allowed to supply equipment meeting the specifications at the bid price.
4. **MATERIALS:** The bidder certifies all materials and equipment supplied resulting from this bid invitation shall be new and unused, unless noted elsewhere in the invitation.
5. **CORRECTIONS, ADDITIONS OR DELETIONS:** To any portion of the invitation will be in the form of a written amendment or addendum.
6. **BID INTERPRETATION:** Bidders are expected to examine all specifications, drawings, standard provisions and instructions. **FAILURE** to do so will be at the bidder's risk. Bids are to be submitted with a response on each item and the total extended, however more than one bid may be submitted on products that meet the specifications.
7. **TAXES:** All quotations are to be submitted less Federal Excise and State of Texas Sales Taxes. Tax exemption certificates will be executed upon request. The City's federal tax identification number is 1-74-6002468-4.
8. **AUTHORIZED SIGNATURE:** Bids must show vendor name and address and be manually signed. A printed name is not a manual signature, unless it is clearly shown on the bid that the person's signature is normally done in printed form. Person signing bid must have authority to bind his firm in

a **contract**. Any erasures or other changes must be initialed by the person signing the offer or others which show evidence of authority.

9. **MODIFICATION OR WITHDRAWAL OF BIDS:** Bid pricing **CANNOT** be altered or amended after the closing time. Bids may be modified or withdrawn prior to the closing hour and date by written or telegraphic notice to the Purchasing Division. A bid may also be withdrawn in person by a bidder or his authorized agent, provided his identity is made known and he signs a receipt for the bid. No bid may be withdrawn after the closing time and date, unless there is a material mistake and the bidder submits an acceptable reason in writing and with approval of the Purchasing Services Division.
10. **PRICES:** Bidder is to quote its lowest and best price F.O.B. destination on each item to shipping locations in Waco, Texas unless otherwise specified in the invitation. Pricing shall include packaging, transportation, unloading, and any trade and cash discounts will be taken if earned. Bids must be firm, however if a bidder believes it necessary to base its price on price adjustment, such a bid may be considered, but only as an alternate bid. Pricing is to be submitted on units of quantity specified with extended totals, however in the event of a discrepancy in extension, the unit prices shall govern. Pricing shall be entered on the bid sheet in ink or typewritten.
11. **DELIVERY DATE:** Bids must show the number of calendar days required to place the materials at the place of destination under normal conditions. Failure to specify delivery date or state unrealistically short or long delivery dates may cause the bid to be disregarded or award to be rescinded.
12. **DEFAULT IN DELIVERY:** The vendor must keep the Purchasing Services Division advised at all times as to the status of the order. When delivery delay can be foreseen, the vendor shall give prior notice to the Purchasing Services Division who shall have the right to extend the delivery date if reasons for delay are reasonable and acceptable. Default in promised delivery, without acceptable reasons, or failure to meet specifications without remedy shall cause the City to purchase the goods elsewhere, and charge any increase in cost and handling to the defaulting vendor. This does not limit any other remedies to the City for damage entitled under the Uniform Commercial Code.
13. **DELIVERY TIMES:** Deliveries will be accepted only during normal working hours, i.e. 8:00 a.m. to 12:00 a.m. and from 1:00 p.m. to 4:00 p.m., Monday through Friday, unless prior arrangements have been made. For large orders 24-hour notice to the Purchasing Services Division or the Receiving Agency is required to eliminate delays in delivery.
14. **EVALUATION FACTORS:** The City will award this contract to the bidder who provides the goods or services at the best value for the City. In determining the best value to the City, price, quantifiable factors, and other factors are considered as set out in the specifications for the Request for Competitive Sealed Bids. The factors may include specifications, delivery requirements, the initial purchase price, life expectancy, cost of maintenance and operation over time, operating efficiency, training requirements, disposal value, and other factors contributing to the overall acquisition cost of an item. Consideration may be given, but not limited to conformity to the specifications, product warranty, a bidder's proposed service, ability to supply and provide service, delivery to required schedules, past performances in other contracts with the City including timely delivery. City reserves the right to extend any contract when most advantageous to the City. NOTE: Other evaluation and award criteria may be included in the invitation documents.

- 15. RECYCLED PRODUCTS:** Bidders are encouraged to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in the specifications.
- 16. PARTIAL AWARD:** Bidders may furnish pricing for all or any portion of the bid invitation. **UNLESS bidder specifies otherwise in their bid, the City may award contracts for any portion of requirement or group of items listed.**
- 17. RESERVATIONS:** The City expressly reserves the right to accept, reject or cancel any and all bids AND:
- a. Waive any defect, irregularity or informality in any bid or bidding procedure,
 - b. Extend the bid closing time and date,
 - c. Reissue a bid invitation or proposal,
 - d. Procure any item by other means,
 - e. Increase or decrease the quantity specified, unless the bidder specifies otherwise,
 - f. Waive as informality, minor deviations from specifications at a lower price than the low bid meeting all aspects of the specifications and consider it, if it is determined that total cost is lower and the overall function is improved or not impaired,
 - g. Consider and accept an alternate bid as provided herein when most advantageous to the City,
 - h. Extend any contract when most advantageous to the City,
 - i. Award any contract to multiple parties, if it is in the best interest of the City.
- 18. SUBMISSION OF BIDS:** Sealed bids are to be returned by the closing time and date stated on the bid invitation cover sheet.
- a. Bids should be returned in the following manner:
 1. In an envelope marked on the outside with the **BID NUMBER**;
 2. **BID OPENING DATE** and **SEALED BID FORM** (Commodity/Service) should be in the lower left corner.
 3. If submitting a "NO BID" indicate so beneath the **BID NUMBER**.
 - b. Bids should be returned using one of the following delivery methods:
 1. **By MAIL:** DO NOT mail bids to the 1415 N. 4th street address. The post office does NOT deliver to this street address! Mail to City of Waco, Purchasing Services Division, Post Office Box 2570, Waco, Texas 76702-2570.
 2. **By DELIVERY SERVICE OR IN PERSON:** Sealed bids may be delivered in person or by delivery service to the Operations Center, Purchasing Services Division, 1415 N. 4th St., Waco, TX. 76707.
 - c. **CLOSING TIME & DATE:** Bids must be received in the Purchasing Services Division and have a time stamp on or before the advertised closing time and date shown in the invitation.
 - d. **LATE BIDS:** Bids received after the advertised closing time and date regardless of the mode of delivery will be refused and will be returned unopened to the bidder.
 - e. **SINGLE BIDS:** If only one bid is received for consideration, such bid can be opened at the advertised time and place as per the current "single bid" policy (Policies and Procedures – GFP&P-6- New 8/04/2011).
 - f. **FAX BIDS:** Fax transmission bids **will not** be accepted.
- 19. ACCEPTANCE:** Acceptance of bidder's offer for an open market purchase will be in the form of a purchase order or contract. Notice for annual contract agreements will be a notice of award, purchase order or contract. The Waco City Council must approve the bidder selected to provide the service requested in this RFB. Each bid should be submitted as completely and accurately as possible.

**CITY OF WACO
PURCHASING SERVICES
STANDARD PURCHASE TERMS AND CONDITIONS**

1. **VENDOR TO PACKAGE GOODS:** The vendor will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows:
 - a. Vendor's name and address;
 - b. Consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable;
 - c. Container number and total number of containers, e.g., box 1 of 4 boxes;
 - d. The number of the container bearing the packing slip. Vendor shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

2. **SHIPMENT UNDER RESERVATION PROHIBITED:** Vendor is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

3. **TITLE & RISK OF LOSS:** The title and risk of loss of the goods shall not pass to City until City actually receives and takes possession of the goods at the point or points of delivery.

4. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** F.O.B. destination Waco, Texas, unless delivery terms, and costs, are specified in Vendor's bid. City shall have the right to designate what method of transportation shall be used to ship the goods.

5. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of goods must fully comply with all provisions of this contract as to the method and place of delivery, quality and the like. If a tender is made which does not fully conform, this will constitute a breach and Vendor will not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Vendor may reasonably notify City of his intention to cure and may then make a conforming tender within the contract time but not afterward.

6. **PLACE OF DELIVERY:** The place of delivery shall be that set forth in the block of the purchase order entitled "Receiving Agency." Any change thereto shall be effected by modification as provided for in Clause 20 hereof entitled "Modifications." The terms of this agreement are "no arrival, no sale."

7. **INVOICES & PAYMENTS:**
 - a. Vendor shall submit separate invoices, in duplicate, on each purchase order or purchase release after each delivery. Invoices shall indicate the purchase or purchase release number and the supply agreement number if applicable. Invoices shall be itemized and they shall list transportation charges, if any, separately. A copy of the bill of lading, and the freight waybill when applicable, should be attached to the invoice. Mail to Finance Department, P.O. Box 2570, Waco, TX. 76702-2570. Payment shall not be due until the above instruments are submitted after delivery.
 - b. City's obligation is payable only and solely from funds available for the purpose of this purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Vendor by City.

- c. Do not include Federal Excise, State or City Sales Tax. City shall furnish tax exemption certificates upon request.
 - d. Payment may be made through electronic funds transfer initiated by the City upon request.
8. **GRATUITIES:** The City may, by written notice to the Vendor, cancel this contract without liability to the City, if it is determined by the City that gratuities have been offered to any officer or employee of the City with a view toward securing a contract, securing favorable treatment with respect to the awarding, amending, or the making of any determinations in respect to the performance of such a contract. In the event this contract is canceled by City as set forth in this paragraph, the City shall be entitled to recover from Vendor all additional costs incurred by City as a result of the cancellation.
9. **SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Vendor for the purpose of filling this order, such special tooling equipment and any drawings or related documents thereto shall become the property of the City and to the extent feasible shall be identified by the Vendor as such.
10. **WARRANTY-PRICE:**
- a. The price to be paid by the City shall be that contained in Vendor's bid which Vendor warrants to be no higher than vendor's current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Vendor breaches this warranty, the prices of the items shall be reduced to the Vendor's current prices on orders by others, or in the alternative, reduced to the Vendor's current prices on orders by others, or in the alternative, City may cancel this contract without liability to Vendor for breach or Vendor's actual expense.
 - b. The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of the warranty the City shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
11. **WARRANTY-PRODUCT:** Vendor shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the City. Vendor warrants that the goods furnished will conform to the specifications, drawings, and descriptions; the specifications shall govern.
12. **SAFETY WARRANTY:** Vendor warrants that the product sold to City shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA). In the event the product does not conform to OSHA standards, City may return the product for correction or replacement at the Vendor's expense. In the event Vendor fails to make the appropriate correction within a reasonable time, correction made by City will be at Vendor's expense.
13. **RIGHT OF INSPECTION:** City shall have the right to inspect the goods at delivery before accepting them.
14. **CANCELLATION:** City shall have the right to cancel for default all or any part of the undelivered portion of the order if Vendor breaches any of the terms hereof including warranties of Vendor or if

the Vendor becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies that City may have in law or equity.

- 15. TERMINATION:** The performance of work under this order may be terminated in whole, or in part by the City in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Vendor of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of the rights of City set forth in Clause 14 herein.
- 16. FORCE MAJEURE:**
- a. In the event performance by Vendor of its obligations under this Agreement shall be interrupted or delayed by or as a consequence of a fire, flood, severe weather, or other act of God, war, insurrection, civil disturbance, or act of state, the Vendor shall be excused from such performance for the period of time such occurrence shall have lasted or such period as is reasonably necessary to rebuild or take other action necessary to resume performance. The period of time reasonably necessary to rebuild or take other action necessary to resume performance shall be as determined by the agreement of the parties, which agreement shall be negotiated and arrived at in good faith.
 - b. Vendor shall notify the Contact Person or RFB Administrator of any matter covered above, the occurrence of which interferes or threatens to interfere with the performance of any of its obligations under the bid. Upon such notice, the Vendor and the City shall consult and cooperate as to measures which may be taken to overcome the interference or as to alternative measures which may be undertaken by the parties with a view to the continued performance of the bid agreement.
- 17. ASSIGNMENT-DELEGATION:** No right or interest in the contract shall be assigned or delegation of any obligation made by Vendor without the written permission of the City. Any attempted assignment or delegation by Vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
- 18. WAIVER:** No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 19. MODIFICATIONS:** This contract can be modified or rescinded only by a written instrument signed by both of the parties or their duly authorized agents.
- 20. INTERPRETATION-PAROL EVIDENCE:** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete agreement for dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in the agreement, the definition contained in the Code is to control.
- 21. APPLICABLE LAW:** This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the

Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.

22. **ADVERTISING:** Vendor shall not advertise or publish, without City's prior consent, the fact that City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the Federal, State or Local government.
23. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
24. **EQUAL EMPLOYMENT OPPORTUNITY:** Vendor agrees that during the performance of its contract it will:
 - a. Treat all applicants and employees without discrimination as to race, color, religion, sex, national origin, marital status, age, or handicap.
 - b. Identify itself as an "Equal Opportunity Employer" in all help wanted advertising or request. The Vendor shall be advised of any complaints filed with the City alleging that Vendor is not an Equal Opportunity Employer. The City reserves the right to consider its reports from its human relations administrator in response to such complaints in determining whether or not to terminate any portion of this contract for which purchase orders or authorities to deliver have not been included, however, the Vendor is specifically advised that no Equal Opportunity Employment complaint will be the basis for cancellation of this contract for which a purchase order has been issued or authority to deliver granted.
25. **CONFLICT OF INTEREST:** Vendor agrees to comply with the conflict of interest provisions of the Waco City Charter, Waco Code of Ordinances, and/or state law. Vendor agrees to maintain current, updated disclosure of information on file with the Purchasing Services Division throughout the term of the contract.
26. **VENUE:** Waco, McLennan County. Texas.
27. **ARREARS IN TAXES:** Article VII. Taxation, Section 8. City Charter. City shall be entitled to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation who is in arrears to the City of Waco for taxes, in the amount of taxes so in arrears, and no assignment or transfer of such debt, claim, demand or account after the said taxes are due, shall affect the right of the City to offset the said taxes against the same.
28. **TAX CERTIFICATION; OFFSET OF OTHER DEBTS AGAINST CITY.** Selected bidder hereby certifies that it is not delinquent in the payment of taxes owed to the City and will pay any taxes owed to the City so that such taxes will not become delinquent. If this certification is subsequently determined to be false, such false certification shall constitute grounds for termination of the contract awarded under this RFB, at the option of City. Furthermore, Selected bidder agrees the City is entitled to counterclaim and offset against any debt, claim, demand, or account owed by the City to the selected bidder, pursuant to the awarded contract, for any debt, claim, demand, or account owed to the City, including other than the taxes mentioned above. The City may withhold from payment under the awarded contract an amount equal to the total amount of debts, claims, accounts, or demands including taxes owed to the City by the selected bidder. The City may apply

the amount withheld to the debts and taxes owed to the City by the selected bidder until said debts are paid in full. No assignment or transfer of such debt, claim, demand or account after the said taxes or debts are due shall affect the right of the City to offset the taxes and the debt against the same.

- 29. INDEPENDENT CONTRACTOR.** The selected bidder will be an independent contractor under the contract. Professional services provided by the selected bidder shall be performed by the selected bidder's employees and/or authorized subcontractors, who will be subject to supervision by the selected bidder; these employees and authorized subcontractors will not be officers, employees or agents of the City. Selected bidder will be required to and agrees to comply with all state and federal employment laws as well as all other federal, state and local laws, rules and regulations affecting the performance of all obligations taken herein.
- 30. NO JOINT ENTERPRISE/JOINT VENTURE.** It is not the intent of this RFB or the contract to be awarded to create a joint enterprise or joint venture.
- 31. SUSTAINED DAMAGES.** In the event the City terminates the awarded contract for breach or any other reason, the selected bidder shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the contract by the selected bidder or otherwise, and the City may withhold any payments to the selected bidder for the purpose of an offset until such time as the amount of damages due the City from the selected bidder can be determined.
- 32. CONFIDENTIALITY OF DOCUMENTS.**
- a. ALL BIDS SUBMITTED WILL BE SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT. Each bidder **must** clearly mark each page of the bid that contains trade secrets or other confidential commercial or financial information which the bidder believes should not be disclosed outside the City, or the claim for confidentiality is waived. Failure to label such information as confidential shall waive any claim of confidentiality. Disclosure of requested information will be determined in accordance with the Texas Open Records Act. You are not encouraged to submit such data and information unless it is absolutely required to understand and evaluate your response. If such data and information is submitted, you agree that the City shall not be liable for disclosure of such data and information.
 - b. In the event a request for public information is filed with the City which involves a bidder's proprietary information submitted to the City in a bid and which was clearly labeled as such, the bidder affected by such public information request will be notified by the City of the request in order to give the affected bidder an opportunity to provide correspondence to the Attorney General as to why such information should not be released.
- 33. SUBCONTRACTING BID.** If subcontracting with another company or individual is proposed, that fact and the same information for the subcontractor *that is required under this RFB to be provided by the bidder concerning the bidder* must be provided and clearly identified in the bid. Following the award of the contract, no additional subcontracting will be permitted without the express prior written consent of the City.
- 34. MISCELLANEOUS.**
- a. There is no expressed or implied obligation for the City to reimburse bidders for any expenses incurred in preparing bids to respond to this RFB.

- b. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from bidders, or to allow corrections of errors or omissions.
- c. The City reserves the right to retain all bids submitted and to use any ideas in a bid regardless of whether or not that bid is selected.
- d. Each bid shall state that it is valid for a period of ninety (90) days from the date of opening of the bid by the City.

35. NON-NEGOTIABLE TERMS. THE FOLLOWING TERMS OR CONDITIONS ARE NOT NEGOTIABLE:

- a. **Unfunded Liability.** The City will not incur a debt or obligation to pay selected bidder any amounts the City does not have the current funds available to pay, unless the contract includes a provision for the City to appropriate funding for the debt or obligation.
- b. **Advance Payments.** The City will not make advance payments to a selected bidder or any third party pursuant to this RFB or resulting contract.
- c. **Gift of Public Property.** The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected bidder.
- d. **Procurement Laws.** The City will not agree to any terms or conditions that cause the City to violate any federal, Texas, or local procurement laws, including its own charter.
- e. **Limitation of Liability.** The City will not agree to allow the selected bidder to limit its liability for breach or default of contract to the contract amount or to the amount the City has paid up to the time of the breach or default.
- f. **Attorney's fees; Legal Costs.** The City will not agree to pay the selected bidder's attorney's fees or other legal costs under any circumstances.
- g. **Venue; Applicable Law.** This RFB and any resulting contract will be governed and construed according to the laws of the State of Texas. The terms and conditions of the contract awarded pursuant to the RFB are fully performable in McLennan County, Texas and venue for any dispute regarding contract shall be in McLennan County, Texas.

**CITY OF WACO
OFFICIAL BID SHEET
BID INVITATION NO: RFB 2012-009
Diesel Fuel**

DATE: _____

BIDDER (Company Name): _____

AUTHORIZED SIGNATURE: _____

PRINTED NAME OF *AUTHORIZED SIGNER* ABOVE: _____

- I. Refer to "Standard Instructions for all Bids" before completing Bid Sheet.
- II.
 - a. Price: quote your best price, F.O.B. Destination, on each item.
 - b. Delivery Date: promised delivery time in days after receipt of order.
- III. In submitting this bid, I certify:
 - a. Items bid are in exact accordance with specifications, unless noted in bid.
 - b. That prices in this bid have been arrived at independently, without consultation or agreement with any competitor for the purpose of restricting competition.

PRICING INFORMATION		
Contract Agreement for BULK DIESEL MOTOR FUEL in accordance with specifications. Bidders will base terminal selling price for January 25, 2012. Bidder may bid on any one, or all items.		
1.0	Diesel No. 2 Grade in Transport Deliveries Transport Load = 7400 Gallons. 10/1/2011 – 9/30/2012, Approximate Annual Quantity: 791,250 gallons	---
1.1	Terminal Price/Gallon	\$
1.2	Constant: (Profit + Overhead) per Gallon	\$
1.3	Selling Price/Gallon for January 25, 2012.	\$
1.4	Branded/unbranded fuel (Circle one)	Yes - No
1.5	Terminal name and location: _____ _____	<<<
1.6	Other terminals you are permitted to purchase from for Diesel No. 2: _____	Include information as Attachment One

<p>2.0</p>	<p>Diesel No. 2 Grade in Tank-Wagon Deliveries Estimated Annual Quantity: included in item OBS 1.0 Typical delivery is 1,200-2,100 gallons</p>	<p>---</p>
<p>2.1</p>	<p>Terminal Price/Gallon</p>	<p>\$</p>
<p>2.2</p>	<p>Constant: (Profit + Overhead) per Gallon</p>	<p>\$</p>
<p>2.3</p>	<p>Selling Price/Gallon: for January 25, 2012</p>	<p>\$</p>
<p>2.4</p>	<p>Branded/Unbranded fuel: (Circle one)</p>	<p>Yes - No</p>
<p>2.5</p>	<p>Terminal name and location: _____ _____</p>	<p><<<</p>
<p>3.0</p>	<p>Emergency Off-site Fueling: Please list address/locations of any off-site fueling stations that you can provide: _____</p>	<p>Include information as Attachment Two</p>
<p>3.1</p>	<p>Emergency Off-site Fueling Fees: Please list any "fees" and/or "markup" (per gallon charge) that you would require for the use of those off-site facilities listed above:</p> <p>3.1.1 Diesel: Daily rack price: _____ cents/gallon State tax: _____ cents/gallon Freight: _____ cents/gallon Load fee: _____ cents/gallon Markup: _____ cents/gallon</p>	<p><<<</p>
<p>4.0</p>	<p>Pump off Charge (If applicable)</p>	<p>\$</p>
<p>5.0</p>	<p>Payment Terms: Payment will made lump sum in thirty (30) days after acceptance of commodity and receipt of invoice unless a _____% early payment discount is offered for payment in ten (10) days.</p>	<p><<<</p>

COMPLETED FORM MUST BE RETURNED WITH BID

BIOGRAPHICAL INFORMATION

Date: _____

Name of Firm: _____

Mailing Address: _____

Street Address: _____

Signature of Person Authorized
to Sign Bid: _____

Signor's Name and Title
(print or type): _____

Business Telephone: _____

Mobile Telephone: _____

Business Fax: _____

Federal Tax ID number: _____

Company Website: _____

E-mail Address: _____

DECLARATION OF INTENT

As per the "SUBSTITUTIONS" section of the "STANDARD INSTRUCTIONS FOR ALL BIDS" contained within these bid documents, I attest that the bid submitted is: (check one box below)

- 1. to the exact Specifications and the Terms and Conditions of the bid documents.
- 2. to the exact specifications with modifications to the Specifications and/or the Terms and Conditions as noted in the attached documentation.

or

- 3. NOT to the exact Specifications and/or the Terms and Conditions and is therefore an alternate bid, submitted for the City's consideration, with attached justification(s) and documentation defending the alternate bid as meeting or exceeding the intent of the specifications or scope of work.

**CITY OF WACO
Purchasing Services
Minority/Women Owned Business Certification**

The City of Waco is committed to assuring that all businesses are given prompt, courteous, and equal opportunity to provide goods and services to the City. To achieve this goal, the City Council requests the minority women owned status of each vendor on the City vendor list.

Definition: A Disadvantaged Minority and Woman owned Business Enterprise means a business concern owned and controlled by socially and economically disadvantaged individuals. This means any business concern that a) is at least 51% owned by one or more socially and economically disadvantaged individuals; or in the case of publicly owned businesses, at least 51% of the stock which is owned by one or more socially or economically disadvantaged individuals; and b) whose management and daily operations are controlled by one or more other socially and economically disadvantaged individuals who own it. The groups included in this program are Black, Non-Hispanic, Native American, Asian or Pacific Islander, Hispanic, and Women.

Certification: Bidder declares a minority and/or women owned business status:
_____ YES _____ NO

If yes, check one of the blocks (indicate male or female):

Black, Non-Hispanic M/F _____; Native American M/F _____;

Asian or Pacific Islander M/F _____; Hispanic M/F _____. Woman Owned _____.

COMPANY NAME: _____

AUTHORIZED SIGNATURE: _____

TITLE: _____

DATE: _____

DRUG-FREE WORK PLACE ACT CERTIFICATION

1. The contractor certifies that it will provide a drug-free work place by:
 - (a) Publishing a statement notifying employees that unlawfully manufacturing, distributing, possessing or using a controlled substance in the contractor's work place is prohibited and specifying the actions that will be taken against employees for violation of such prohibition.
 - (b) Establishing a drug-free awareness program to inform employees about:
 - (1) the dangers of drug abuse in the work place;
 - (2) the contractor's policy of maintaining a drug-free work place;
 - (3) any drug counseling, rehabilitation, and employee assistance programs that are available; and
 - (4) the penalties that may be imposed upon employees for drug abuse violations in the work place.
 - (c) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a).
 - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the contract the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the work place no later than five (5) days after such a conviction.
 - (e) Notifying the City of Waco within ten (10) days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction.
 - (f) Taking one of the following actions within thirty (30) days of receiving notice under subparagraph (d)(2) with respect to any employee so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such an employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
 - (g) Making a good faith effort to continue to maintain a drug free work place through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

2. The contractor's headquarters is located at the following address. The addresses of all other work places maintained by the contractor are provided on the accompanying list.

Name of Contractor: _____

Street Address: _____

City: _____ County: _____

State: _____ Zip Code: _____

SIGNED BY: _____ **Date Signed:** _____

Print Or Type Name And Title: _____

LITIGATION DISCLOSURE

Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your bid from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One YES NO

2. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of Waco or any other Federal, State or Local Government, or Private Entity?

Circle One YES NO

3. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of Waco or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Circle One YES NO

If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your bid.

RESIDENT CERTIFICATION

Chapter 2252 of the Texas Government Code “CONTRACTS WITH GOVERNMENTAL ENTITY, SUBCHAPTER A. NONRESIDENT BIDDERS”:

In accordance with Chapter 2252 of the Texas Government Code, a governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principle place of business is located.

- (1) "Government contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.
- (2) "Governmental entity" means:
 - (A) a municipality, county, public school district, or special-purpose district or authority;
- (3) “Nonresident bidder” refers to a person who is not a resident.
- (4) “Resident bidder” refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

I certify that as defined in Texas Government Code, Chapter 2252 that:

COMPANY NAME: _____

Yes, I am a Texas Resident bidder, _____. No, I am not a _____ Resident bidder.

PRINTED NAME: _____

SIGNATURE: _____

E-MAIL ADDRESS: _____

INSTRUCTIONS FOR CONFLICTS OF INTEREST QUESTIONNAIRE [Form CIQ]

H.B. 914, passed during the 2005 Texas legislative session, as amended by H.B. 1491 passed in 2007, requires certain persons who wish to conduct business or be considered for business with a city to file a “conflict of interest questionnaire.” The Texas Ethics Commission (TEC) created the conflict of interest questionnaire (FORM CIQ). These laws are codified in Chap. 176 of the Texas Local Government Code.

What vendors/persons are subject to Chapter 176?

- The word “person” includes a partnership, corporation or other corporate body, including those performing professional services. Such partnerships or corporations act through individuals, but it is the partnership or corporation that would be seeking to do business with the city.
- Any “person” who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity
- An agent of a person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity
- A vendor shall file a completed conflict of interest questionnaire if the person has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with an officer of that local governmental entity, or a family member of the officer that results in taxable income exceeding \$2,500 during the 12 month period preceding the date a contract is executed or a contract is being considered; or
 - (2) has given an officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value of more than \$250 in the 12 month period preceding the date a contract is executed or a contract is being considered

What triggers the requirement to file a “conflict of interest questionnaire”?

When a person begins (1) contract discussions or negotiations with the city or (2) submits an application, response to request for proposals or bids, correspondence, or another writing related to a potential agreement, Form CIQ must be completed. Whether the person initiates the discussion or the city initiates the discussions, Form CIQ must be completed. Even if the vendor has no affiliation or business relationship with an officer or employee of the city, Form CIQ must be completed and submitted

To what type of contracts does the bill apply?

Any written contract and any implied contract, such as purchase orders, procurement card purchases, utility purchases, or any exchange of money or other consideration for some service or property. The monetary amount or value of the contract/purchase does not matter.

When must a vendor file the conflict of interest questionnaire?

No later than seven days after the date the person: (a) begins contract discussions or negotiations with the city, or (b) submits an application or response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with a city, or (c) becomes aware of an employment relationship with a local government officer or family member of the officer, or (d) becomes aware of a qualifying gift..

What has to be revealed?

Section 176.006 requires disclosure of a person’s employment or business relationships. This includes each employment or business relationship with a corporation or other business entity with respect to which a local government officer services as an officer or director or holds an ownership interest of 10% or more.

How do I go about filling out the Conflict of Interest Questionnaire form?

Each number below corresponds with the number on FORM CIQ:

1. Fill in the full name of the person who is trying to do business with the City. If the person is a corporation, partnership, etc., then it is the name of that corporation, partnership, etc., that is required on Form CIQ.
2. Check box if the form is an update to a form previously completed. Updates are required by the 7th business day after an event that makes a statement in a previously filed questionnaire incomplete or inaccurate. Updates are also required by September 1 of each year in which the person submits a proposal, bid or response to the City of Waco or begins contract discussions or negotiations with the City.
3. Complete this Section by listing the name of the local government officer (member of City Council or City Manager) with whom there is an affiliation to or business relationship and you checked the “Yes” box in Section 3 A, B, or C.
If there is more than one local government officer (City Council or City Manager) with whom there is an affiliation or business relationship, more than one page two may be needed to provide information on each local government officer.
4. State whether the local government officer named on the form receives or is likely to receive taxable income, other than investment income, from the vendor filing the questionnaire.
5. State whether the filer receives or is likely to receive taxable income, other than investment income, from or at the direction of the local government officer named on the form AND the taxable income is not received from the local governmental entity.
6. State whether the filer is employed by a corporation or other business entity with which the local government officer serves as an officer or director or holds an ownership interest of 10% or more.
7. Describe each employment or business relationship with the local government officer named on the form.
8. Signature box. Person completing form must date and sign the form. If the form is being completed for a corporation, partnerships, etc., the person signing should be someone who is authorized to act on behalf of the corporation, partnership, etc.

A signature is required in box #4 regardless of any other entry on the form.

A copy of Chapter 176 of the Texas Local Government Code can be found at:

<http://www.statutes.legis.state.tx.us/SOTWDocs/LG/html/LG.176.htm>

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

OFFICE USE ONLY

Date Received

RFB / RFP / Contract #

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).
 By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

1. Name of person doing business with local governmental entity.

2. Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3. Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4.

 Signature of person doing business with governmental entity

 Date Signed



**DISCLOSURE OF RELATIONS WITH
CITY COUNCIL MEMBER, OFFICER, OR EMPLOYEE OF CITY OF WACO**

Failure to fully and truthfully disclose the information required by this form may result in the termination of any business the City is now doing with the entity listed below and/or could impact future dealings.

Name of Entity/Business/Person: _____

1. Is the above named entity/business/person: (check one)

- A corporation
- A partnership
- A sole proprietorship or an individual
- Other (specify): _____

Check all applicable boxes.

2. Relationship/Connection to Council member, officer, or employee

- NO - there is no connection between Entity/Business/Person and the City of Waco.
- YES - a person involved with this Entity/Business/Person

Who is an owner, principal, or manager of this entity/business/person
is related to* or a member of the same household as
a City of Waco city council member, officer or employee.

* As used here, "related to" means a spouse, child or child's spouse, and parent or parent's spouse. It also includes a former spouse if a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

If **YES**, provide (a) the name of owner, principal, or manager **and** (b) the name of the City Council member, officer or employee. Include the department the City officer or employee works for, if known. If related to, indicate (c) whether relationship is spouse, child or child's spouse, and parent or parent's spouse or member of same household. Use back of page if more space needed.

(a) Name of owner, principal, or manager	(b) Name of Council member, officer or employee & department	(c) What is relationship or household arrangement

3. City Council member, officer, or employee directly involved

- NO – City of Waco council member, officer or employee not involved
- YES - a person involved with this Entity/Business/Person
is an owner, principal, or manager of this entity/business/person
or is working for this entity/business/person,

AND said person is a current City of Waco city council member, officer or employee.

If YES, provide the name of owner, principal, or manager who is a City Council member, officer or employee. Include the department the City officer or employee works for, if known.

Signature: _____ Phone #: _____ Date: _____

Print Name: _____ Print Title: _____

**INSTRUCTIONS FOR COMPLETING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION CERTIFICATION**

1. By signing and submitting this proposal, the prospective lower tier participant (PROPOSER/SUBRECIPIENT) is providing the certification.
2. The certifications in this clause are a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant (PROPOSER/ SUBRECIPIENT) knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant (PROPOSER/SUBRECIPIENT) shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant (PROPOSER/SUBRECIPIENT) learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant (PROPOSER/SUBRECIPIENT) agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant (PROPOSER/SUBRECIPIENT) further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction, "without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.



CITY OF WACO

Purchasing Department

Post Office Box 2570
Waco, Texas 76702-2570
254 / 750-8060
Fax: 254 / 750-8063
www.waco-texas.com

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION**

Project Name: _____
Location: _____
RFB/RFP #: _____

**TO: CITY OF WACO
GENERAL SERVICES
P.O. BOX 2570
WACO, TX 76702-2570**

This certification is required or may be required by the regulations implementing Executive Order 12549. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). For further assistance in obtaining a copy of the regulations, contact the City of Waco Purchasing Department.

READ INSTRUCTIONS BEFORE COMPLETING CERTIFICATION

(1) The prospective lower tier participant (PROPOSER/SUBRECIPIENT) certifies, by submission of this proposal that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency.

(2) Where the prospective lower tier participant (PROPOSER/SUBRECIPIENT) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Company

Name and Title of Authorized Representative

Signature

Date

WACO TRANSIT DBE COMPLIANCE STATEMENT

(Refer To Section 13 for explanation)

(Check the statement which applies to your bid)

1. _____ Bid meets or exceeds DBE percentage participation goal established for this procurement.

You must submit the SCHEDULE OF DBE UTILIZATION along with bid. If you are a certified DBE, complete the first set of questions on SCHEDULE OF DBE UTILIZATION for yourself.

2. _____ Bid does not meet the DBE percentage participation goal established for this procurement, but you have made bona fide good faith efforts to reach those goals.

If this statement applies, you must submit the SCHEDULE OF DBE UTILIZATION and the SCHEDULE OF DBE UNAVAILABILITY along with bid, together with all other documentation of good faith efforts, which you wish Waco Transit to consider in its evaluation of your bid.

3. _____ Bid does not meet the DBE percentage participation goals established for this procurement, but you believe this procurement meets the following exception to Waco Transit DBE Policy:

This solicitation is for the procurement of a standard manufactured item or other similar procurement not open to subcontracting opportunities. Firm must fully explain in its bid response the facts on which it bases its belief that this contract meets the terms of the exception. Attach a separate page or pages giving such facts, which page(s) shall be signed on behalf of Contractor and headed "Waco Transit DBE Compliance Statement - Exception Information."

Signature

Company (print)

Printed Name and Title

Date

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

COMPLETED FORM MUST BE RETURNED WITH BID

WACO TRANSIT SCHEDULE OF DBE UTILIZATION
(Refer to Section 13 for explanation)

List all DBE's expected to participate in performing the contract resulting from this solicitation.

NOTE: Any firm listed below must be certified by the Texas Unified Certification Program (as DBE's).

_____ Total Amount of Bid \$ _____ Bid Number: _____

Name of Prime Contractor (print)

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

Name of DBE Subcontractor or DBE Prime Contractor:

Address & Telephone Number:

Type of Work to be Performed:

Project Commencement & Completion Dates:

Dollar Amount of Work:

Name of DBE Subcontractor or DBE Prime Contractor:

Address & Telephone Number:

Type of Work to be Performed:

Project Commencement & Completion Dates:

Dollar Amount of Work:

Name of DBE Subcontractor or DBE Prime Contractor:

Address & Telephone Number:

Type of Work to be Performed:

Project Commencement & Completion Dates:

Dollar Amount of Work:

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

SIGNATURE

TITLE

DATE

(Bidder may make as many copies of this schedule as needed to list all potential DBE subcontractors contacted)

COMPLETED FORM MUST BE RETURNED WITH BID

WACO TRANSIT SCHEDULE OF DBE UNAVAILABILITY

(Refer to Section 13 for explanation)

Give requested information for each DBE contacted to participate in the contract resulting from this solicitation.

_____ Bid Number: _____
Name of Prime Contractor

Name of certified DBE Subcontractor:
Address & Telephone Number:
Type of Work:
Contract Items or Parts to be Performed:
Reason Unavailable:

Name of certified DBE Subcontractor:
Address & Telephone Number:
Type of Work:
Contract Items or Parts to be Performed:
Reason Unavailable:

Name of certified DBE Subcontractor:
Address & Telephone Number:
Type of Work:
Contract Items or Parts to be Performed:
Reason Unavailable:

The undersigned certifies that the above certified DBEs were contacted, in good faith, and said certified DBEs were unable to submit an acceptable response on bid. The above certified DBEs listed will be contacted and verification of reason of unavailability made. (Please attach additional documentation of good faith efforts to meet the goal.)

DATE SIGNATURE TITLE

(Bidder may make as many copies of this schedule as needed to reflect all potential DBE subcontractors contacted)

COMPLETED FORM MUST BE RETURNED WITH BID

GOVERNMENT-WIDE DEBARMENT AND

SUSPENSION (NONPROCUREMENT)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

(49 CFR - Part 29 -- Executive Order 12549)

- 1) The prospective lower tier participant certifies, by submission of this bid or bids, that neither it nor its "principals" [as defined at 49 CFR 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.**
- 2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this bid.**

Date: _____

Signature: _____

Company Name _____

Title: _____

COMPLETED FORM MUST BE RETURNED WITH BID

**CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING DEBARMENT,
SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

Required of contractors and subcontractors with contracts over \$100,000

The Lower Tier Participant, _____, certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by an Federal department or agency.

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

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

Signature and Title of Authorized Official

The undersigned chief legal counsel for the _____ (entity) hereby certifies that the _____ (entity) has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney

Date

MUST BE SUBMITTED BEFORE ISSUANCE OF PURCHASE ORDER

LOBBYING REQUIREMENTS

**CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANT,
LOANS AND COOPERATIVE AGREEMENTS**

(APPENDIX A, 49 CFR - PART 20)

The undersigned [Bidder] certifies, to the best of his or her knowledge and belief, that:

- 1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph two (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
- 3) The undersigned shall require that the language of this certification be included in the award documents for all 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 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Bidder, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Bidder understands and agrees that the provisions of 31 U.S.C. 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official: _____

Name and Title of Contractor's Authorized Official: _____

Date: _____

COMPLETED FORM MUST BE RETURNED WITH BID

CERTIFICATION OF COMPLIANCE WITH RESTRICTIONS ON LOBBYING
Required of Contractors and Subcontractors with contracts over \$100,000

I, _____, hereby certify on
(Printed Name and Title of Contractor Official)

behalf of _____ that:
(Printed Name of Contractor)

- (1) It will not use federal funds to support lobbying.
- (2) No federal 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, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (3) If any funds other than Federal 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.
- (4) *All subcontractors and subrecipients shall certify and disclose accordingly.*

This certification is a material representation of fact upon which reliance is 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.C. 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.

Executed this _____ day of _____, 20_____.

By _____
(Signature of Authorized Official)

(Title of Authorized Official)

Note: Bidder shall make copies of this blank page and obtain certification from all subcontractors that bidder is recommending, and submit such certifications to Waco Transit prior to such subcontractors beginning any work under this contract.

MUST BE SUBMITTED BEFORE ISSUANCE OF PURCHASE ORDER

CORPORATION AUTHORITY AND RESOLUTION

When an instrument is signed on behalf of a corporation, documentation must be submitted that states the person signing on behalf of the corporation has the authority to do so. That documentation may be in the form of a resolution approved by the Board of Directors, charter provisions, or by-laws.

If a corporation has a document authorizing one or more individuals to enter into contracts or execute and deliver any instrument in the name of the corporation that it may deem necessary for carrying on the business of the corporation, a certified copy of that document may be submitted. The secretary of the corporation must certify that the submitted document is a true and correct copy of the resolution and has not been revoked, amended, or altered and is still in full force and effect. (A certification form is presented below for your convenience.)

If a corporation does not have such a document authorizing someone to enter into a contract on behalf of the corporation, a resolution form is attached for your convenience.

CERTIFICATION

I, _____, certify that the attached resolution was
(Secretary of Corporation)

adopted by the Board of Directors of _____
(Corporation)

at a meeting on the ____ day of _____, 200__, and has not been revoked, altered, or amended and is still in full force and effect.

(Signature)

(Print Name), Secretary

RESOLUTION

BE IT RESOLVED by the Board of Directors of _____ that
(Name of Corporation)
_____ is hereby authorized to execute a contract with the City of
(Name)

Waco, Texas, for Unleaded Fuel, pursuant to City of Waco RFB No. 2012-008.

Said _____, Secretary, is authorized to attest the signature binding
the corporation.

Corporate Name

(Corporate Seal)

By: _____

Title: _____

ATTEST:

Secretary of Corporation

CERTIFICATION

I, _____, certify that the above resolution was adopted by the
(Secretary of Corporation)

Board of Directors of _____ at a meeting held on the ___ day of
(Corporation)
_____, 20__.

(Signature)

(Print Name), (Secretary)

BID AND PROPOSAL PROTEST PROCEDURE

Adopted October 12, 2004

1. Any actual or prospective bidder or proposer who believes they are injured as a result of a bid or proposal posted by the City of Waco may file a protest. Only written protests may be considered. A written protest includes a protest sent by email or facsimile to the purchasing services department of the city.
2. The protest must be in writing and delivered to the purchasing services department of the City of Waco. The protest may be delivered in person to the department offices located at **1415 N. 4th St., Waco, Texas, 76707**, or by certified mail, return receipt requested, to the following address:
**Purchasing Services
c/o City of Waco
Post Office Box 2570
Waco, Texas 76702-2570**
3. The department must receive the written protest within five (5) business days from the date of receipt of notification of city staff's bid award recommendation being submitted to the Waco City Council for award.
4. The written protest must include the following information before it may be considered by the city:
 - (a) name, mailing address, and business phone number of the protesting party;
 - (b) identification of the bid or proposal being protested;
 - (c) a precise and concise statement of the reason or reasons for the protest which should provide enough factual information to enable the city to determine the basis of the protest; and
 - (d) any documentation or other evidence supporting the protest.
5. The purchasing services department, in necessary conjunction with the department responsible for the bid or proposal solicitation, will attempt to resolve the protest, including, at the purchasing services director's option, meeting with the protesting party. If the protest is successfully resolved by mutual agreement, written verification of the resolution of each ground addressed in the protest will be provided to the city manager or designee assistant city manager.
6. If the purchasing services department is unable to resolve the protest, the protesting party may request the protest be reviewed and resolved by the city manager or designee assistant city manager.
7. A request for the city manager's review must be in writing and received by the purchasing services department within three (3) business days from the date the purchasing services department informs the protesting party the protest cannot be resolved. The request for review must be delivered in person to the purchasing services department at the address stated above or by certified mail, return receipt requested, to the mailing address stated above.
8. If a protesting party fails or refuses to request a review by the city manager within the three (3) days, the protest is deemed finalized and no further review by the city is required.
9. Applicable documentation and other information applying to the protest may be submitted by the protesting party to the purchasing services department before review by the city manager. If the protesting party requests a review by the city manager, such documentation will be forwarded to the city manager or designee assistant city manager for consideration. The city manager or designee assistant city manager may likewise notify the protesting party or any city department to provide additional information.

The decision reached by the city manager or designee assistant city manager will be final, but the protesting party may still appear before the city council during the hearing of the visitors session.

Diesel Fuel S15 No.2-D Destination Specification

Product Property	Units	Limit	Values	Method	Note	Spec ^(a.) Source
Composition						b.
Cetane Index		MIN	40	D-976		EPA/ASTM
Cetane Index (Four Variable)		MIN	40	D-4737B		ASTM
Total Sulfur	ppmw	MAX	15	D-7039		EPA/ASTM
Volatility						
Distillation 90% Recovery	°F	MIN MAX	540 640	D-86		ASTM
Flash Point	°F	MIN	126	D-93		ASTM
API Gravity	°API		Report	D-4052		FHR
Fluidity						
Viscosity	cSt@104 °F	MIN MAX	1.9 4.1	D-445		FHR
Cloud Point	°F	MAX	Nov.-Mar. +20 April, Oct +30	D-5771, D-5773 or D-2500		ASTM
Corrosion						
Copper Strip (3 hrs @122 °F)		MAX	3	D-130		FHR
Contaminants						
Appearance					c.	ASTM
Haze	Haze@Ambient	MAX	< 3	D-4176		FHR
Ash	wt. %	MAX	0.01	D-482		ASTM
Carbon Residue	wt. %	MAX	0.35	D-4530		ASTM
Thermal Stability	Pad @ 300°F	MAX	7	DuPont		FHR
Lubricity						
HFRR	microns @ 60 °C	MAX	520	D-6079	d.	ASTM

Notes

- a. ASTM specification source is D975 "Standard Specification for Diesel Fuel Oils".
- b. Product purchased at, or deliveries originating from, the FHR Eules Terminal may contain up to 5% biodiesel.
- c. Free of sediment and water as per ASTM D-975.
- d. No Lubricity Improver Additive is added to bulk shipments via pipeline or vessel. Injection is at the terminal rack.

Issue Date: 5/03/2011

Approved by: Rick Legvold (Lab/Quality Assurance Manager)

Nature of Change:

- Specification revised to conform to the new format.
- Remove note "Testing performed on oversight basis only."
- Include note that FHR Eules Terminal may contain up to 5% biodiesel.