

REQUEST FOR PROPOSAL (RFP) INVITATION

HVAC ROOFTOP UNITS

RFP # 20-T036

The Fort Worth Transportation Authority (“Trinity Metro”) outlines the following schedule:

RFP Release:	June 29, 2020
Pre-Proposal and On-Site Walk-Thru:	July 13, 2020 @ 2:00 p.m.
Last Day to Submit Written Questions:	July 17, 2020 @ 5:00 p.m.
Proposal Due Date:	July 22, 2020 @ 5:00 p.m.

Electronic proposals **shall** be delivered via **Trinity Metro’s electronic submission portal, Bonfire:**

<https://ridetm.bonfirehub.com/opportunities/28987>

Preamble:

The Fort Worth Transportation Authority (Trinity Metro) is a regional transportation authority of the State of Texas, created pursuant to Chapter 452, Transportation Code of Texas and confirmed by a public referendum on November 8, 1983. Trinity Metro provides public transportation services within the city limits of Fort Worth and Blue Mound. Such services include fixed bus routes, mobility impaired transportation service (ACCESS), carpool/vanpool services and commuter rail (Trinity Railway Express, (Trinity Railway Express). A one-half of one percent (\$.0050) sales tax is dedicated to supporting Trinity Metro’s public transportation program. Trinity Metro is also the recipient of Federal Transit Administration (FTA) capital grants and Texas Commission on Environmental Quality grants.

Trinity Metro is governed by an 11 member Board of appointed officials. Eight Board members are appointed by the Fort Worth City Council and 3 Board members are appointed by the County Commissioners Court, in accordance with Subchapter N., Sec. 452.562 (c) – (f) of the Transportation Code. The Board sets policy through standing and ad hoc committees, and establishes broad business goals and policies for management. The President & Chief Executive Officer reports to the Board, and is responsible for implementation of Board policies and day-to-day operations of Trinity Metro.

This request for proposal implies no obligation on the part of Trinity Metro to award a contract or to pay any costs incurred in the preparation or submittal of any proposal. Trinity Metro reserves the right to accept the proposal that it believes most nearly meets the requirements, based on “best value” and not necessary the lowest price offered.

Trinity Metro
801 Cherry Street, Suite 850
Fort Worth, Texas 76102

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SECTION 1 MINIMUM REQUIREMENTS			
NAME	FORM DESCRIPTION	FORM NUMBER	SUBMIT WITH OFFER?
Section 1	Cover Letter, Table of Contents	None	YES
Section 2	Schedule of Events	None	
Section 3	Instruction to Proposers	None	
Section 4	Evaluation and Response	None	
Section 5	Scope of Work	None	
Section 6	Special Provisions	None	
Section 7	Federal Contract and Other Requirements	None	
Section 8	Disadvantaged Business Enterprise (DBE)	None	
Section 9	Attachments and Amendments	F1	YES
	DBE Compliant Statement	F2	YES
	Schedule of DBE Utilization	F3	YES
	Good Faith Effort Documentation	F4	YES
	Good Faith Effort Information Requests	F5	YES
	Certification of Contractor Regarding Debarment, Suspension and Other Matters	F6	YES
	Conflict of Interest Acknowledgement and Certification	F7	YES
	Certification of Compliance with Restriction on Lobbying	F8	YES
	Business Questionnaire	F9	YES
	List of References for Similar Projects	F10	YES
	Affidavit of Non-Collusion (Notarized)	F11	YES
	Prohibition of Contracts with Boycotting Israel	F12	YES
	Price Proposal Form	F13	YES
!!!NOTE: FAILURE TO SUBMIT ALL REQUESTED ITEMS ABOVE, PROPERLY COMPLETED, CAN BE CAUSE FOR REJECTION OF YOUR FIRMS' SUBMITTAL!!!			

SECTION 2 SCHEDULE OF EVENTS

2.1 Schedule of Events

EVENT	DATE
Release of RFP	June 29, 2020
Pre-Proposal and On-Site Walk-Thru: 1600 E. Lancaster, Fort Worth, TX 76102	July 13, 2020 @ 2 p.m.
Deadline for Submission of Written Questions or Requests for Clarifications ¹	July 17, 2020 @ 5:00 p.m.
Proposal Due Date	July 22, 2020 at 5:00 p.m.
Trinity Metro Board Meeting Recommended Approval for Award ³ (if applicable)	August, 2020
Contract Executed and Notice to Proceed ⁴	September, 2020

¹ Questions will be received in writing by e-mail. No questions will be answered verbally.

² Trinity Metro reserves the right to not conduct oral interviews and select a Contractor based on the written proposals only.

³ The Evaluation Committee's recommendation of contract award is scheduled for Board presentation by the date above; however, Trinity Metro reserves the right to change the award date.

⁴ Trinity Metro reserves the right to change the contract execution date.

SECTION 3 INSTRUCTIONS TO PROPOSERS

3.0 Notice of Intent to Respond to Proposal

Prior to submittal of the RFP response, potential respondents should submit a letter of intent (e-mail is accepted) to Trinity Metro acknowledging receipt of the RFP and informing Trinity Metro of its intent to respond. The potential respondent should also provide the name, address, telephone number, and email address of a contact individual who can address inquiries related to this RFP and the Company's proposal. This contact would also receive any clarifications or addenda to the RFP from Trinity Metro.

For uniformity, all respondents are required to submit information in the order and format requested in this RFP. Information requested in the RFP, which is deemed privileged information and confidential by the Company, may be submitted in a separate envelope marked "Privileged and Confidential Information." Trinity Metro will use its best efforts to protect such information from disclosure to the extent allowable by law. There will be no release of information until the selection process is complete and a contract has been executed.

3.1 Basis for Contract Negotiation

This RFP and the resulting proposals shall be used as the basis for contract negotiation. The RFP does not commit Trinity Metro to procure or award a contract for the scope of work described herein.

3.2 Pre-Proposal Meeting/On-Site Walk-Thru

A pre-proposal meeting and on-site walk-thru is scheduled for July 13, 2020 at 2 p.m. at the HRP Facility, 1600 E. Lancaster, Fort Worth, TX 76102.

All visitors will be required to wear a protective mask on-premise, and have their temperature checked before being allowed to attend the meeting.

3.3 Receipt of Proposals

Sealed proposals marked "RFP # 20-T036 HVAC Rooftop Unit" will be received electronically through Trinity Metro Bonfire on July 22, 2020.

The Bonfire portal is: <https://ridetm.bonfirehub.com/projects/view/28987>

3.4 Rejection of Proposals

Trinity Metro reserves the right to reject any or all proposals, to waive formalities, and to select the proposal and the Company that, in Trinity Metro's sole discretion, is in the best interests of Trinity Metro.

1. Trinity Metro reserves the right to:
 - a. Amend, modify, or withdraw this RFP;
 - b. Revise any requirements under this RFP;
 - c. Require supplemental statements of information from any responding party;
 - d. Extend the deadline for submission of responses hereto;
 - e. Negotiate or hold discussions with any proposer to correct insufficient responses that do not completely conform to the instructions contained herein;
 - f. Waive any nonconformity with this RFP;
 - g. Cancel, in whole or in part, this RFP if Trinity Metro deems it is in its best interest to do so;
 - h. Request additional information or clarification of information provided in the response without changing the terms of the RFP; and
 - i. Waive any portion of the selection process in order to accelerate the selection and negotiation with the top-ranked management company.
 - j. Award contracts to one or more proposers whose proposals best meet program needs of Trinity Metro.

Trinity Metro may exercise the foregoing rights at any time without notice and without liability to any proposer, or any other party, for expenses incurred in the preparation of responses hereto or otherwise. Responses hereto will be prepared at the sole cost and expense of the bidder. Issuance of this RFP does not bind Trinity Metro to award a contract.

2. Nothing stated at any time, by any representative of Trinity Metro, will effect a change in, or constitute an addition to, this RFP unless confirmed in writing by Trinity Metro.
3. Respondents hereto must agree to keep confidential their response and any information received from Trinity Metro.
4. All information submitted in response to the RFP shall become the property of Trinity Metro, and as such, may be subject to public review as public records.
5. Respondents acknowledge and agree that Trinity Metro will not be liable for any costs, expenses, losses, damages (including damages for loss of anticipated profit), or liabilities incurred by the respondent or any member thereof as a result of, or arising out of, submitting a proposal, negotiating changes to such proposal, or due to Trinity Metro's acceptance or non-acceptance of the proposal.
6. Trinity Metro shall provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to release information to the public must receive prior written approval from an authorized representative of Trinity Metro.

7. Neither Trinity Metro nor any of its officers, agents, consultants, or employees shall be responsible for the accuracy of any information provided as part of this RFP (including appendices). All respondents are encouraged to independently verify the accuracy of any information provided. The use of this information in the preparation of a response to the RFP is at the sole risk of the respondent.
8. The respondent shall not collude in any manner or engage in any practices with any other respondent(s), which may restrict or eliminate competition or otherwise restrain trade. Violation of this instruction will cause Trinity Metro to reject the respondent's submittal. This prohibition is not intended to preclude joint ventures or subcontracts.
9. All responses submitted must be the original work product of the respondent. The copying, paraphrasing, or other use of substantial portions of the work product of another respondent is not permitted. Failure to adhere to this instruction will cause Trinity Metro to reject the response. The successful respondent will be required to enter into contract by signature on separate contract documents, which will be prepared by Trinity Metro from information in the RFP and the successful respondent's proposal.
10. Any respondent may protest such recommended award in accordance with FTA Circular 4220.1F.

3.5 Requests for Clarification

It is the responsibility of the proposer to examine the entire RFP package and seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a response.

All requests for clarifications or changes shall be submitted in writing in time to be received and responses provided (within 7 days) prior to the date on which the proposals are due.

3.6 Addenda and Attachments to RFP

This Request for Proposal (RFP) has been posted on Trinity Metro's website. Any attachments, addendums, clarifications or further instructions to proposers, whether as a result of questions raised by proposers or initiated by Trinity Metro will also be posted when issued. It is the Offeror's responsibility to ensure that the entire RFP package, in its latest version, is reviewed prior to submittal of a proposal.

3.7 DBE Requirements

Pursuant to Title 49, Code of Federal Regulations, Part 26.49, a Proposer, as a condition of being authorized to respond to this solicitation, must certify by completing the form DBE Approval Certification that it has on file with the Federal Transportation Administration (FTA) an approved or not disapproved annual disadvantaged business enterprise (DBE) subcontracting participation goal.

3.8 Non-Collusion Affidavit

Proposer shall submit, with its proposal, an affidavit stating that neither proposer nor its agents, nor any other party on its behalf, has paid or agreed to pay, directly or indirectly, any person, firm, or corporation, any money or valuable consideration for assistance in procuring or attempting to procure the contract that may result from this RFP, and further agrees that no such money or consideration will be hereafter paid. This affidavit shall be on the form provided by Trinity Metro, which is made a part of this RFP.

3.9 Term of Contract

Trinity Metro desires to negotiate a purchase and installation of HVAC equipment. All pricing must be provided with this bid. It should be noted that multiyear contracts may be continued each year only after funding appropriations and program approval have been granted by Trinity Metro Board of Directors. In the event that the necessary funding appropriation/program approval is not granted, then the affected multiyear contract will not be renewed.

Trinity Metro reserves the right to add similar or like items as needed and to increase quantities as needed.

3.10 Type of Contract

Trinity Metro intends to award one or more firm, fixed-price contracts for HVAC Roof-Top units. If a Contract(s) is awarded, all prices are to remain firm through the completion of the project.

3.11 Contract Award

Trinity Metro reserves the right, as the interests of the Authority(s) may require, to postpone, accept or reject any and/or all proposals and to waive any informalities in the proposals received, and to award the contract(s) to the best responsive and responsible proposer.

In awarding a contract, Trinity Metro reserves the right to consider all elements entering into the determination of the responsibility of the proposer. Any proposal which is incomplete, conditional, obscure, or which contains additions not called for or irregularities of any kind, may be cause for rejection of the proposal.

The contract for the services may be awarded within 90 calendar days from the date upon which proposals are received to the proposer Trinity Metro deems most responsive and responsible.

In the event a single proposal is received, Trinity Metro will conduct a price and/or cost analysis of the proposal. A price analysis is the process of examining and evaluating a price submitted without examining in detail the separate cost elements and the profit included in the cost proposal. It should be recognized that a price analysis through comparison to other similar procurements shall be based upon an established or competitive price of the elements used in the

comparison. The comparison shall be made to a purchase of similar quantity and involving similar specifications. Where a difference exists, a detailed analysis shall be made of this difference and costs associated thereto. Trinity Metro has the right to enter into a negotiated procurement should only a single proposal be received.

Where it is impossible to obtain a valid price analysis, it may be necessary for Trinity Metro to conduct a cost analysis of the proposal price.

Regardless of the award of a contract as a result of this RFP to a single vendor or multiple vendors, Trinity Metro reserves the right to purchase the same or similar materials or items from other sources, should it be determined that doing so would be in the best interest of Trinity Metro.

3.13 Sales Taxes

Trinity Metro is a tax-exempt institution and is free from all state and federal taxes. No such taxes shall be included in the contractor's charges to Trinity Metro. However, the contractor may be liable for the payment of sales and use taxes on materials purchased for fulfilling this contract.

3.14 Proprietary Information

If a proposal includes proprietary data or information that the proposer does not want disclosed to the public, such data or information shall be specifically identified as such and marked "Privileged and Confidential Information" on every page on which it is found. Data or information so identified will be used by Trinity Metro solely for the purpose of evaluating proposals and conducting contract negotiations. Disclosure of any proprietary information by Trinity Metro shall be in strict accordance with the laws and regulations regarding disclosure in the State of Texas. Trinity Metro will use its best efforts to protect such information from disclosure to the extent allowable by law. There will be no release of information until the selection process is complete and a contract has been executed.

3.15 Format and Order of Proposal Preparation

For uniformity, all respondents are required to submit information in the order and format requested in this RFP. Failure to do so may cause the proposal to be deemed nonresponsive to the RFP.

Required Proposal Documents and Format:

- a. Proposer shall submit proposal as required through the electronic portal, Bonfire.
- b. Each proposer shall submit a detailed response to the RFP. The response shall include sufficient information to enable Trinity Metro to fully evaluate the capabilities of the proposer and its approach to providing the specified products and services (scope). Unnecessarily elaboration or voluminous responses are neither required nor wanted. Discussion of the firm's past experience, which is not germane to the specified scope, shall not be included. The response shall specifically

address the issues raised, and provide the information requested.

- c. Specification sheets may be provided that represent the proposer's items and products offered.

3.16 Proprietary Information

If a proposal includes proprietary data or information that the proposer does not want disclosed to the public, such data or information shall be specifically identified as such on every page on which it is found. Data or information so identified will be used by Trinity Metro solely for the purpose of evaluating proposals and conducting contract negotiations. Disclosure of any proprietary information by Trinity Metro shall be in strict accordance with the laws and regulations regarding disclosure in the State of Texas.

3.17 Cost of Proposal Preparation

The cost of preparing a response to this RFP, including site visits, will not be reimbursed by Trinity Metro.

3.18 Disclosure of Interested Parties

Section 2252.908 of the Texas Government Code states that Texas state agencies and other Texas governmental entities, such as the Trinity Metro, may not enter into certain contracts with a Supplier if the business is required to submit a "disclosure of interested parties" (Form 1295). The successful bidder must submit a completed, executed, and notarized Form 1295, with the certification of filing with the Texas Ethics Commission, when a contract is delivered to Trinity Metro for execution. Please refer to the information at the Texas Ethics Commission's website for instructions on registering and completing Form 1295. Trinity Metro must notify the Texas Ethics Commission of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the contract binds all parties to the contract. The commission will post the completed Form 1295 to its website within seven business days after receiving notice from Trinity Metro. Trinity Metro will not execute the contract, and no agreement will be formed if Trinity Metro has not received the certification of filing.

3.19 Prohibition of Contracts with Companies Boycotting Israel

House Bill 89, effective September 1, 2017, amended the Texas Government Code to add Chapter 2270, Prohibition of Contracts with Companies Boycotting Israel.

Effective September 1, 2017, a state agency and a political subdivision (which includes a transportation authority) may not enter a contract with a company for goods or services unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract.

"Boycott Israel" is defined to mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit

commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. "Company" is defined to mean a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

3.20 Response to Communications and Request

Trinity Metro will not respond to oral requests. Only written requests, including questions and/or clarifications, will be acceptable (email and/or email attachments will be accepted). All requests, including questions and/or clarifications shall be sent to the attention as identified below. Only written responses from Trinity Metro, provided as addenda shall be official and all other forms of communication with any officer, employee or agent of Trinity Metro shall not be binding. All questions and/or clarifications and/or request for a change to any of the specifications shall be fully supported with technical data, test results, or other pertinent information evidencing that the exception will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements. Any responses to such written requests shall be provided by Trinity Metro in the form of an addendum.

All questions (including all technical, contract or administrative questions) regarding the services required shall be submitted in writing and/or email (no phone inquiries will be accepted) and addressed to:

Kathy Bridwell
Director, Procurement
Trinity Metro
801 Cherry Street, Suite 850
Fort Worth, Texas 76102
[E-mail: Kathy.bridwell@RideTM.org](mailto:Kathy.bridwell@RideTM.org)

Proposers shall not contact members of the Evaluation Committee or Board of Directors of the Agency concerning this RFP. Any proposers violating this provision may be disqualified from consideration in this RFP.

SECTION 4 EVALUATION CRITERIA

Evaluation and Selection Criteria

Proposals will be evaluated by a selection committee of individuals from Trinity Metro. Trinity Metro intends to evaluate the proposals generally in accordance with the criteria listed below.

At Trinity Metro's own discretion, Trinity Metro, may negotiate with proposers whose proposals rank as the most qualified firm or firms, based on the evaluation factors set forth below and/or within the competitive range. Proposals shall be clear, concise and include sufficient detail for effective evaluation.

Selection Criteria (out of a total of 100 points)

<ul style="list-style-type: none"> ● Qualifications/ Experience: Provide a description of the Qualifications and Experience of the Proposer to provide the services of comparable requested services. At a minimum provide the following: <ul style="list-style-type: none"> ▪ Provide evidence that you have qualified capabilities to provide HVAC units, products and maintenance services. Provide personnel capabilities for managing the account. ▪ Product availability/Representations of Manufacturers ▪ Sufficient plant and facilities—Include where products are acquired (In U.S. or International) ▪ Adequate equipment availability/leadtimes/sources of manufacturing or purchase ▪ Adequate successful experience to provide the products listed on the proposal attachments, including references for similar sized companies. ▪ Financial management of account 	15 Points
<ul style="list-style-type: none"> ● Installation Plan: Describe the services offered by your firm and how your firm meets service levels. Provide information for service calls and responsiveness, and how issues are resolved in a timely manner. At a minimum, describe the following: <ul style="list-style-type: none"> ▪ Understanding of scope of services. ▪ Response to call/repair time commitment ▪ Customer service ▪ Service levels provided ▪ Quality and completeness of product provided ▪ Account Management 	20 Points

<ul style="list-style-type: none"> • Quality Control & Quality Assurance: Include organizational processes and procedures that the Proposer has in place and intends to apply to services within this RFP to assure quality assurance and quality control, regarding customer service/maintenance, service calls, invoicing, reporting mechanisms and account management. 	<p>25 Points</p>
<ul style="list-style-type: none"> • Pricing: Pricing must include all associated costs with providing HVAC units costs including any delivery fee and move charges. All additional fees should be included. 	<p>25 Points</p>
<ul style="list-style-type: none"> • Compatible systems: Please indicate innovative solutions and industry best-practices Trinity Metro can consider for process development and implementation purposes that Proposer can provide in efforts for meeting service expectations outlined in RFP. 	<p>10 Points</p>
<ul style="list-style-type: none"> • DBE Participation/Goal: Ability to meet or exceed the goal for DBE participation. 	<p>5 Points</p>

SECTION 5 SCOPE OF SERVICES

1. Scope and Intent

Trinity Metro is seeking proposals from one or more qualified suppliers for the purchase and installation of 8 (eight) HVAC Rooftop Units to Trinity Metro.

The successful Proposer (“Contractor”) shall have all necessary equipment and qualified staff available to deliver and handle installation of the units. In addition, the Contractor must have the capability to provide the needed services and program the existing Metasys automation system to control the units.

III. SPECIFICATIONS

1. Provide Trinity Metro Roof Top Unit Submittal for review.
2. Schedule meeting to review submittals and approve.
3. Provide eight (8) York Roof Top Units (or equivalent):
 - a. One (1) York Series 20 - 17.5 Ton Roof Top Unit
 - b. Two (2) York Series 10 - 7.5 Ton Roof Top Unit
 - c. Two (2) York Sunline - 5 Ton Roof Top Unit
 - d. One (1) York Sunline 20 - 3 Ton Roof Top Unit
 - e. Two (2) York Series 10 - 10 Ton Roof Top Unit
4. Coordinate and schedule work with Trinity Metro facilities personnel.
5. Coordinate pre-construction with sub-contractors for safety and site requirements.
6. Provide Microsoft Project Schedule for work path.
7. Coordinate staging areas for crane and equipment.
8. Lockout/Tag out electrical to existing roof top units.
9. Disconnect existing roof top units electrical.
10. Inspect ductwork for any fasteners or screws attached to roof top unit frame.
11. Disconnect condensate piping from units.
12. Disconnect Metasys controls and remove controller for roof top units.
13. Stage crane in owner specified area for rigging and removal of roof top units.
14. Rig and set new roof top units on existing roof curbs.
15. Install condensate piping roof supports as needed.
16. Install new Copper condensate drain piping and tie into existing drain piping.
17. Reconnect electrical power wiring and terminate at unit connection point.
18. Install SA Bus to York roof top units.
19. Verify control operation, visibility, and functionality.
20. Dress-out roof top units with hail guards and economizers.
21. Check phase rotation on roof top units as applicable.
22. Perform start up and logging of roof top unit operation in cooling and heating.
23. Run test unit operation and clean-up work area.

24. Create Metasys program for the unit and verify its reading and operating correctly.
25. Place old roof top units in area defined by Trinity Metro
26. Demobilize and remove all equipment and debris.

PROJECT INCLUSIONS

1. York (or equivalent) Roof Top Units:

- a. One (1) York Series 20 - 17.5 Ton Roof Top Unit
 - b. Two (2) York Series 10 - 7.5 Ton Roof Top Unit
 - c. Two (2) York Sunline - 5 Ton Roof Top Unit
 - d. One (1) York Sunline 20 - 3 Ton Roof Top Unit
 - e. Two (2) York Series 10 - 10 Ton Roof Top Unit. Natural Gas Single and Two Stage Heating
 - f. Natural Gas Single and Two Stage Heating
 - g. Full Perimeter Base Rails with Built in Rigging Capabilities
 - h. Unit Cabinet Constructed of Powder Painted Steel, Certified At 1000 Hours
 - i. Salt Spray Test (ASTM B-117 Standards).
 - j. Dual Refrigerant Circuits for Efficient Part Load Operation with Scroll Compressors Based on Unit Tonnage
 - k. Unit Ships with 2" Throwaway Filters
 - l. Solid Core Liquid Line Filter Driers
 - m. Single Point Power Connection with Non-Fused Disconnect
 - m. 110-Volt Convenience Outlets
 - o. Through-the-Curb and Through-The-Base Utility Connections
 - p. Short Circuit Current: 5kA RMS Symmetrical
 - q. Phase Monitor
 - r. Hail Guards
 - s. Standard Condenser Coil
 - t. Standard Evaporator Coil
 - u. Composite Drain Pan
 - v. Standard Access Doors
 - w. BACNet MS/TP, Modbus and N2 communication card
 - x. DAT, RAT, and OAT Temperature Sensors
1. Copper Condensate Drain Piping
 2. Natural Gas BI Piping
 3. Crane and Rigging Estimated Full Day Lift Offload and Load
 4. Electrical Disconnect and Reconnect
 5. Metasys Disconnect and Reconnect
 6. Metasys Termination, Verification, and Functionality

7. NS-8000 Thermostats
8. Straight Time Labor
9. Equipment Start Up Reports
10. Equipment Warranty Documents
11. Three (3) Equipment Submittals
12. Three (3) IOM Manuals

Disposition for Replaced Materials:

It is preferred that the contractor remove replaced materials from Trinity Metro and provide a value for the scrap or materials that can be replaced.

SECTION 6 SPECIAL PROVISIONS

6.1 CONTRACT TYPE

This will be a firm fixed-fee contract for purchase and installation of equipment. Delivery and performance shall be made only as authorized after funding appropriations and program approval have been granted by Trinity Metro's Board of Directors. In the event that the necessary funding appropriation/program approval is not granted, then the affected multiyear contract will be canceled.

6.2 EXPENSES & INVOICING

Trinity Metro is exempt under this solicitation from all Federal, State, municipal and local taxation. A copy tax exempt certification(s) will be provided to the successful proposer upon request. This provision supersedes any language pertaining to payment of taxes that may appear elsewhere in this solicitation.

6.3 SELECTION PROCEDURE

- a. Proposals received after date and time specified in Section 2 are not eligible and shall not be considered for award of contract.
- b. After the proposals are received, the Evaluation Committee shall evaluate each proposal that was submitted on time and the evaluation shall be based on the criteria listed Section 4. The sum total points scored on both qualifications and price will be considered in award of a contract. Following this initial evaluation, the Evaluation Committee may make a recommendation to the Board of Director(s) concerning award of contract without further discussion with proposers, or the firms submitting. The top rated proposals may be asked to make an oral presentation to the evaluation team for the purpose of further clarification and evaluation of the proposals.
- c. Oral presentations, if required, shall be conducted to solicit information to enable the Evaluation Committee to evaluate the capability of the applicable proposer proposing the desired services. If Trinity Metro notifies a proposer that an oral presentation is required, Trinity Metro shall inform the proposer of the schedule, order and procedure for the presentation, including its content, time limits, identity of the presenters, and use of handouts and visual aids. Trinity Metro may tape record and/or videotape any presentation.
- d. If oral presentations are scheduled, the representatives of the firm who will be directly assigned to the account shall be present at the interview. During the interview portion of the meeting, the Evaluation Committee may advise the proposer of deficiencies in the Proposal Documentation and shall allow the proposer to satisfy the requirements, questions, or concerns by submitting final Proposal Documentation. The proposer may decide not to modify their Proposal Documentation and may inform the Buyer that the Proposal Documentation is firm and final.
- e. Notwithstanding the foregoing, Trinity Metro emphasizes that it may elect to forego oral presentations for all or some proposers. Consequently, all responses shall be comprehensive and clear. No proposer shall rely upon the opportunity to present additional or clarifying information at a later time.

f. The Evaluation Committee shall not disclose any information included in a proposing firm's Proposal Documentation to another firm, and shall not disclose any information for the purpose of bringing one firm's Proposal Documentation up to that of a competitor's Proposal Documentation.

g. If final Proposal Documentations are required, the Evaluation Committee shall reevaluate each of the final Proposal Documents, including those deemed final at the interview. The final Proposal Documentations shall be evaluated on the same criteria used in the first evaluation.

h. The Evaluation Committee shall recommend the top ranked proposer to the Board of Director(s). Each Agency's Board shall make the final selection for the respective Agency. Selection of any firm except the top ranked firm shall be "for cause," and that reason shall be stated in the minutes of Trinity Metro Board's decision.

i. Award of contract shall be made to the responsive, responsible proposer whose Proposal Documentation is determined to be the most advantageous to each Agency, taking into consideration the evaluation factors. Notwithstanding any other provision of this RFP, Trinity Metro expressly reserves the right to:

- Waive any immaterial defect or informality, or
- Reject any or all Proposal Documentations, or
- Reissue a Request for Proposal Documentation, or
- Modify the number and types of data to be collected to meet budgetary limitations, or
- Cancel the Request for Proposal (RFP).

6.4 OPEN RECORDS

All responses submitted to Trinity Metro become the property of Trinity Metro and are subject to the Public Information Act (Texas Government Code Chapter 552). The bidder shall familiarize themselves with the provisions of that Act. In no event shall Trinity Metro, or any of its agents, representatives, proposers, directors, officers, or employees be liable to a bidder for the disclosure of all or any portion of a response submitted pursuant to the RFP. If Trinity Metro receives a request for public disclosure of all or any portion of a response, Trinity Metro will use reasonable efforts to notify the applicable bidder of the request and give such bidder an opportunity to assert, in writing, a claimed exception under the Public Information Act or other applicable law within the time period specified in Trinity Metro's notice and allowed under the Act. Provided Trinity Metro receives the bidder's written assertion for the exception of identified materials within the time period specified in Trinity Metro's notice, Trinity Metro will forward those assertions to the Office of the Attorney General with Trinity Metro's request for determination of the matter. If a bidder has special concerns about information which it desires to make available to Trinity Metro but which it believes constitutes a trade secret, proprietary information or other information excepted from disclosure, such bidder shall identify those portions of a bid that the bidder considers to be trade secrets or confidential commercial, financial, or proprietary information. Such information shall be clearly marked "CONFIDENTIAL" and the basis of the claim of confidentiality shall be stated. Data so identified will be maintained as a protected record, to the extent permitted by law. Blanket statements regarding the confidentiality of information may not be sufficient to protect the confidentiality of information submitted. A bidder is encouraged to seek counsel regarding any information it seeks to keep confidential.

In no event shall the Procurers be liable to a Private Entity or Private team member for the disclosure of any materials or information submitted in response to these guidelines or an Invitation for Bid.

6.5 PROPOSER'S ACKNOWLEDGEMENT

By submitting a response to this RFP, each proposer unequivocally acknowledges that the proposer has read and fully understands this RFP, and that the proposer has asked questions and received satisfactory answers from Trinity Metro regarding any provisions of this RFP with regard to which the proposer desired clarification.

6.6 EXCEPTIONS TO ANY PORTION OF THE SOLICITATION REQUIREMENTS

a. Exceptions to RFP terms and conditions - Proposers are cautioned to limit exceptions, conditions, and limitations to the proposal documents as they may be determined to be so fundamental as to cause rejection of the proposal for not responding to the requirements of the RFP.

b. Exceptions taken to the terms and conditions of the solicitation, to any of its formal attachments or to other parts of the solicitation shall be clearly identified. Each exception shall be specifically related to each paragraph and/or specific part of the solicitation to which the exception is taken. Proposer shall provide rationale in support of the exception and fully explain its impact, if any, on the performance

6.7 INCORPORATION OF PROPOSER'S PROPOSAL

a. Trinity Metro reserves the right to incorporate the successful proposer's proposal into any resulting purchase order or contract, by reference or full including any revisions and supplements.

b. If, after contract award, it is discovered that changes were agreed to in writing during negotiations, but were not incorporated into the resulting contract, such changes shall be considered administrative in nature and incorporated by unilateral modification at no change in the contract cost or price, or other terms and conditions. To satisfy the contract requirements, the bidder shall adhere to the bid accepted by Trinity Metro.

6.8. INSURANCE REQUIREMENTS

a. The Contractor shall, at all times during the term of this contract and extended terms thereof, provide and maintain the following types of insurance protecting the interests of Trinity Metro and the Contractor with limits of liability not less than those specified below.

b. Comprehensive Automobile Liability

insurance or its equivalent, covering all owned, hired and non-owned vehicles used in connection with the work performed under this contract with combined single limits for bodily injury and property damage liability of not less than \$1,000,000.

c. Certificates of Insurance - Before commencing execution of this contract, the Contractor shall mail Certificates of Insurance satisfactory to Trinity Metro (or, as and when Trinity Metro may direct, copies of the policies endorsements or actual insurance policies) at the address in Section 3 evidencing that insurance as required by paragraph (a), and all subparagraphs to (a) above, is in force, stating policy number dates of expiration and limits of liability thereunder. All copies of policies and Certificates of Insurance submitted to Trinity Metro shall be in form and content acceptable to Trinity Metro.

d. Approval of Forms and Companies - All coverage described in this contract shall be in a form and content satisfactory to the Contracting Officer. No party subject to the provisions of this contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein. All insurance shall be provided by insurance companies with a Best's Rating of A- or better.

e. Additional Insured Endorsement - The policy or policies providing Commercial General Liability, Automobile Liability, and as otherwise required above shall be endorsed to name Fort Worth Transportation Authority, their directors, officers, representatives, agents and employees as Additional Insured as respect to operations performed by or on behalf of the Contractor in performance of this contract. The policy shall also be endorsed to name other interests as directed by Trinity Metro. The policies shall be primary and non-contributory.

f. Notice of Cancellation or Material Changes - Policies and/or Certificates shall specifically provide that a thirty (30) day notice of cancellation, non-renewal, or material change be sent to Trinity Metro.

g. Multiple Policies - The limits of liability as required above may be provided by a single policy of insurance or a combination of primary, excess or umbrella liability policies. But in no event shall the total limit of liability of any one occurrence or accident be less than the amount shown above.

f. Deductibles - Companies issuing the insurance policies and the Contractor shall have no recourse against Trinity Metro for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Contractor.

g. Subcontractors - If any part of the work is sublet, Contractor shall require any and all subcontractors performing work under this contract to carry workers' compensation insurance, in accordance with paragraph (a) above. The Contractor shall determine any other types of insurance and the limits of liability that Contractor shall deem appropriate and adequate to protect the interests of Trinity Metro. In the event a subcontractor is unable to furnish any insurance required under this Contract, the Contractor shall endorse the subcontractor as an Additional Insured or become an Alternate Employer. The Contractor shall obtain and furnish to Trinity Metro certificates of Insurance evidencing subcontractors' workers' compensation insurance coverage. If a subcontractor's certificate of workers compensation insurance expires during the period of performance, Contractor shall obtain a renewal certificate. All certificates of workers' compensation insurance shall be maintained by the Contractor for a period of not less than 1 year. All other insurance certificates for subcontractors shall be furnished to Trinity Metro upon request.

h. No Release - The carrying of the above-described coverage shall in no way be interpreted as relieving the Contractor of any other responsibility or liability under this agreement or any applicable law, statute, regulation or order.

6.10 HOLD HARMLESS.

A. Notwithstanding anything contained in the Contract to the contrary, to the fullest extent permitted by applicable law, Contractor shall indemnify, protect, defend and hold harmless Trinity Metro, Trinity Railway Express, Dallas Area Rapid Transit, and their respective representatives, officers, directors, shareholders, partners, members of their governing boards, members, managers, employees, affiliates, assignees, agents, consultants, and contractors (other than Contractor and its Subcontractors and Suppliers) (collectively, the "Indemnitees") from and against all claims, liabilities, damages, losses, causes of action, administrative proceedings, suits, judgments, fees (including, but not limited to, attorneys' fees and expert fees), and expenses, of any nature, kind or description, directly or indirectly,

caused by, arising out of, resulting from, or sustained or incurred in connection with (in whole or in part), (1) the Work performed hereunder, or any part thereof, (2) Contractor's failure to comply with the Contract, (3) the use, occupancy or presence of Contractor, its Subcontractors, Suppliers, employees or agents on or about the Work Site, or (4) any act or omission of Contractor, any Subcontractor, any Supplier, anyone directly or indirectly employed by any of the foregoing, or anyone that any of the foregoing control or exercise control over ("Claims"), but not to the extent directly attributable to Trinity Metro, the gross negligence or willful misconduct of an Indemnitee. The foregoing indemnity shall include, but is not limited to, Claims arising out of or resulting from bodily injury to, or sickness, disease or death of, any employee, agent or representative of Contractor or any of its Subcontractors, Supplier or any other person, directly or indirectly employed by any of the foregoing, or anyone that any of the foregoing control or exercise control over regardless of fault or negligence by an Indemnitee ("Employee Claims"). Contractor acknowledges and agrees that Indemnitees other than Trinity Metro are third-party beneficiaries under this Agreement with respect to Contractor's indemnity obligations. **EXCEPT AS OTHERWISE EXPRESSLY PROVIDED WITH RESPECT TO CLAIMS DIRECTLY ATTRIBUTABLE TO AN INDEMNITEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE OBLIGATIONS OF CONTRACTOR UNDER THIS INDEMNIFICATION SHALL APPLY TO ALL CLAIMS, EVEN IF SUCH CLAIMS ARE CAUSED IN WHOLE OR PART BY THE NEGLIGENCE OF AN INDEMNITEE, TO THE EXTENT IT MAY LAWFULLY DO SO, CONTRACTOR WILL NOT ASSERT, AS TO ANY CLAIM MADE BY INDEMNITEE UNDER THIS SECTION, ANY DEFENSE IT MAY HAVE UNDER THE TEXAS WORKER'S COMPENSATION STATUTE. NO COURT OR JURY FINDINGS IN ANY EMPLOYEE CLAIM PURSUANT TO ANY WORKER'S COMPENSATION ACT OR THE FEDERAL EMPLOYER'S LIABILITY ACT AGAINST A PARTY TO THIS AGREEMENT MAY BE RELIED UPON OR USED BY Trinity Metro OR BY CONTRACTOR IN ANY ATTEMPT TO ASSERT LIABILITY AGAINST THE OTHER PARTY.**

B. If any legal limitations now or hereafter in effect affect the validity or enforceability of the indemnification obligations under this article, such legal limitations are made a part of the indemnification obligation to the minimum extent necessary to bring the indemnification into conformity with the requirements of such limitations, and as so modified the indemnification obligations shall continue in full force and effect. The indemnification obligations under this Section shall not be limited to or by damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employee benefits acts.

C. Trinity Metro has the right to appoint defense counsel, at its own expense, to associate in the defense of any contested claim. Trinity Metro will cooperate fully with Contractor in the defense of all claims. Trinity Metro's election to appoint defense counsel will not affect Contractor's obligation to indemnify and hold harmless Trinity Metro from and against all claims to the extent set forth in the Contract. When defending Trinity Metro against claims, Contractor will retain counsel experienced in defending such claims and mutually agreeable to both Trinity Metro and Contractor. Trinity Metro will not unreasonably withhold, condition, or delay its consent to Contractor's choice of counsel. Contractor will not settle any claims in a manner that would impose any expense, penalty, obligation, or limitation on Trinity Metro without Trinity Metro's prior written consent.

6.11 WARRANTIES.

Contractor warrants that the Work Product, and any portion thereof performed pursuant to the Contract, shall be of the quality specified or of the best grade if no quality is specified, and shall conform to the Plans, Specifications, Samples, and other descriptions set forth in the Contract. Unless otherwise provided in the Contract, Contractor warrants all Materials furnished by Contractor and its Subcontractors, and all Work performed by Contractor and its Subcontractors to be free of defects and faults for a period of one (1) year from the date of Final Acceptance of the Work Product by Trinity Metro. Contractor's warranty shall apply regardless of any lesser period of warranty provided by the manufacturer of Materials furnished by Contractor. The warranty on any repair, rework or replacement as a result of a warranty claim or damage shall be one year from the acceptance of the repairs, rework or replacement.

6.12 PROPOSAL BOND/GUARANTEE

None.

6.13 INTEREST OF MEMBERS OF TRINITY METRO

No member of the governing body of Trinity Metro, other officer, employee or agent of Trinity Metro who exercises any functions or responsibilities in connection with the carrying out of the activities, to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract.

6.14 INTEREST OF OTHER LOCAL PUBLIC OFFICIALS AND STATE OFFICIALS

No member of the governing body who exercises any functions or responsibilities in the review or approval of the carrying out of activities to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract. No part of the proceeds shall be paid directly or indirectly to any officer or employee of the State of Texas as wages, compensation or gifts in exchange for acting as officer, agent, employee, subcontractor, or Proposer to Trinity Metro in connection with any work contemplated or performed relative to this Contract.

6.15 INTEREST OF MEMBERS, OR DELEGATES TO CONGRESS

In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract, or to any benefit arising there from.

6.16 INTEREST OF THE PROPOSER

The Proposer covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Proposer further covenants that no person having such interest shall be employed in the performance of this Contract.

6.17 AUTHORITY TO ENTER CONTRACT

The Proposer has all requisite power and authority to conduct its business and to execute, deliver, and perform services specified in the RFP and any Contract that may be issued. The Proposer warrants that the individuals who have signed the Proposal have the legal right and authority to bind the Proposer.

6.18 AUTHORIZATION OF PROPOSAL

If the Proposal is made by an individual doing business under an assumed name, the Proposal shall so state. If the Proposal is made by a partnership, the full name and addresses of each member and the address of the partnership shall be given and the Proposal shall be signed by one member thereof. If the Proposal is made by a corporation, it shall be signed in the corporate name by an authorized officer. If the Proposal is made by a joint venture, the full name and address of each member of the joint venture shall be given and the Proposal shall be signed by each venture. Form(s) is included to be filled out and submitted with Proposal.

6.19 SUBCONTRACT APPROVAL

Proposer shall contain a provision making the subcontractor(s) subject to all provisions stipulated in the Contract. The Proposer shall be fully responsible for all services performed by any subcontractor.

6.20 COST/PRICE ANALYSIS

Trinity Metro reserves the right to conduct a cost or price analysis for any purchase or service. Trinity Metro may be required to perform a cost/price analysis when competition is lacking for any purchase. Sole source procurements or procurements which result in a single Proposal received, will be subject to a cost/price analysis, which will include the appropriate verification of cost data, the evaluation of specific elements of costs and the projection of the data to determine the effect on Proposal prices. Trinity Metro may require a pre-award audit, and potential Proposers shall be prepared to submit data relevant to the proposed work which will allow Trinity Metro to sufficiently determine that the proposed price is fair, reasonable, and in accordance with Federal, State, and local regulations. Procurements resulting in a single Proposal will be treated as a negotiated procurement and Trinity Metro reserves the right to negotiate with the single Proposer to achieve a fair and reasonable price. If both parties cannot agree upon a negotiated price, Trinity Metro reserves the right to reject the single Proposal.

All contract change orders or modifications will be subject to a cost analysis.

6.21 PRICING

The price quoted in any Proposal submitted shall include all necessary cost to complete the services in accordance with the specifications. Anything omitted from such specifications, which are clearly necessary, shall be considered a portion of such cost although not directly specified or called for in the specifications. Proposer shall note discounts.

6.22 PROMPT PAYMENT

The Proposer agrees to pay each subcontractor for satisfactory performance of its contract no later than 30 days from receipt of each payment the Proposer receives from Trinity Metro. The Proposer agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor work is satisfactorily completed. Any delay or postponement of payment from the above reference may occur only for good cause following written approval of Trinity Metro. This clause applies to both DBE and non DBE subcontractors. If the Proposer determines the work to be unsatisfactory, it shall notify Trinity Metro immediately, in writing, and state the reasons. Failure to comply with this requirement would be construed to be a breach of contract and subject to contract termination.

6.23 PROTEST

A. Definitions for Purposes of the section

The term “days” refers to working days of the Authority.

The term “interested party” means any person (a) who is an actual Proposer or prospective Proposer in the procurement involved, and (b) whose direct economic interest would be affected by the award of the contract or by a failure to award the contract.

Note – The Federal Transit Administration (FTA) will be notified by the Authority of all formal, written protests, when FTA funds are involved.

B. TRINITY METRO will hear and consider a bona fide protest regarding its procurement actions. It is anticipated that the majority of protests will be evaluated and finally decided by the Authority. Accordingly, the Authority intends to provide a thorough review of all bona fide bid protests. The Authority’s primary concern, however, is the timely procurement of needed capital equipment, supplies or services. It does not intend to allow the filing of protests to unnecessarily delay the procurement process, especially if the

protest involved is vexatious or frivolous in nature.

Notwithstanding the availability of these protest procedures, any interested party is encouraged to exhaust all methods described in this section of resolving an issue before filing a formal protest with the Authority. In its consideration of a protest, the Authority reserves the right to give due consideration to the good faith efforts of the protestor to resolve the issue involved through informal methods.

C. Submission of Protest

Any interested party may file a protest with the Authority on the basis that the Authority has failed to comply with applicable Federal or State Regulations or with the Authority's Procurement Process. The protest shall be filed in accordance with the timing requirements set forth in subsection D. "Types of Protests and Timing" of this section, and shall include: The name, phone number, e-mail and address of the protestor.

The RFP and proposed contract number of the proposal. A statement of grounds for the protest, a statement as to what relief is requested, and in particular the Federal or State law or Authority Process alleged to have been violated. This statement shall be accompanied by any supporting documentation the protesting party desires the Authority to consider in making its decision.

Protest shall be submitted to:

Kathy Bridwell
Director, Procurement
Fort Worth Transportation Authority
801 Cherry Street, Suite 850
Fort Worth, TX 76102

D. Types of Protests and Timing

The requirement for timely filing of protest with the Authority will depend upon the type of protests involved. The Authority will consider the following three types of protest by interested parties:

1. Protest regarding proposal

Any protest regarding the proposal shall be filed no later than five (5) business days before proposal due date. Any protest filed after that date regarding the proposal will not be considered by the Authority. This type of protest would include any claim that the proposal contained exclusionary or discriminatory specification, any challenge to the basis of award, or any claim that the proposal documents or the proposal process violated applicable Federal or State law, or that the Authority failed to follow its Procurement Process in the proposal.

2. Protests regarding Requirements and Responsiveness

Any protest regarding the requirements and responsiveness of proposal by the Authority shall be filed with Authority no later than five (5) business days after receipt of letter of notification of non-responsiveness. Any protest filed after such date regarding the requirements and responsiveness will not be considered by the Authority.

This type of protest would include any challenge to determinations by the Authority of the responsiveness of or the responsibility of a Proposer, or any claim that the requirements and responsiveness of proposal violated Federal or State law or the Authority's Procurement Process.

3. Protest Regarding Receipt of Non-Award Notification

Any protest regarding the award of the contract shall be filed no later than five (5) business days after receipt of Non- Award Notification. Any protest regarding the award of the contract filed after that date will not be considered by the Authority.

This type of protest will only be entertained by the Authority if the protestor is able to demonstrate that the party awarded the contract fraudulently represented itself as a responsible Proposer of that the Authority violated Federal or State regulations or its Procurement Process in the award of the contract.

E. Authority Response

The Authority will notify the protestor upon timely receipt of a protest and may, where appropriate, request additional information from the protestor. The Authority may, at its discretion, meet with protestor to review the matters raised by the protest. The Authority's consideration of the particular types of protests will, except as otherwise stated in subsection 2. "Decisions by Authority" of this section E. "Authority Response" in accordance with the following provisions:

1. Types of Protests

a. Protest regarding proposal

Upon receipt of a timely filed protest regarding the proposal, the Authority will postpone the opening until resolution of the protest. No additional proposals will be accepted during the period of postponement.

If the protest regarding the proposal involves a claim of unduly restrictive or exclusionary specifications, the Authority will, in evaluation of the protest, consider both the specific need of the Authority for the feature or item challenged and any effects on competition of including the specifications regarding that feature or item. If the Authority determines that such feature or item was included in the specification in order to meet justified and valid transit needs of the Authority, and was not unduly restrictive of competition or designed to exclude a particular competitor, then the Authority will have grounds to deny the protest.

b. Protest regarding requirement and responsiveness

Upon receipt of a timely filed protest regarding the requirements responsiveness, the Authority will suspend its evaluation of all proposals submitted until resolution of the protest, if the Authority determines that the protestor has established that there are reasonable doubts regarding the responsiveness of a proposal or the responsibility of a Proposer or regarding the Authority's compliance with Federal or State Regulations or its Procurement Process.

c. Protests after non-award notification

Upon receipt of a timely filed protest regarding the non-award notification the Authority will not proceed with contract, if necessary, until the resolution of the protest if the Authority determines that the protestor has established a prima facie case that the contract was awarded fraudulently or in violation of that Federal or State Regulations or the Authority's Procurement Process.

2. Decisions by Authority

As indicated above, in most instances the Authority will suspend the procurement process upon receipt of a bona fide protest. However, the Authority reserves the right, notwithstanding the pendency of a protest, to proceed with the appropriate action in the procurement process or under the contract in the following cases:

- A. Where the item to be procured is urgently required;
- B. Where the Authority determines that the protest was vexatious or frivolous; and
- C. Where delivery or performance will be unduly delayed or other undue harm will occur, by failure to make the award promptly.

After reviewing the protest submitted under this section, the Authority will issue a written decision of the basis of the information provided by the protestor, the results of any meetings with protestor, and the Authority’s own investigation. If the protest is upheld, the Authority will take appropriate action to correct the procurement process and protect the rights of the protestor, including re-proposal, revised evaluation of proposal or Authority determinations, or termination of the contract. If the protest is denied, the Authority will lift any suspension imposed and proceed with the procurement process.

F. FTA Protest Procedure

Reviews of protests by FTA will be limited to claims that the Authority failed to have or follow protest procedures, or claims the Authority failed to review a complaint or protest. A protestor shall exhaust all administrative remedies with the Authority before pursuing a protest with FTA. An appeal to FTA shall be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation.

Under certain circumstances, protest may be made to the FTA in accordance with FTA circular 4220.1F.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

6.24 ADDITIONAL SERVICES REQUEST

Trinity Metro reserves the right to request Additional Services under this RFP that may not be specifically identified within. Proposers are encouraged to identify and provide supporting statements and price information for any other area(s) of services not listed in the Scope that may be related to Additional Services and the work of Trinity Metro.

6.25 RFP/PROPOSED CONTRACT ALTERATIONS

No alterations or variables in the terms of the RFP and /or of the Proposed Contract shall be valid or binding upon Trinity Metro unless authorized in writing by Trinity Metro.

6.26 ASSIGNABILITY

Any public agency (i.e., city, district, public agency, municipality, and other political subdivision or any FTA-funded entity) shall have the option of participating in any award made as a result of a Proposal and/or contract at the same prices, terms and conditions. Trinity Metro reserves the right to assign any or all portions of Services awarded under this Proposal and/or contract. This assignment, should it occur, shall be agreed to by Trinity Metro and Proposer. Once assigned, each agency will enter into its own contract and be solely responsible to the Proposer for obligations to the service assigned. Trinity Metro’s right of assignment will remain in force over the contract period or until completion of the contract including

options, whichever occurs first. Trinity Metro shall incur no financial responsibility in connection with contracts issued by another public agency. The public agency shall accept sole responsibility for placing service and payments to the Proposer.

6.27 PUBLICATION AND MEDIA RESTRICTIONS

The Contractor shall not publish or reproduce subject data in whole or in part, or in any manner or form, without the advance written consent of Trinity Metro, unless Trinity Metro has released or approved the release of that data to the public.

6.28 GRATUITIES AND KICKBACKS

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metropolitan Government contracts.

6.29 NO CONTINGENCY FEES

Contractor hereby represents that Contractor has not been retained or retained any persons to solicit or secure this Contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contract or subcontractor under Trinity Metro contracts. Trinity Metro shall have the right to annul said Contract without liability or, in its discretion, to deduct from the Contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

6.29 NON-DISCRIMINATION

It is the policy of Trinity Metro not to discriminate on the basis of age, race, sex, color, national origin, creed, religion or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in Trinity Metro contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, creed, sex, national origin, or any other classification protected by federal or Texas State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with Trinity Metro or in the employment practices of Trinity Metro Contractors. Accordingly, all Proposers entering into contracts with Trinity Metro shall, upon request, be required to show proof of such nondiscrimination

and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

6.30 LICENSING AND PERMITS

The Contractor and all subcontractors shall be appropriately licensed in the State of Texas for the work required as a result of the Contract. The cost for any required licenses shall be the responsibility of the Contractor.

Unless otherwise provided in the Contract Documents, the contractor shall be responsible for paying for permits and government fees where the cost of obtaining such permits or paying such fees has not been waived by the issuing authority necessary for proper execution and completion of the Project. The contractor shall be responsible for obtaining any building or other types of permits necessary for the proper execution and completion of the Project

6.31 INSPECTION OF WORK

All work which includes services performed, material furnished or utilized in the performance of services, and workmanship in the performance of services shall be subject to inspection and test by Trinity Metro to the extent practicable at all times and places during the term of the Contract. All inspections by TRINITY METRO shall be made in such a manner as to not unduly delay the work. Trinity Metro shall have the right to enter the premises used by the Contractor for the purpose of inspection and auditing all data and records, which pertain to the Contractor's performance under the Contract.

If any work performed is not in conformity with the requirements of the Contract, Trinity Metro shall have the right to require the Contractor to perform the work again in conformity with such requirements at no increase in the total Contract amount. In the event the Contractor fails promptly to perform the work again, Trinity Metro shall have the right, either by Contract or otherwise, to have the work performed in conformity with the Contract requirements and charge to the Contractor any costs to Trinity Metro that are directly related to the performance of such work, or terminate the Contract for default as provided in this RFP.

6.32 PROPOSER'S RESPONSIBILITY

It is the intent of these specifications to provide for goods of first quality and the workmanship shall be the best obtainable in the various trades. The design of the goods, which the contractor proposes to furnish, shall be of substantial and durable construction in all respects. No advantage shall be taken by the Proposer or manufacturer in the omission of any part or detail, which goes to make the product complete and ready for installation and use.

The contractor shall assume responsibility for all materials used in the proposal whether the contractor manufactures the same or purchased ready-made from a source outside the contractor's company.

6.33 ACCEPTANCE OF MATERIAL OR SERVICES PERFORMED

If the item or services performed are not acceptable Trinity Metro will furnish a letter of non-acceptance detailing the deficiencies within thirty (30) days after delivery and the system becomes operational. Acceptance of delivery of an item or services performed shall not release the Contractor from liability for services not performed, faulty workmanship or materials appearing even after final payment have been made.

6.34 STANDARD OF CARE

Contractor shall perform all services under this Contract in a skillful and competent manner. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the services assigned to them. The Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the services, and that such licenses and approvals shall be maintained throughout the term of this Contract. Any person who is determined by Trinity Metro to be uncooperative, incompetent, a threat to the adequate or timely completion of the services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the services in a manner acceptable to TRINITY METRO shall be promptly removed by the Contractor and shall not be re-employed to perform any of the services under this Contract.

6.35 RIGHT TO EMPLOY OTHER CONTRACTORS

Trinity Metro reserves the right to purchase goods and/or services, with other Contractors in connection with these Services.

6.36 CONTRACT AMENDMENTS / MODIFICATIONS / CHANGE ORDERS

No changes to this RFP, Proposer proposal, or Contract shall be approved unless appropriate parties of Trinity Metro authorize the change. All changes shall be made by written agreement between the parties.

Trinity Metro shall not incur any costs due to any unauthorized changes made by Contractor.

6.37 TAX EXEMPTION

Trinity Metro is exempt from payment of all Federal, State, and local taxes in connection with the project. Said taxes shall not be included in proposal prices.

6.38 ATTORNEY FEES

In the event Trinity Metro deems it necessary to take legal action to enforce any provision of the contract, and Trinity Metro prevails, Contractor shall pay all expenses of such action including Trinity Metro attorney fees and costs at all stages of the litigation.

6.39 INELIGIBLE CONTRACTORS AND SUBCONTRACTORS

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

6.40 LIQUIDATED DAMAGES-NOT APPLICABLE

6.41 USE OF COMPLETED PORTIONS OF THE WORK

A. Whenever, as determined by Trinity Metro, any portion of the Work performed by Contractor is in a condition suitable for use, and the best interests of Trinity Metro requires such use Trinity Metro may take possession of or use such portion of the Work. Such use by Trinity Metro shall in no case be construed as Final Acceptance, and shall neither relieve Contractor of any of its responsibilities under the Contract, nor act as a waiver by Trinity Metro of any of the conditions thereof. Contractor shall not be liable for the cost of repairs, rework, or renewals, which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of the Work, Contractor shall notify Trinity Metro in writing as required by the Contract and shall be entitled to such additional compensation or extension of time, or both, as determined in accordance with the Contract.

B. If in the course of such use, the Work proves to not be in compliance with the Contract, Trinity Metro shall have the right to continue such use until such portion of the Work can, without injury to Trinity Metro, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory Materials, as necessary for such portions of the Work to comply with the Contract. Contractor shall correct the Work as soon as practical, but not later than one (1) month after notification by Trinity Metro.

C. Contractor shall not use any permanently incorporated Materials unless such use is approved in writing by Trinity Metro. Where Contractor's request is granted for the use of certain Materials, Contractor shall properly use and maintain and, upon completion of its use and at its own expense, recondition such Materials to the satisfaction of Trinity Metro.

6.42 APPLICABLE LAW AND JURISDICTION

The Contract, as well as the rights, obligations and remedies of the parties, shall be governed by the laws of the State of Texas. Whenever there is no applicable state statute or decisional precedent governing the interpretation of or disputes arising under or related to the Contract, then federal common law, including the law developed by federal boards of contract appeals, the United States Court of Federal Claims, the United States Claims Court, and the Comptroller General of the United States, shall govern. Any suit or action arising from the Contract shall be commenced and prosecuted in the courts of Tarrant County, Texas or the United States District Court for the Northern District of Texas, as applicable, and the parties agree to submit to the exclusive jurisdiction and venue of these courts.

6.43 CONTRACT ORDER OF PRECEDENCE

A. The General Provisions, Special Provisions, Scope of Work, Contract attachments and exhibits are essential to the Contract. All are intended to be complementary and to provide for completed work suitable for its intended use. A requirement occurring in one is as binding as though occurring in all. Where Plans and Specifications describe portions of the Work in general terms, but details are incomplete or silent, it is understood that only the best general practice is to prevail and that only new Materials and first-quality workmanship are to be used. Omissions of details of Work that are manifestly necessary to carry out the intent of the Contract, or that are customarily performed, shall not relieve Contractor from the obligation to perform such Work. Notes on Plans are part of the Plans. No reliance shall be placed on dimensions scaled from any Plans.

B. The documents referenced below are in descending order of precedence. Any conflict between any of the documents shall be resolved in favor of the document with higher precedence.

- Contract Form

- Special Provisions
- General Provisions
- Scope of Work
- Reference Documents, Standards, and Codes
- RFP
- Proposal

C. Contractor shall immediately notify TRINITY METRO, in writing, of any ambiguity or conflict within or between documents, any error, omission, lack of necessary detailed description, or a detail, which is a potential code violation, which is discovered in the Specifications or Plans and request clarification and direction. Trinity Metro will provide clarification and direction as required to fulfill the intent of the specifications. Proceeding without the required notification and request for clarification or instruction shall be at Contractor's risk.

SECTION 7 FEDERAL CONTRACT AND OTHER REQUIREMENTS

7.1 No Obligation by the Federal Government.

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

7.2 Program Fraud and False or Fraudulent Statements or Related Acts.

1. 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.

2. 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.

3. 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.

7.3 Access to Records.

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.

2. 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.

3. 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 \$100,000.

4. 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.

5. 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.

6. 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.

7. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any

of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

7.4 Federal Changes.

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

7.5 Civil Rights (EEO, Title VI & ADA).

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:

a. *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.

b. 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.

c. 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.

7.6 Incorporation of FTA Terms.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in Page 34 of 59

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 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 (name of grantee) requests which would cause The Fort Worth Transportation Authority to be in violation of the FTA terms and conditions.

7.7 Energy Conservation.

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

7.8 Termination Provisions.

a. Termination for Convenience: The Fort Worth Transportation Authority, 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 Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

b. Termination for Default: 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 Fort Worth Transportation Authority may terminate this contract for default. The Fort Worth Transportation Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

c. Opportunity to Cure: The Fort Worth Transportation Authority in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30–60 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the Fort Worth Transportation Authority's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from The Fort Worth Transportation Authority setting forth the nature of said breach or default, the Fort Worth Transportation Authority 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 Fort Worth Transportation Authority from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach: In the event that the Fort Worth Transportation Authority elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the Fort Worth Transportation Authority shall not limit the Fort Worth Transportation Authority's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

7.9 Suspension and Debarment

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

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

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

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

7.10 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 Fort Worth Transportation Authority's CEO/President. 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 CEO/President. 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 Trinity Metro authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

7.10.1 Performance During Dispute - Unless otherwise directed by the Fort Worth Transportation Authority, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

7.10.2 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.

7.10.3 Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Fort Worth Transportation Authority 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 of Texas.

7.10.4 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 Fort Worth Transportation Authority, Architect 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.

7.11 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 \$100,000 or more shall file the certification required (Attachment C) 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

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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 Fort Worth Transportation Authority.

7.12 Clean Air

(1) 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 Fort Worth Transportation Authority and understands and agrees that the Fort Worth Transportation Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

7.13 Clean Water

(1) 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 Fort Worth Transportation Authority and understands and agrees that the Fort Worth Transportation Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

7.14 Recycled Products

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.

7.15 Access Requirements for Persons with Disabilities (ADA)

The Management Company agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Management Company also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
4. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
5. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial

Facilities," 28 C.F.R. Part 36;

6. U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
7. 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;
8. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

7.16 Disadvantaged Business Enterprise

Trinity Metro notifies all potential respondents that it will affirmatively ensure, in regard to any contract entered into pursuant to this request, that disadvantaged and/or women-owned business enterprises will be afforded full opportunity to submit proposals in response to this request and will not be discriminated against on the grounds of race, religion, color, age, sex, disability, or national origin in consideration for an award. Trinity Metro has in place a Disadvantaged Business Enterprise (DBE) Plan. All potential respondents understand and agree that, upon award, pursuant to this RFP, the successful bidder will abide by and utilize Trinity Metro's DBE Plan in any transactions applicable to the plan.

SECTION 8 Disadvantaged Business Enterprise (DBE)

Trinity Metro has a policy to involve Disadvantaged Business Enterprises (DBEs) to the maximum extent feasible in all phases of its procurement practices. Trinity Metro's DBE Program and Utilization forms are included in Section 9, Forms F2 & F3, DBE firms are encouraged to respond to this RFP, and joint ventures with DBE firms are also encouraged.

DBE Goal for this Solicitation is: 5%

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 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 apply to this agreement.

TO ATTAIN THESE POLICY OBJECTIVES, Trinity Metro HAS SET DBE SUBCONTRACTING GOALS FOR DBE SUBCONTRACT PARTICIPATION. EACH INVITATION FOR BID (IFB) OR REQUEST FOR PROPOSAL (RFP) WILL SPECIFY WHAT THE DBE SUBCONTRACTING GOAL IS FOR THAT PROCUREMENT.

DBE Obligation. Trinity Metro and its contractors agree to ensure that DBEs as defined in 49 CFR Part 26 have the 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, Trinity Metro and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the opportunity to compete for and perform contracts. Trinity Metro 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.

Disadvantaged Business Enterprise (DBE) DBEs are for-profit small business concerns where socially and economically

disadvantaged individuals own at least a 51% interest and control management and daily business operations.

African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans and women are presumed to be socially and economically disadvantaged.

Other individuals can be characterized as socially and economically disadvantaged on a case-by-case basis.

To participate in the program, a small business owned and controlled by socially and economically disadvantaged individuals must receive DBE certification from their relevant state or local transportation agency. *NOTE: this is not a federal certification and is not applicable to federal contracts.*

Irrespective of what the size standard is, a firm cannot exceed the size of \$20.41 million and still be seen as a *Small Business*. This size limit is periodically adjusted for inflation.

Trinity Metro is a member of a unified certification program administered by the North Central Texas Regional Certification Agency (NCTRCA).

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 Trinity Metro'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 Trinity Metro may be substituted in this formula for the DBE percentage goal as originally established.

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, Trinity Metro may consider a bid which does not fully comply with the DBE requirements.

Trinity Metro has a written document that fully describes its DBE policy and program. The document is available upon request from Trinity Metro DBE Administrator, 1600 East Lancaster Avenue, Fort Worth, Texas 76102-6720.

DBE ASSISTANCE ORGANIZATIONS Trinity Metro can provide assistance in identification of DBE firms:

Fort Worth Transportation Authority
 ATTN: Contract Administration and Procurement
 801 Cherry Street, Suite 850
 Fort Worth, Texas 76102
 (817) 215-8760

North Central Texas Regional Certification Agency
 624 Six Flags Drive Suite # 100
 Arlington, Texas 76011
 (817)640-0606
 (817) 640-6315 (fax)
www.nctrca.org

Technical Assistance Provided by:
 Tarrant County Asian American Chamber of Commerce
 711 Houston Street
 Fort Worth, Texas 76102
 (817) 212-2690
 (817) 212-2697 (fax)

Fort Worth Metropolitan Black Chamber of Commerce
 1150 South Freeway, Suite 211
 Fort Worth, Texas 76104
 (817) 531-6538
 (817) 332-6438 FAX
www.fwmbcc.org

MBDC/Minority Business Development Center 545 East John Carpenter Freeway, Suite 100 Irving, Texas 75062
 (214) 688-1612
 (214) 688-1753 (fax)
www.fwbac.com

Texas Unified Certification Program
www.dot.state.tx.us/business/tucinfo.htm

Fort Worth Hispanic Chamber of Commerce
 1327 North Main Street
 Fort Worth, Texas 76106-8576
 (817) 625-5411
 (817) 625-1405 FAX
www.fwhcc.org

American Indian Chamber of Texas
 P.O. Box 163047
 Fort Worth, Texas 76161
 (817) 429-2323
 (817) 451-3575 FAX

Fort Worth Business Assistance Center (BAC)
 1150 South Freeway
 Fort Worth, Texas 76104
 (817) 871-6006
 (817) 871-6031 FAX

COMPLIANCE REQUIREMENTS

Compliance with the DBE Policy and Program of Trinity Metro 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.

In order to demonstrate compliance through its "good faith efforts" to obtain the DBE percentage participation goals, a Bidder must submit with its bid sufficient information to enable Trinity Metro to determine that the efforts made by the Bidder to obtain DBE participation were such efforts that a Bidder actively and aggressively sought to meet the goals. 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, Trinity Metro will not only look at the kinds of efforts that the Bidder has made, but also the quality and intensity of these efforts.

To assist Trinity Metro 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:

- (i) Bidder attended pre-bid meetings scheduled by Trinity Metro to inform DBEs of contracting and subcontracting opportunities;
- (ii) 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);
- (iii) Bidder advertised in general circulation, trade association, and/or minority focus media concerning the sub-contracting opportunities;
- (iv) 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;
- (v) Bidder followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
- (vi) Bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the solicitation;
- (vii) Bidder negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on their investigation of the capabilities;

- (viii) Bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by Trinity Metro or the Bidder as prime Contractor;
- (ix) 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 above.

This is not intended to be an inventory or checklist. DOT does not require Trinity Metro 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.

COMPLIANCE DOCUMENTATION

In order to demonstrate compliance with Trinity Metro DBE Policy and Program it is essential that full documentation be submitted at the time of the bid. This documentation consists of completion of the relevant statements appearing on Section 11 of this RFP packet, and attaching additional relevant documentation and information where specified.

Trinity Metro DBE COMPLIANCE STATEMENT and Trinity Metro SCHEDULE OF DBE UTILIZATION must be completed by all Bidders. Trinity Metro GOOD FAITH EFFORT DOCUMENTATION 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.

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. Some space at the bottom of the DBE Compliance Form (above the signature lines entitled "Exception Information") has been provided for exception information. If additional space is needed to provide complete exception information, please attach additional sheets titled "DBE Compliance Statement Exception Information."

COUNTING PARTICIPATION TOWARD MEETING DBE GOAL

DBE participation shall be counted toward meeting goals set in accordance with DOT's DBE regulations at 49 CFR Part 26 and Trinity Metro's program as follows:

- (i) 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.
- (ii) Trinity Metro 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.

(iii) Trinity Metro or a contractor will count toward its goal 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, Trinity Metro or a contractor shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.

(iv) 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 Trinity Metro. Trinity Metro's decision on the rebuttal of this presumption is final, subject to review by the Department of Transportation in instances of DOT-assisted contracts.

(v) Trinity Metro 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. Trinity Metro 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). Trinity Metro 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.

SECTION 9 ATTACHMENTS AND FORMS

THE FOLLOWING FORMS AND CERTIFICATIONS MUST BE COMPLETED BY PROPOSER AND SUBMITTED WITH PROPOSAL, AS SPECIFIED IN SECTION 1- MINIMUM REQUIREMENTS.

- F1 - Attachments and Amendments**
- F2- DBE Compliant Statement**
- F3- Schedule of DBE Utilization**
- F4 - Good Faith Effort Documentation**
- F5- Good Faith Effort Information Requests**
- F6 - Certification of Contractor Regarding Debarment, Suspension, and Other Responsibility Matters**
- F7 - Conflict of Interest Acknowledgement and Certification**
- F8 - Certification of Compliance with Restriction on Lobbying**
- F9 - Business Questionnaire & List of References**
- F10 - List of References for Similar Projects**
- F11 - Affidavit of Non-Collusion**
- F12 -- Prohibition of Contracts with Companies Boycotting Israel**
- F13 -- Price Proposal Form**

F1- ATTACHMENTS AND AMENDMENTS

The undersigned acknowledges receipt of attachments and amendments for Trinity Metro’s solicitation **RFP 20-T036 HVAC Rooftop Units**.

ATTACHMENTS:

AMENDMENTS:

Failure to acknowledge receipt of all attachments and amendments may cause bidder/proposer to be considered nonresponsive to the solicitation.

Acknowledged receipt of each attachment and amendment must be clearly established and included with the bid/proposal response.

AUTHORIZED SIGNATURE	DATE

F2 - DBE COMPLIANCE STATEMENT

Check the statement below that applies to your submittal.

 1. **Bid meets or exceeds DBE percentage participation goal established for this procurement.** You must submit the Schedule of DBE Utilization with bid. If you are a certified DBE, complete the first set of questions on Schedule of DBE Utilization for yourself and submit DBE certification number. Submit DBE certification numbers for each DBE you intend to use.

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

 3. **Bid does not have any DBE percentage participation for this procurement, but we believe this procurement meets the following exception to Trinity Metro’s DBE Policy:**

“This solicitation is for the procurement of a standard manufactured item or other similar procurement with no subcontracting opportunities.”

Firm should check “Yes” or “No” to both questions below and then explain in the exception information area below.

Failure to provide an explanation may render the bid non-responsive (Subcontracting opportunities include things such as: delivery, assembly, installation, painting, suppliers, etc. Supplies are items purchased specifically for this procurement, other than the standard manufactured item requested by the invitation for bid).

Will you perform this entire contract without subcontractors? Yes No

Will you perform this entire contract without suppliers? Yes No

If you answered “no” to either question above, please fully explain why you are seeking the exception. The existence of subcontractor and supplier opportunities usually indicates that option # 2 and the Good Faith Effort Documents apply.

Exception Information (attach additional sheets, titled “Exception Information”, if needed):

Authorized Signature	Name of Company
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 Trinity Metro’s work for a period of not exceeding six months.

F3- SCHEDULE OF DBE UTILIZATION

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

Note: Any firm listed below must be certified by the NCTRCA and/or listed on Trinity Metro Texas TUCP web site and their corresponding certification number should be listed.

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

Name of DBE Subcontractor of DBE Prime Contractor	
Address & Telephone Number	
Subcontracting Tier:	Type of Work to be Performed:
Dollar Amount for Work: \$	DBE Certification #:
Name of DBE Subcontractor of DBE Prime Contractor	
Address & Telephone Number	
Subcontracting Tier:	Type of Work to be Performed:
Dollar Amount for Work: \$	DBE Certification #:
Name of DBE Subcontractor of DBE Prime Contractor	
Address & Telephone Number	
Subcontracting Tier:	Type of Work to be Performed:
Dollar Amount for Work: \$	DBE Certification #:

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

Signature	Title	Date

F4 - GOOD FAITH EFFORT DOCUMENTATION

If the bidder did not meet or exceed Trinity Metro’s DBE subcontracting goal, then the bidder must comply with Trinity Metro’s DBE policy by documenting that good faith efforts were made. Please check “Yes” or “No” below if you have completed the good faith effort form, attached any related support documents, and provided any additional information/support/clarification beyond that requested in the good faith effort documents. Providing additional information is the bidder’s responsibility to ensure that sufficient information is provided to Trinity Metro, so that good faith efforts can be comprehensively evaluated.

We (bidder) have: _____ Yes _____ No

___ Completely filled out this good faith effort form with signature and date.

___ Attached any related supporting documents, and also

___ Provided any additional information and/or documents that we deemed necessary to support and/or clarify the good faith efforts that we made.

It is the bidder’s responsibility to correctly, accurately, and substantively provide all necessary information to Trinity Metro, at Trinity Metro time of bid submission. The information provided by the bidder must be sufficient enough for Trinity Metro 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 DBE’s. Trinity Metro will look at the kinds of efforts the bidder has made, as well as the quality and intensity of those efforts.

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

Note: The DOT does not require Trinity Metro to insist that any bidder do any particular one or any combination of the items requested in DBE forms. 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.

F5 - GOOD FAITH EFFORT INFORMATION REQUESTS

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

Subcontracting Opportunities

Supplier Opportunities

1.

1.

2.

2.

3.

3.

4.

4.

5.

5.

6.

6.

7.

7.

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14.

14.

15.

15.

(Bidder may make as many copies of this page as needed).

- 2. Did you obtain a list of DBE firms from Trinity Metro’s DBE Department (a list may or may not have been included with the Invitation for Bid or Proposal). If one was not included, or if additional lists are needed, they can be obtained from the DBE Department upon request.
 YES _____ NO _____

- 3. Did you attend the pre-bid conference(s) scheduled by Trinity Metro?
 YES _____ NO _____
 Date of pre-bid: / /
 Did you request bids from DBEs that also attended the pre-bid conference?
 YES _____ NO _____
 DBE Firm/Person Contacted?

- 4. Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number 1. above by mail?
 YES _____ NO _____

- 5. Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number 1. by fax?
 YES _____ NO _____

- 6. Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number 1. above by telephone?
 YES _____ NO _____

- 7. Did you solicit bids from DBEs, within the subcontracting and/or supplier areas that you listed previously on question number 1. above by some other means?
 YES _____ NO _____
 If yes, please explain.

- 8. Did you advertise in local newspapers?
 YES _____ NO _____
 If yes, then please attach a copy(s) of advertisements, with the date advertised and list the specific newspapers that were used.

- 9. Please provide the following information for every DBE firm that you contacted by any method or that initiated contact with you, but will *not* be used on this contract:
 - a. Attach a listing of every DBE firm that you solicited a bid from or that initiated contact with you to ask about and/or submit an unsolicited bid to you and include their mailing address, phone and fax numbers, the date that solicitations were sent, and the method that the solicitation was sent (i.e., mail, fax, phone, personal contact, etc. . .) and please provide a DBE contact name, if you have one.

 - b. Indicate the subcontracting area(s) that you solicited bids on from each DBE firm and/or the subcontracting area(s) for which each DBE firm submitted a bid to you, if different from what you solicited.

- c. If DBE firms submitted bids, but those bids were rejected, provide an explanation for rejecting those bids and attach documentation to support the reason for rejecting the bid (i.e., letters, memos, DBE bid amount, telephone notes, meeting notes, etc.).
- d. If a DBE firm bid was rejected because of price, then list the DBE firm’s bid price and the name and bid price of the subcontractor or supplier that you will use in lieu of the rejected DBE firm.
- e. Indicate the number of times that follow-up contact was made with DBE firms after the initial solicitations of interest.
- 10. Did you contact all DBE firms that you solicited bids from in a timely manner such that the DBE firms had at least 10 days prior to the bid submission date to prepare and submit a bid to you?
 YES _____ NO _____
 If NO, please explain.
- 11. Did you negotiate in good faith with interested DBE firms by, for instance, providing timely information regarding plans and specifications, breaking down subcontracts into economically feasible units to facilitate DBE participation, maintaining accessible lines of communications, etc.?
 YES _____ NO _____
- 12. Did you assist interested DBE firms in obtaining bonding, lines of credit, or insurance required by Trinity Metro or by you as prime contractor?
 YES _____ NO _____

ADDITIONAL INFORMATION

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

Authorized Signature

Name of Company

Printed Signature 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 Trinity Metro work for a period not exceeding six months.

F6 - CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The potential contractor for Trinity Metro contract (hereinafter "PRIMARY PARTICIPANT" - print name), _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(If the primary participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification)

THE PRIMARY PARTICIPANT CERTIFIES OR AFFIRMS TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS ON 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official _____ Date

Primary participant is required to secure from every subcontractor this same certification and must submit such to Trinity Metro prior to such subcontractor's commencing work under this contract. Contractor may make as many copies of this schedule as needed for certification by all subcontractors.

(If the subcontractor is unable to certify to any of the statements above in this certification, the subcontractor shall attach an explanation to this certification)

THE UNDERSIGNED SUBCONTRACTORS FOR Trinity Metro, CERTIFY OR AFFIRM AS TO ITSELF AND ITS PRINCIPALS TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SET OUT ABOVE AND SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTAND THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE TO THIS CERTIFICATION.

Signature Title Name of Firm (printed)

Signature Title Name of Firm (printed)

F7 - CONFLICT OF INTEREST ACKNOWLEDGMENT AND CERTIFICATION

1. Policy

In order to promote fairness and impartiality in Trinity Metro's procurement process, involvement in any decision making role in the solicitation, or in the awarding or administration of a resulting contract by any Related Person who might receive some Benefit is prohibited. "Related Person" is defined as any employee, officer, Executive Committee member, or agent of Trinity Metro. "Benefit" is defined as any direct or indirect pecuniary, financial, or other tangible advantage, gain, promotion, or interest growing out of or related in any manner to the solicitation or to a contract or subcontract growing out of the solicitation. Such involvement of any Related Person is also prohibited when a person bearing certain relationship to the Related Person ("Other Related Person") may receive a Benefit. Such "Other Related Person" is defined as any member of a Related Person's immediate family (a spouse, child, parent, brother or sister), a partner of any Related Person, or any person or organization which employs or is about to employ a Related Person or Other Related Person. If a Related Person or Other Related Person will or may so Benefit, a prohibited conflict of interest may exist.

2. Disclosures

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

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

ACKNOWLEDGMENT AND CERTIFICATION (Potential Contractor)

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

By:

Signature and Title of Authorized Official of Potential Contractor

Name of Potential Contractor (print)

ACKNOWLEDGMENT AND CERTIFICATION (Recommended Subcontractor)

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

By:

Signature and Title of Authorized Official of Recommended Subcontractor

Name of Recommended Subcontractor

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

F8 - CERTIFICATION OF COMPLIANCE WITH RESTRICTIONS ON LOBBYING

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

_____ 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 sub-recipients 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.

Date: _____

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 Trinity Metro prior to such subcontractors beginning any work under this contract.

F9 - BUSINESS QUESTIONNAIRE & LIST OF REFERENCES

This questionnaire, the requested list of references and the authorization to release financial information are used in part to assist in determining a potential contractor’s responsibility. Offerors shall submit the information with the offer. All information must be current and traceable. Each venture of a joint venture must submit a separate signed form.

The Trinity Metro reserves the right to make additional inquiries based on information submitted, or the lack thereof. Questions concerning this questionnaire or the authorization form should be directed to the contact person identified on the solicitation.

1. Name of Offeror (“Business”):

2. List name(s) and business address of officers and directors for corporations, partners for partnerships, and ventures for joint ventures (attach additional pages as necessary):

3. Number of years in business under present business name:

4. If applicable, list all other names under which the business identified above operated in the last 5 years:

5. Annual Gross Revenue (past year): M=millions K=thousands
 \$100K - \$500K \$500K - \$1M \$1M-\$10M \$10M-\$20M >\$20M
6. Has the business, or any officer or partner, failed to complete a contract? Yes No
7. Is any litigation pending against the business? Yes No
8. Has the business ever been declared “not responsible” for the purpose of any governmental agency contract award? Yes No
9. Has the business been debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise disqualified from bidding, proposing or contracting?
 Yes No
10. Are there any proceedings pending relating to the business’ responsibility, debarment, suspension, voluntary exclusion or qualification to receive a public contract? Yes No

11. Has the government or other public entity requested or required enforcement of any of its rights under a surety agreement on the basis of a default or in lieu of declaring the business in default?
_____Yes _____No

12. Is the business in arrears on any contract or debt? _____Yes _____No

13. Has the business been a defaulter, as a principal, surety or otherwise? _____Yes _____No

14. Have liquidated damages or penalty provisions been assessed against the business for failure to complete work on time or for any other reason? _____Yes _____No

15. Does the business maintain a drug-free workplace? _____Yes _____No

16. If a "yes" response is given under questions 6-14, provide a detailed explanation including dates, reference to contract information, contacts, etc. (attach additional pages as necessary):

17. Business Identification Number (EIN, etc.)

18. Provided completed **List of References for Similar Projects** form. _____Yes _____No

I, individually and on behalf of the business named in this Business Questionnaire, do by my signature below, certify that the information provided in this questionnaire is true and correct. I understand that any false statements or misrepresentations regarding the business named above may result in:

- 1. *Termination of any or all contracts which Trinity Metro has or may have with the business,*
- 2. *Disqualification of the business from consideration for contracts,*
- 3. *Removal of the business from Trinity Metro's bidders' list and/or*
- 4. *Legal action(s) applicable under federal, state or local law.*

Name:

Title:

Signature:

(Owner, CEO, President, Majority Stockholder or Designated Representative)

Date:

F10 - LIST OF REFERENCES FOR SIMILAR PROJECTS

(Use additional pages as necessary)

1. Project:

Date of Completion (if applicable):

Company Name:

Address:

Contact Name:

Telephone Number:

E-Mail Address:

2. Project:

Date of Completion (if applicable):

Company Name:

Address:

Contact Name:

Telephone Number:

E-Mail Address:

3. Project:

Date of Completion (if applicable):

Company Name:

Address:

Contact Name:

Telephone Number:

E-Mail Address:

4. Project:

Date of Completion (if applicable):

Company Name:

Address:

Contact Name:

Telephone Number:

E-Mail Address:

F11 – AFFIDAVIT OF NON-COLLUSION

Each member of the proposing team (prime and subs) shall submit a signed and notarized Form 12 – Non-Collusive Affidavit.

THE UNDERSIGNED, HAVING SUBMITTED PROPOSAL TO PROVIDE HVAC Rooftop Units in response to *RFP 20-T036* swear that said bidder, quoter, or proposer has not directly or indirectly entered into any combination, collusion, undertaking, or agreement relative to price to be bid by any person, or to prevent any person, or persons, or company from submitting pricing; or to entice any bidder, quoter, or proposer to refrain from pricing for such supplies, merchandise, service, or contract, and that said bid so made is without reference or regard to any other bid or bids, and without agreement, understanding or combination, either directly or indirectly, with any person or persons, with reference to such bidding in any way or manner whatsoever.

Proposer (Firm)

Name, title and Signature of Proposer or Firm

STATE of _____

County of _____

Subscribed and sworn before me this _____ day of _____, 2020.

My commission expires

Notary Public Seal Dated at

City State

Failure to properly Notarize and Return This Form with the Proposal Will Invalidate Your Proposal

F12-PROHIBITION OF CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

(This form must be completed and submitted with the bid/proposal)

House Bill 89, effective September 1, 2017, amended the Texas Government Code to add Chapter 2270, Prohibition of Contracts with Companies Boycotting Israel.

Effective September 1, 2017, a state agency and a political subdivision (which includes a transportation authority) may not enter a contract with a company for goods or services unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract.

“Boycott Israel” is defined to mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

“Company” is defined to mean a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

"I, _____ (Name of certifying official), the _____ (title or position of certifying official) of (name of company), do hereby verify on behalf of said company to that said company does not Boycott Israel and will not Boycott Israel (as that term is defined in Texas Government Code Section 808.001) during the term of this contract.

Signature of Certifying Official

Title: _____

F13-PROPOSAL PRICING FORM

<u>Item</u>	<u>Description</u>	<u>Qty</u>	<u>Cost</u>
1	York Sunline 20 (or Equivalent) 3 Ton Roof Top	1 ea	
2	York Sunline (or Equivalent) 5 Ton Roof Top Unit	2 ea	
3	York Series 10 (or Equivalent) 7.5 Ton Roof Top Unit	2 ea	
4	York Series 10 (or Equivalent) 10 Ton Roof Top Unit	2 ea	
5	York Series 20 (or Equivalent) 17.5 Ton Roof Top Unit	1 ea	
TOTAL COST			

Installation/Delivery Date:

Warranty Term:

Will your company remove the replaced (scrap) materials, if authorized by Trinity Metro?

Yes

No

Value (credit) for scrap equipment to be removed: \$

Signature: _____ Date: _____