



DALLAS/FORT WORTH
INTERNATIONAL AIRPORT

October 22, 2009

ADDENDUM NO. 1

Re: 8004082 Payment Processing Systems
RFQ Due Date and Time: October 26, 2009 at 3:00 p.m. (CST)

THIS ADDENDUM IS AN INTEGRAL PART OF THE SOLICITATION AND MUST BE SIGNED AND RETURNED WITH THE PROPOSAL.

Please be advised of the following change or clarification to the above referenced Solicitation.

Change 1: Please note the schedule change below.

SCHEDULE FOR SELECTION PROCESS (Tentative Schedule)

RFP Release Date:	(October 9, 2009 after 1:00 pm)
Pre-Proposal Conference:	(October 15, 2009; 2:00 pm)
Deadline for Questions:	(October 19, 2009 5:00pm)
Proposal Due Date:	(November 2, 2009 at 3:00 pm)
Evaluation Period:	(November 3 – November 6, 2009)
Interviews:	(November 9 – 12, 2009)
Board Approval Date:	(December 3, 2009)
Notice To Proceed	(Approximately 1 week after Board Approval)

NOTE: A copy of this addendum shall be acknowledged by appropriate signature and attached to the submitted proposal.

Company Name

Signed


Date

If you have any questions regarding this addendum, contact **Shannon Hamilton** during normal working hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at 972-973-5620 or 972-973-5601 (fax).

Sincerely,

Solicitation No. 8002381 – Addendum No. 1

Shannon Hamilton
Contract Administrator
Procurement and Materials Management

 DALLAS/FORT WORTH INTERNATIONAL AIRPORT	CONTRACT	1. Contract No.:
		2. Contract Title:
		3. Board Resolution Number and Date
4. Name and Address of Board Dallas/Fort Worth International Airport Board 3122 East 30 th Street (Carbon Road) PO Box 619428 Dallas, Texas 75261-9428	5. Name and Address of Contractor	
6. Contract Agreed Amount:		
<p>7. The Dallas/Fort Worth International Airport Board (Board) and the Contractor agree to perform this Contract in strict accordance with the documents <u>listed below</u>, all of which are made a part of this contract, <u>in the order of precedence as listed</u>:</p> <p>Attachment A: Accepted Contractor Modifications Attachment B: Addenda to Solicitation Specifications / Scope of Work Attachment C: Solicitation Specifications / Scope of Work Attachment D: Special Provisions Attachment E: General Terms and Conditions Attachment F: Contractor’s Bid / Proposal</p>		
8. Performance Period:	9. Approved as to Form: _____ Board’s Legal Counsel	
10. By _____ (Signature of Authorized Representative) Date Signed: _____ _____ Name and Title of Authorized Representative (Type or Print)	11. Dallas/Fort Worth International Airport Board: By _____ (Signature of Authorized Representative) Date Signed: _____ Gregory C. Spoon, CMRP, Vice President or Joanne Baca Garcia, Assistant Vice President _____ Procurement and Materials Management Name and Title of Authorized Representative (Type or Print)	

ATTACHMENT A

ACCEPTED CONTRACTOR MODIFICATIONS

ATTACHMENT B

ADDENDA TO SOLICITATION SPECIFICATIONS / SCOPE OF WORK

ATTACHMENT C

SPECIFICATIONS / SCOPE OF WORK

ATTACHMENT D

SPECIAL PROVISIONS

1 AIRPORT SECURITY PROVISIONS

- 1.1 Work under this contract may require Contractor and subcontractor personnel to go through an access control badging process. All badge fees will be charged per the Schedule of Charges, which can be found at <http://www.dfwairport.com/about/financials.php> in the section titled “OTHER CHARGES”. U. S. DEPARTMENT OF HOMELAND SECURITY-CUSTOMS AND BORDER PROTECTION SECURITY ACCESS CLEARANCE. If your job responsibilities that requires you access a federal inspection services area, aircraft deplaning and ramp area, and other restricted areas designated by the port director, additional clearance is required by Customs and Border Protection (CBP). You will need to complete CBP Form 3078, along with a letter on company letterhead that attests that a background check was conducted on the applicant to the extent allowable by law. The letter must also contain a description of the duties that will be performed in the CBP area.
- 1.2 COMPLETING THE FINGERPRINT APPLICATION. First time applicants are required to clear an electronic, fingerprint-based criminal history records check, receive an approved Security Threat Assessment result from the Transportation Security Administration and if applying for a Security Identification Display Area (SIDA) badge, the applicant must also successfully complete DFW SIDA Training before a badge will be issued. Applicants are required to read and sign a Fingerprint Application before receiving fingerprint services. This application lists the 28 crimes that disqualify applicants from receiving a badge. It also advises the applicant of his/her responsibility to self-disclose any arrests/convictions received while possessing security access privileges with DFW Airport.
- 1.3 SECURITY TRAINING. Applicants applying for the SIDA badge will be required to successfully complete security training before badge issuance; the training must be completed in the DFW Access Control Office. The training must be successfully completed within thirty (30) days from the date of the criminal history records check clearance or the Security Threat Assessment approval, whichever is the later date.. The applicant may come to the Access Control Office on three (3) separate days during the thirty (30) day time frame. If the applicant does not successfully complete the security training within the thirty (30) time frame, the applicant will not receive a badge.
- 1.4 DFW AIRPORT BOARD ACCESS CONTROL (BADGING) OFFICE. Applications and forms are available on-line at <http://www.dfwairport.com/badge>. Paperwork is accepted at Terminal D, Departure Level, Room D22L352. Office hours are Monday through Thursday between 7:00 a.m. and 6:00 p.m. and on Friday between 7:00 am and noon For additional information about this process, please contact the Access Control Office at aco@dfwairport.com or at 972 973 5100.

2 CONTRACT TERM

- 2.1 This Contract, if awarded, shall be for an initial **two-year period** commencing as of the date specified in the Notice to Proceed letter, to be issued by the Board's Vice President of Procurement and Materials Management Department, unless renewed under the provisions below.

- 2.2 This Contract, as executed, shall include the **options to renew for two (2)** additional one-year periods, under the same terms and conditions, with said options to be exercised solely at the Board's discretion.
- 2.3 Unless otherwise amended in writing and endorsed by both parties prior to the beginning of each respective renewal period, all terms and conditions of the Contract shall remain in full force and effect with the only change being in the Contract term.

3 **INSURANCE PROVISIONS**

3.1 **DEFINITIONS FOR INSURANCE PROVISIONS**

- “We”, “us”, or “our” means the Dallas/Fort Worth International Airport Board.
- “You” or “your” means the vendor, contractor, tenant, consultant, engineer, architect, and their agents, servants, employees, or other party to a contract with us.
- “Contract” means the contract, purchase order, Invitation for Bid, or similar memorandum or agreement.
- For purpose of defining Additional Insured and Waiver of Subrogation, the term “Dallas Fort Worth International Airport Board (the Board) and the Cities of Dallas and Fort Worth, Texas” (the Cities) shall also mean the elected officials, boards, officers, employees, agents and representatives of the Board and the Cities.

3.2 **GENERAL REQUIREMENTS**

- 3.2.1 You shall, at your own expense, maintain in effect not less than the following coverages and limits of insurance, which you shall maintain with insurers, policy forms and deductibles satisfactory to us. If your coverage fails to comply with these requirements, you agree to amend, supplement or endorse the existing coverage to comply, at no additional cost to us, and to maintain such insurance through the end of the contract, warranty period, or other specified time period, whichever is longer. ANY deviation from the requirements outlined below requires the prior written approval of the Board’s Assistant Vice President of Risk Management.
- 3.2.2 All policies must be written through a licensed company authorized by the Texas State Board of Insurance to transact that class of insurance business in the State of Texas, with a minimum rating of ‘A -’, and ‘VII’ by A. M. Best Company. If the rating of any insurer should fall below this standard, you shall cause the policy to be replaced promptly by an acceptable insurer.
- 3.2.3 All policies shall designate the below mentioned parties as “Additional Insured,” either by a ‘blanket additional insured’ endorsement, or by specific endorsement:
“Dallas Fort Worth International Airport Board and the Cities of Dallas and Fort Worth, Texas”
- 3.2.4 All policies shall waive the insurer’s right of recovery or subrogation against the Board and the Cities.
- 3.2.5 If any policy is in excess of a deductible or self-insured retention (SIR), the amount of such deductible or SIR must be clearly identified, and may not exceed one (1%) percent of your net worth. We reserve the right to reject any deductible or SIR, or require you to provide a bond at no additional cost to the Board.

- 3.2.6 All policies must be primary with respect to coverage provided for the Board.
- 3.2.7 All policies must be non-contributory with other coverage or self-insurance available to the Board.

3.3 REQUIRED COVERAGE AND LIMITS

3.3.1	Workers' Compensation.....	Statutory Coverage
	Employer's Liability Insurance	\$500,000 Each Accident
		\$500,000 Each Disease, Each Employee
		\$500,000 Each Disease Policy Limit

3.3.1.1. All employees, leased or co-employees, independent contractors, and employees of subcontractors and vendors, occupants of the building as tenants, sub-tenants or sub sub-tenants, performing work for the Board, or entering upon the Board’s premises, must be covered by Workers Compensation.

3.3.1.2. If Contractor is a sole proprietorship without employees and which will not be using any subcontractor(s) in the performance of the Contract Work, it may substitute the following for workers compensation insurance: The Contractor must provide the Board's Risk Management Department (Risk Management) with proof of medical insurance covering the sole proprietor and, as sole proprietor, must sign and provide to Risk Management a Hold Harmless and Indemnification Agreement in the form attached hereto as Exhibit B.

3.3.2	Commercial General Liability (CGL)	
	Limit Any One Occurrence	\$ 1,000,000
	Damage to Rented Premises	\$100,000
	Personal and Advertising Injury.....	\$1,000,000
	Policy Aggregate (per location or per project)	\$2,000,000
	Products and Completed Operations Aggregate	\$2,000,000

3.3.2.1. CGL coverage applies unless you provide only trucking, (no premises or operations other than driving, loading/unloading), or garage operations, (see below).

3.3.2.2. All Liability policies, except Pollution & Professional, must be written on an “Occurrence Form.” Neither “Modified Occurrence” nor “Claims-Made” policies are acceptable, and the Contractor will be in contractual default if your insurance is “Modified Occurrence” or “Claims Made.” If the Pollution or Professional Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the Contractor’s first professional service to the Board, your first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to our contract.

3.3.2.3. Aggregate limits of all Liability policies shall be “per project” or “per location,” as appropriate. If any aggregate limit is reduced by 25% or more by reserved and/or paid claims, the contractor must notify the Board and promptly reinstate the required aggregates.

3.3.2.4. All Liability policies must provide unlimited defense costs in excess of policy limits.

3.3.2.5. All liability policies shall name the Board and the Cities (as defined above) as “Additional Insured,” including coverage for Products/Completed Operations.

- 3.3.2.6. All liability shall include Broad Form Contractual Liability covering the indemnification provisions of our contract.
- 3.3.2.7. All liability policies shall cover loss caused by the contractor’s subcontractors, independent contractors, suppliers or other parties providing goods or services in connection with our contract.
- 3.3.2.8. All liability policies must contain a “severability of interests” provision.
- 3.3.2.9. All liability policies must cover cross-suits between insured.
- 3.3.2.10. If the contractor’s operations involve excavation, grading, filling, backfilling, road or similar construction, no Liability policy may contain exclusions for subsidence or earth movement.
- 3.3.2.11. If the contractor’s operations involve any construction, no liability policy shall contain exclusions for hazards of explosion (“X”), collapse (“C”) or underground (“U”).
- 3.3.2.12. If the contractor’s operations involve any construction, reconstruction, repair or similar work, no liability policy may contain any exclusion for such work.

3.3.3 **Business Automobile Liability**

Combined Single Limit for Each Accident..... \$500,000

- 3.3.3.1. Coverage must apply to all vehicles (owned, non-owned, or hired) operating on our site/location, or transporting our people or property off our site, except vehicles operated by you or your employee(s) commuting in personal vehicles to our parking facilities, in which case you must only carry Employer’s Non-Ownership coverage, (same limit), and ensure that such vehicle(s) are personally insured.
- 3.3.3.2. Auto pollution liability coverage is required on vehicles hauling hazardous cargo.
- 3.3.3.3. If your operations are solely a garage (vehicle maintenance and repair), you must carry Garage Liability, instead of Business Auto Liability, but the Garage Liability must not be limited to auto liability only, and the same limit applies.

3.4 **ADDITIONAL COVERAGE AND LIMITS**

3.4.1 **Excess / Umbrella Liability**

Air Operations Area (within air operations area)..... \$10,000,000

Secure/Sterile Side Operations (outside air operations area)..... \$5,000,000

- 3.4.1.1. Coverage must apply in excess of all required primary Liability insurance, and must be at least as broad as the underlying Liability insurance.
- 3.4.1.2. This coverage limit may be satisfied by adding the amounts of CGL and Excess/Umbrella Liability to arrive at a total of \$10,000,000. The same would be applicable for Business Auto Liability and Excess/Umbrella Liability to arrive at a total of \$10,000,000.

3.4.2 **Professional Liability Insurance..... \$1,000,000**

- 3.4.2.1. Your policy must cover the type of professional service you will provide in fulfilling your contract with the Board.
- 3.4.2.2. If the Professional Liability policy is Claims-Made, the Retroactive Date must be on or

before the contract date or the date of the contractor's first professional service to the Board.

- 3.4.2.3. If you have any exposure to asbestos, lead, mold, (including any work which could, if not performed properly, lead to mold or fungal contamination), petroleum products, contaminated soils, or other pollutants, you shall provide appropriate Pollution Liability or Environmental Impairment insurance.
- 3.4.2.4. If the Pollution Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the contractor's first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to our contract.

3.5 ADDITIONAL REQUIREMENTS

- 3.5.1 If you are a crane/rigging operator or will hoist or move property of others in connection with our contract, you must have 'care, custody & control' exclusion deleted from your Commercial General Liability policy, or provide Rigger's Liability coverage at least equal to the highest replacement cost of materials to be hoisted or moved.
- 3.5.2 If your vehicles carry materials belonging to others in connection with our contract, you must carry Cargo Liability coverage, at least equal to the highest value of property to be carried on a single vehicle, with terminal coverage at least equal to the highest value of property at one terminal, owned or controlled by you.
- 3.5.3 If you will store, warehouse, or otherwise have custody of property belonging to others in connection with our contract, you must have Warehousemen's Liability, Bailee's Customers' Goods, Garage-Keeper's Legal Liability or equivalent coverage at least equal to the highest value of property in your custody.
- 3.5.4 If our contract calls for you to construct a structure, you must purchase and maintain "All-Risk" Builders Risk insurance for the full completed value of the structure and contents, including all changes and sufficient limit to fund full and immediate reconstruction under adverse conditions. This policy shall cover our interests as Loss Payee, so any loss will be adjusted with and made payable to us as trustee for all insured as their interest may appear.
- 3.5.5 If you transport materials, equipment, machinery or furnishings to, or store such property on, our construction site, you must carry an "All-Risk" Installation Floater with coverage at least equal to the greatest concentration of value, (including the cost of transit, installation labor and testing).
- 3.5.6 If you use rented equipment or tools on our job site or premises, you must carry Rented Equipment coverage sufficient to repair or replace damaged equipment.
- 3.5.7 If you sell or serve alcohol or alcoholic beverages, you must carry \$3,000,000 Liquor Legal Liability, not limited to 'host liquor' coverage.
- 3.5.8 If your work involves administration of Airport Funds, you must furnish a Third Party Fidelity Bond which must remain in effect for the term of the contract, as modified and/or extended. The Board shall be named as "Loss Payee".
- 3.5.9 Should this Contract require the use of Subcontractors, it will be the sole responsibility of the General Contractor to either require Subcontractors to provide and maintain the insurance limits and coverages required herein or provide said insurance coverage for the subcontractor by designating the Subcontractor as an additional insured either by a

blanket additional insured endorsement, or by specific endorsement.

- 3.5.9.1. The General Contractor shall verify that such Subcontractors are in compliance with all contractual insurance requirements.
- 3.5.9.2. The General Contractor shall assume all liability for those Subcontractors who do not meet the insurance requirements.
- 3.5.9.3. Access to the Air Operations Area will not be granted without verification of insurance coverage as required.

3.6 CERTIFICATION OF INSURANCE

- 3.6.1 Upon execution of the contract or prior to commencement of work, whichever is first, you shall have your insurance agent(s), broker(s), or Insurer(s) enter your policy information into www.Ins-Cert.com , and link your policy data to us. You shall cause your insurance data to be kept current on **Ins-Cert.com** for the period of time you are liable for your product or work, but not less than the warranty period of our contract. You further agree to cause your insurance agent(s), broker(s) or Insurer(s) to properly register, use and pay the fees for using Ins-Cert.com, (your agent will be charged \$3 to enter your policy data, and 25¢ when we verify your coverage on-line, which is less than the cost of issuing certificates, so there should be no effect on your cost of insurance or service).
- 3.6.2 **Paper, faxed or e-mailed insurance certificates are NOT acceptable.**
- 3.6.3 You shall cause your insurance agent, broker or insurer to enter any restrictive or exclusionary provisions or endorsements that may affect you, us, and those required to be named as Additional Insured, into “Special Exclusions” in Ins-Cert.com.
- 3.6.4 You further agree, upon our oral or written request, to furnish copies of your policies, certified by an authorized representative of the insurer(s), within ten (10) days of request.
- 3.6.5 All of your insurance policies shall contain a provision that written notice shall be given to the Board’s Risk Management department, at least thirty (30) days prior to cancellation, except ten (10) days for non-payment of premium. In the event that you are notified that an insurer intends to terminate or non-renew a policy or reduce coverage below our requirements, you shall arrange acceptable alternate coverage to comply with our requirements and cause replacement coverage data to be obtained. In addition you shall cause your agent, broker or insurer to enter a cancellation date into Ins-Cert.com, as soon as the effective date is known to the agency, brokerage or insurer, (if insurer enters data).
- 3.6.6 Upon execution of the contract or prior to commencement of work, whichever is first, you shall have your insurance agent(s), broker(s), or Insurer(s) enter your policy information into www.Ins-Cert.com , and link your policy data to us. You shall cause your insurance data to be kept current on Ins-Cert.com for the period of time you are liable for your product or work, but not less that through the warranty period of our contract.
- 3.6.7 No policy submitted shall be subject to limitations, conditions or restrictions that are inconsistent with the intent of the Insurance Requirements to be fulfilled by you. The Board's decision thereon shall be final.

- 3.6.8 Approval, disapproval or failure to act by the Board regarding any insurance obtained by you shall not relieve you of full responsibility or liability for damages and accidents as set forth herein. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate you from liability.
- 3.6.9 No special payment, except when separate line item is provided, shall be made by the Board for any insurance that the Contractor may be required to carry; all are included in the Contract amount and the Contract unit prices.

4 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) PROVISIONS

4.1 GENERAL REQUIREMENTS

- 4.1.1 It is the policy of the Board to remove barriers for Minority and Women-Owned Business Enterprises (M/WBEs) to compete and create a level playing field for M/WBEs to participate in Airport contracts and related subcontracts.
- 4.1.2 The Contractor specifically agrees to comply with all applicable provisions of the Board's M/WBE Program and any amendments thereto. The Contractor agrees to include the requirements of this Section in all subcontracts and to further require all subcontractors to include the requirements of this Section into all sub-subcontracts. All subcontractors at all tiers agree to comply with all applicable provisions of the Board's M/WBE Program.

END OF SPECIAL PROVISIONS

ATTACHMENT E

GENERAL TERMS AND CONDITIONS

1 ASSIGNMENT

The Contractor is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of the Contract or its rights, title, or interests therein, or its power to execute such agreement to any other person, company, or corporation without the prior approval, in writing, by the Dallas/Fort Worth International Airport Board's (Board) Vice President of Procurement and Materials Management Department (PMM), whose approval shall be discretionary. Such consent shall not relieve the assignor of liability in the event of default by its assignee.

2 BOARD'S RIGHT TO INSPECT AND AUDIT

- 2.1 The Contractor (and Contractor's suppliers, vendors, subcontractors, insurance agents and other agents) shall maintain and the Board shall have the right to examine records, documents, books, accounting procedures and practice and any other supporting evidence deemed necessary by the Board to substantiate compliance with the terms of this Contract, including Change Orders. Such right of examinations shall include reasonable access to and cooperation by all Contractor personnel who have worked on or have knowledge related to the performance of this Contract. Proprietary/Trade Secret information pertaining to this Contract may not be withheld from Board or its Authorized Representative.
- 2.2 The Contractor's, subcontractors' and related agent and vendor organization's documents, records and other evidence shall be subject to inspection and/or reproduction by the Board, its agents and Authorized Representatives. The Contractor shall provide the Board with retrievals of computer-based records or transactions that the Board determines to be necessary to conduct the audit. There shall be no charge to the Board for reasonable use of the Contractor's photocopy machine while conducting the audit, nor for any cost of retrieving, downloading to diskette, and/or printing any records or transaction stored in magnetic, optical, microfilm, or other media. The Contractor shall provide all records and retrieval requested, within seven (7) calendar days.
- 2.3 The documents, etc., described above shall be made available at the office of the Contractor at all reasonable times, for inspection, audit, and reproduction, until the expiration of three (3) years from the date of the Board's final acceptance of the Work. Records, which relate to appeals or litigation or settlement or claims arising out of the performance of this Contract, shall be made available for a period of three (3) years from the date of the final disposition of such appeals, litigation, or claims. The Contractor shall provide adequate and appropriate workspace to conduct all inspections, audits, and reviews. The Board shall provide the Contractor with a reasonable advance notice of intended audit, inspections, and reviews.
- 2.4 The Contractor shall insert an item containing all these Audit provisions, including this paragraph, in all subcontracts hereunder except altered as necessary for the proper identification of the contracting parties and the Board under this Contract. Failure to insert these Audit provisions in all subcontracts hereunder shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Contract.
- 2.5 In addition, where projects are funded wholly or in part by federal grants, the FAA, the

Secretary and the Comptroller General of the United States or any of their duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to grants received in accordance with CFR 49, Part 18, as it may be amended from time to time.

- 2.6 If an audit or review in accordance with this Section disclosed overcharges (of any nature), by Contractor, in excess of five percent (5%) of the contract value audited, the cost of the Board's audit shall be paid by the Contractor.

3 CHANGES IN CONTRACT

The Board reserves the right to make changes in the scope of the Work as may be considered necessary or desirable, and Contractor shall perform the Work as altered, whether increased or decreased, for a new Contract price equitably adjusted to reflect the changes. No allowance will be made for anticipated profits where the scope of the Work has been diminished. All Contract changes must be executed in writing by Contract Change Order signed by the Vice President of PMM or designee from the PMM Department. Payment will be made only for actual quantities of products delivered or Work performed.

4 CODE OF BUSINESS ETHICS

- 4.1 All Board employees must adhere to the Board's Code of Business Ethics, which is included in this Section by reference. The Contractor is therefore prohibited from offering or providing Board employees, directly or indirectly, any gifts or other items that the Board's Code of Business Ethics does not allow the employee to accept. The Contractor shall ensure that all of its management and other Fair Labor Standard Act-exempt employees associated with this Contract read and understand the Board's Code of Business Ethics. The Board may require each such employee of the Contractor to acknowledge in writing that they have read and do understand the Board's Code of Business Ethics found online at www.dfairport.com.
- 4.2 Additionally, the Board frequently uses outside contractors to perform functions similar to those performed by Board employees (e.g., project managers, quality assurance inspectors, payment analysts, contract administrators, etc.). Contractor employees who perform work associated with this Contract (including any supplemental agreements, extra work authorizations, delivery orders, change orders, etc.) shall comply, in all respects, with the Board's Code of Business Ethics as it relates to their assigned scope of work on this Contract. For example, a quality assurance inspector may not accept a gift from a subcontractor that he or she is monitoring, if the Board's Code of Business Ethics would prohibit a Board employee performing the same duties from accepting the gift.
- 4.3 Any questions related to the interpretation of this Section shall be directed to the Airport Board's General Counsel.
- 4.4 The Contractor shall insert an Article containing all the provisions of this Section, including this paragraph, in all subcontracts hereunder executed except altered as necessary for the proper identification of the contracting parties and the Board under this Contract.

5 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable Federal, State and Local laws, statutes and ordinances, and with all applicable regulations or orders of any governmental department, board, bureau or agency, including the Board.

6 CONFIDENTIAL OR PROPRIETARY INFORMATION

Any portion of the Contractor's Bid that is marked confidential or proprietary, or clearly states contains trade secrets of the Contractor may not necessarily guarantee the non-release of the information under the Public Information Act or as otherwise required by law. If access is requested to information in the Contractor's Bid so marked, the Board shall review the issues thoroughly and, if justified, shall request an opinion by the Attorney General's office prior to releasing any information requested under the Public Information Act.

7 CONTRACT

The Board and the Contractor agree to perform this Contract in strict accordance with the documents listed below, all of which are made a part of this contract, in the order of precedence listed. Subject to the order of precedence set forth below, the documents listed constitute the entire Contract between the parties.

- Accepted Contractor Modifications (if any)
- Addenda (if any)
- Solicitation Specifications / Scope of Work;
- Special Provisions;
- General Terms and Conditions;
- Contractor's Bid / Proposal.

8 CONTRACTOR RESPONSIBILITIES / PERFORMANCE OF WORK

- 8.1 The Contractor shall be fully responsible for the quality and accuracy of any and all Work performed in conjunction with this Contract. Neither acceptance of such Work by the Board, nor payment therefore, shall relieve the Contractor of this responsibility. If and when applicable, the Contractor shall complete all services in conformity with professional standards, and shall provide qualified personnel to meet agreed upon schedules.
- 8.2 In addition, at its own expense, the Contractor shall:
- 8.2.1 Take all precautions necessary per state regulations and/or OSHA Regulations to protect persons or property against injury or damages occurring as a result of its operations.
- 8.2.2 Obtain all permits/licenses required to perform work or deliver products, including the Board's security requirements for Air Operations Area (AOA) badging regulations where applicable. Any cost for compliance shall be paid by the Contractor.
- 8.2.3 Provide competent supervisors and workmen;
- 8.2.4 Take all precautions necessary or required by law to protect persons or property against injury or damages occurring as a result of its operations;
- 8.2.5 Perform the Work without unnecessarily interfering with Board operations;
- 8.2.6 Provide all vehicles and tools as necessary for its use; and
- 8.2.7 Protect existing facilities from damages and promptly repair or replace any damages caused by its employees or arising out of its operations.

9 DELIVERY / PERFORMANCE OF SERVICES

- 9.1 **Performance will be made only upon authorization of the Board's Vice President**

of PMM and shall thereafter be made if, as, and when required and ordered by the Board.

- 9.2 Performance shall be at the location identified in the Contract or purchase order. When no location is specified, the Board's Technical Representative will provide direction.
- 9.3 The scope of this contract and requirements of the Board as shown in the contract specifications and bid shall not be considered as binding on the Board, and the work actually may be less than or greater than projected.
- 9.4 Bidder warrants that all work under the contract will be of the type and quality specified, and the Board's Vice President of PMM or designee, may reject, and/or refuse work that falls below the quality required in the specifications.
- 9.5 Failure by the Contractor to make reasonable progress as and when requested shall entitle the Vice President of PMM or designee, to seek work from alternate sources wherever available, with the right to seek reimbursement from the Contractor for amounts, if any, paid by the Board over and above the bid price.
- 9.6 All work performed under this Contract, as herein shown under the Specifications, shall be of the highest quality workmanship and shall in every respect meet or exceed the industry standards for this type contract.
- 9.7 Authorized Board personnel on a routine basis will make inspections. The Contractor must correct any deficiencies in the work performance disclosed during such inspections following receipt of notification. Continued failure to take such corrective actions could, at the Board's discretion, lead to termination of the Contract.
- 9.8 Failure of Contractor to fully comply with the terms and provisions of this Contract shall constitute grounds for declaring the Contractor in default.
- 9.9 The Contractor shall at all times when Work is in progress be represented in person, either by a qualified superintendent, or by other designated, qualified representative who is duly authorized to receive and execute orders of the Board.

10 DISPUTE RESOLUTION

The Board and Contractor agree that before either party files suit against the other to enforce, or otherwise relating to, the terms of this Contract, it shall notify the other party of its intent to sue. Upon delivery and receipt of such notice, the parties agree to submit the matter to be litigated to mediation before a mutually agreed upon mediator and to diligently pursue a mediated settlement until such time as the parties mutually agree to terminate such mediation or the mediator declares an impasse. No lawsuit under or relating to this Contract by one party against the other may be filed until mediation of the issue has ended in accordance with the terms hereof. Notwithstanding the foregoing, this section may be enforced by action for specific performance or injunctive relief.

11 FINANCIAL INTEREST

Contractor understands that Article 11 of the Contract and Agreement between The City of Dallas and The City of Fort Worth, dated April 15, 1968, prohibits any officer or employee of the Board from having any financial interest, direct or indirect, in any Contract with the Board, or be financially interested, directly or indirectly, in the sale to the Board of any land, materials, supplies, equipment or services, except on behalf of the Board as an officer or employee thereof. Any violation of this prohibition shall constitute malfeasance in office, and any officer or employee adjudged guilty thereof shall thereby be subject to removal from his/her office or position by the Board or the Chief Executive Officer. Any violation of this

provision by a member of the Board shall be grounds for removal by a vote of two-thirds (2/3rds) of the City Council appointing such member.

12 FISCAL YEAR FUNDING

The Board's fiscal year begins October 1 and ends the following September 30th. Budget funds are approved by the Board and the Cities of Dallas and Fort Worth on an annual basis. In the event the Board/Cities should fail to fund the Contract for any fiscal year during the Contract term, the Contract shall automatically terminate on the last day of the fiscal year for which funding has been approved. Contractor will be given no less than sixty-(60) days written notice of any such non-approval of Contract funding. Termination under this clause shall be without penalty to the Board.

13 FORCE MAJEURE

Neither Contractor nor the Board shall be responsible or deemed to be in default of its obligations to the other to the extent any failure to perform or delay in performing its obligations under this Contract is caused by events or conditions beyond the reasonable control of that party, and are not due to the negligence or willful misconduct of such party (hereinafter, "force majeure events"). For purposes of this Contract, force majeure events shall include, but not be limited to, acts of God or public enemy, war, riot or civil commotion, strikes, epidemic, fire, earthquake, tornado, hurricane, flood, explosion, or other catastrophes, or events or conditions due to governmental law, regulations, ordinances, order of a court of competent jurisdiction, executive decree or order. However, in the event of such delay(s) or nonperformance, the party so delayed shall furnish prompt written notice to the other party (including the date of inception of the force majeure event and the extent to which it will affect performance) and shall undertake all efforts reasonably possible to cure the delay or nonperformance and mitigate its effects or to otherwise perform. The Board shall not be responsible for payment for any product or service delayed or foreclosed by any force majeure event unless and until such delayed or foreclosed product or service is provided. The provisions of this section shall not preclude the Board from canceling or terminating this Contract (or any order for any goods or services included herein), or from revising the scope of the Work, as otherwise permitted under this Contract.

14 INDEMNIFICATION AND HOLD HARMLESS

- 14.1 **CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD AND CITIES OF DALLAS AND FORT WORTH AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD AND CITIES OF DALLAS AND FORT WORTH, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, INCLUDING WITHOUT LIMITATION ATTORNEY'S FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD AND CITIES OF DALLAS AND FORT WORTH DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACTS OR OMISSIONS OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE**

EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD AND CITIES OF DALLAS AND FORT WORTH, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL OR BODILY INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT CONTRACTOR AND DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD AND CITIES OF DALLAS AND FORT WORTH ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD AND CITIES OF DALLAS AND FORT WORTH UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 14.2 **THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**
- 14.3 **CONTRACTOR SHALL PROMPTLY ADVISE THE DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD AND CITIES OF DALLAS AND FORT WORTH IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD AND CITIES OF DALLAS AND FORT WORTH OR CONTRACTOR KNOWN TO CONTRACTOR RELATED TO OR ARISING OUT OF CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT.**

15 INDEPENDENT CONTRACTOR

The relationship of Contractor to Board is that of Independent Contractor. Under no circumstances shall Board be considered in privity of Contract with any subcontractor or supplier hired by Contractor, and such subcontractor or supplier, if any, shall look solely to Contractor or to the Contract Bond Surety, if any, for recovery of any claims for monies owed for material supplied or labor performed relating to the Work hereunder.

16 JURISDICTION

This Contract shall be construed in accordance with the laws and court decisions of the State of Texas and be enforceable in Dallas County or Tarrant County, Texas, and if legal action is necessary by either party with respect to the enforcement of any and all of its terms and conditions, exclusive venue for same shall lie in Dallas and Tarrant Counties, Texas.

17 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) PARTICIPATION

- 17.1 It is the policy of the Board to remove barriers for Minority and Women-Owned Business Enterprises (M/WBEs) to compete and create a level playing field for M/WBEs to participate in Board contracts and related subcontracts.
- 17.2 Additional M/WBE Program requirements, if any, shall be included in the Special Provisions Section of this Contract.
- 17.3 The Contractor specifically agrees to comply with all applicable provisions of the Board's M/WBE Program and any amendments thereto. The Contractor agrees to include all Board M/WBE Program requirements in all subcontracts and to further require all subcontractors to include all M/WBE Program requirements into all sub-subcontracts. All subcontractors at all tiers agree to comply with all applicable provisions of the Board's

M/WBE Program.

18 NON-DISCRIMINATION

As a condition of this Contract, Contractor hereby covenants that it will take all necessary action to insure that, in connection with any Work under this Contract, it will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or Work performed hereunder for a minimum period of three years following final payment by Board or resolution of outstanding issues between the Board and Contractor, whichever is later, with full access allowed to authorized representatives of the Board upon request for purposes of evaluating compliance with this and other provisions of the Contract.

19 NOTICE OF DELAYS

Whenever the Contractor encounters any difficulty which is delaying or threatens to delay timely performance (including actual or potential labor disputes), the Contractor shall immediately give notice in writing to the Vice President of PMM, or designee, including all relevant information. Such notice shall not in any way constitute a basis for an extension of the delivery or performance schedule or be construed as a waiver by the Board of any right or remedies to which it is entitled by law or pursuant to provisions herein. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery or performance schedule because of such delay.

20 PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the Contract provisions or in exercising any power or authority granted to him by this Contract, neither the Board's Technical Representative, his/her authorized representatives, nor any employees or officers of the Board shall be personally liable.

21 PROTECTION AND RESTORATION OF PROPERTY

- 21.1 The Contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the Work, resulting from any act, omission, neglect, or misconduct in his/her manner or method of executing the Work, or at any time due to defective Work or materials, and said responsibility will not be released until the project shall have been completed and accepted.
- 21.2 When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the nonexecution thereof by the Contractor, the Contractor shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, or otherwise restoring as may be directed, or he shall make good such damage or injury in an acceptable manner.

22 PUBLIC CONVENIENCE AND SAFETY

The Contractor shall control its operations and those of its subcontractors and all suppliers to assure the least inconvenience to the Board operation. Under all circumstances, safety shall be the most important consideration.

23 SEVERABILITY

If any provision of the Contract is declared or found to be illegal, unenforceable or void, in whole or in part, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that it is illegal, unenforceable or void, it being the intent and agreement of the parties that the Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefore another provision that is legal and enforceable and achieves the same objectives. Any such invalidity, illegality, or unenforceability shall not affect any other provision of the Contract. The parties agree to negotiate in good faith for a proper amendment to the Contract in the event any provision thereof is declared illegal, invalid or unenforceable.

24 TAX EXEMPTION STATUS

Purchases by the Airport Board are exempt from sales and use tax under Section 151.309 of the Texas Tax Code (the "Code"). In addition, Contractor purchases of tangible personal property and taxable services for the purpose of reselling them to the Board under this Contract may also be exempt from sales and use tax under Code Section 151.302. Where legally permitted, Contractor shall provide the vendor or supplier with a properly executed resale certificate at the time of purchasing tangible personal property and/or taxable services that are to be resold to the Board under this Contract.

25 TEMPORARY SUSPENSION OF THE WORK

- 25.1 The Board Technical Representative, in conjunction with PMM, shall have the authority to suspend the Work wholly, or in part, for such period or periods as he may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for the performance of the work, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the Contract.
- 25.2 In the event that the Contractor is ordered by the Board's Technical Representative, in writing, to suspend Work, in whole or in part, for some unforeseen cause not otherwise provided for in the Contract and over which the Contractor has no control, the Contractor shall be paid that part of the Work, if any, not shut down, and for extended overhead, if any relating to the part of the Work suspended. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the Technical Representative's order to suspend Work to the effective date of the Technical Representative's order to resume the Work. Claims for extended overhead shall be filed with the Board's Technical Representative within the time period stated in the Board's Technical Representative's order to resume Work. The Contractor shall submit with his/her claim information substantiating the amount shown on the claim. The Board's Technical Representative will forward the Contractor's claim to the Board for consideration in accordance with local laws or ordinances. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather, for suspensions made at the request of the Contractor, or for any other delay provided for in the Contract, plans, or specifications.
- 25.3 If it should become necessary to suspend Work for an indefinite period, the Contractor shall store all materials in such manner that they will not become an obstruction nor likely to become damaged in any way.

26 TERMINATION OF CONTRACT: DEFAULT AND REMEDIES

In the event of default by the Contractor, the Contractor may be given written notice to cure the default detailing the nature of the default and the recommended remedy to the default. The Contractor shall have seven (7) days to respond to the notice should recommend a cure and any associated plan of action. The Contractor shall have thirty (30) days from the date of receipt of the notice to cure the default., If the Contractor has not cured the default on the 31st day after receipt of the notice, the Board may terminate the contract and/or pursue any and all relief, at law or in equity, to which it may be entitled by reason of such default.

27 TERMINATION OF CONTRACT FOR BOARD CONVENIENCE

Whenever the Board, in its discretion, deems it to be in the Board's best interests, it may terminate this Contract for the Board's convenience. Such termination shall be effective thirty (30) days after Board delivers written notice of such termination for convenience to the Contractor. Upon receipt of such notice from Board, Contractor shall not thereafter incur, and Board shall have no liability for, any costs under this Contract that are not necessary for actual performance of the Contract between the date of the notice of termination for convenience and the effective date of that termination for convenience. In the event of a termination for convenience hereunder, Board shall have no liability to Contractor for lost or anticipated profit resulting therefrom.

28 TERMS OF PAYMENT

- 28.1 Terms of payment to the successful Bidder will be contingent upon the terms provided in the Contract and based on invoices submitted to and approved by the Vice President of PMM or designee. Invoices shall be fully documented in accordance with the specifications.
- 28.2 Payment may be delayed on invoices not listing the Contract number. Invoices shall be priced per unit prices as awarded unless Contractor invoices at a discounted unit price. If Contractor invoices for less than the contracted unit price, the Board has the right to accept invoice and pay the discounted price as full satisfaction of compensation due the Contractor.
- 28.3 Invoices will be paid following delivery and acceptance unless special arrangements are made through the Vice President of PMM for partial payment or progress payments. Progress payments will be made following receipt of a valid invoice submitted by the Contractor. Invoices must reflect only the amount due for accepted portion of the services performed, materials, and equipment furnished for the period covered by each invoice.
- 28.4 Upon payment by the Board, Contractor shall pay each subcontractor the appropriate share of the payment no later than the tenth (10th) calendar day after the day on which the Contractor receives payment from the Board.
- 28.5 Unless otherwise directed, invoices shall be submitted to:

Dallas/Fort Worth International Airport Board
PMM Contract Payables
P. O. Box 619428
Dallas/Fort Worth Airport, Texas 75261-9428

29 THIRD-PARTY BENEFICIARY CLAUSE

It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the contract to make the public or any member thereof a third party beneficiary or to authorize anyone not a party to the contract to maintain a suit on or under the Contract.

END OF GENERAL TERMS AND CONDITIONS