



## Appendix 1

### [RFP Template / *Insert TITLE here*] SECTION I GENERAL

**1.1 SCOPE.** The State of Texas, by and through the \_\_\_\_\_ *{Insert agency name here}* seeks sealed proposals to establish a contract for *[Insert general description here]* commodities/services in accordance with the specifications contained in this Request for Proposal ("RFP"). In particular, the services requested herein and to be provided under any contract(s) awarded as a result of this RFP are for \_\_\_\_\_ *[Insert the specific commodities/services and purpose]*.

*[The following to be included only when soliciting for IDQ or Requirements contracts:]*

**No Guarantee of Volume.** The State of Texas does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this solicitation and resulting contract. *[It is recommended that you provide some sort of past performance and or reporting data to assist vendors in their Proposals]*.

**1.2 CONTRACT TERM.** The services requested shall be provided for a period of \_\_\_\_\_ *[state initial term, ex. Two (2) years]*, beginning \_\_\_\_\_ *[insert start date]*, or the last signature date, whichever is later, and ending \_\_\_\_\_ *[Length of contract term should not extend past end of biennium in which execution of contract occurs, i.e. no later than August 31, 20XX]. [If applicable, include the following]* This contract may be renewed for up to *[state renewal options, ex. three (3) one (1) year renewal options]* upon mutual agreement of the parties to be evidenced in writing prior to the expiration date of the initial term. *[Length of renewal term should run so it expires within biennium]* At the sole option of *{Insert agency name here}* the Contract may be extended as needed, not to exceed a total of *{Insert extension period}* months.

**1.3 COMPENSATION.** *[Insert compensation details here]*

**1.4 DEFINITIONS.** For purposes of this RFP, the following definitions apply:

*[The following is a list of generic definitions to be used only if the terms appear in the RFP]*

- (a) Acceptable Quality Level - The level of performance of requested services below which the contract will not be paid or damages may be assessed;
- (b) Addendum - A modification of the specifications issued by \_\_\_\_\_ *{Insert agency name here}* and distributed to prospective Respondents prior to the opening of responses;
- (c) Best and Final Offer ("BAFO") - A formal request made to selected Respondents for revisions to the originally submitted Proposal;
- (d) Contract – The contract awarded as a result of this RFP and all exhibits thereto., This RFP, any Addendum issued in conjunction with this RFP, the successful Respondent's Proposal, any BAFO, and subsequent submission by Respondent, shall all be fully incorporated therein as exhibits; and

- (e) Contractor – Respondent whose Proposal results in a contract with \_\_\_\_\_ *{Insert agency name here}*.
- (f) Electronic State Business Daily (ESBD) – The Electronic State Business Daily, which is available on-line at <http://esbd.cpa.state.tx.us/>
- (g) Gov't Code – Texas Government Code.
- (h) Proposal – The response submitted by a vendor to the {insert agency name} as a result of this solicitation.
- (i) Respondent – Any person or vendor who submits a Proposal in response to this solicitation.
- (j) RFP – Request for Proposals, which is the type of solicitation embodied in this document.
- (k) TAC – Texas Administrative Code, which is the publication for administrative rules.

*[List any additional definitions here that may specifically apply to the RFP.]*

## **SECTION II STATEMENT OF WORK**

**2.1 Commodity/SERVICE REQUIREMENTS.** Commodities/Services shall include, but are not limited to, the requirements contained in this RFP. Commodities/Services set forth that contain the words "must" or "shall" are mandatory and must be provided as specified with no alteration, modification, or exception. Commodities/Services set forth that contain the words "may" or "can" allow Respondents to offer alternatives to the manner in which the commodities/services are provided. The requested commodities/services and corresponding deliverables are as follows:

*[List description of commodities/services and specific forms of deliverables here.]*

**2.2 SUBCONTRACTORS.** Subcontractors providing commodities/services under the Contract shall meet the same requirements and level of experience as required of Respondent. No subcontract under the Contract shall relieve Respondent of responsibility for ensuring the requested commodities/services are provided. Respondents planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.

**2.3 PERFORMANCE TRACKING.** *{Insert agency name here}* will monitor the performance of the Contract issued under this RFP. All commodities/services under the Contract shall be performed at an acceptable quality level and in a manner consistent with acceptable industry standards {identify industry & codes}, custom, and practice.

*[List performance measures, reports, deliverables, and other tracking data here.]*

*Example:*

\_\_\_\_\_ *{Insert agency name here}* may consider the following performance by Contractor as unsatisfactory performance. An unsatisfactory performance determination is not limited to the following:

- (a) *In excess of one (1) service "call back" to correct the same problem within thirty (30) calendar days.*

(b) In excess of one (1) instance within one (1) calendar year of Contractor personnel assigned to an authorized service call not having the skill or knowledge to diagnose the problem and/or perform the repair.

(c) In excess of two (2) instances within one (1) calendar year of which response time to a service call exceeds the thirty (30) minute response by telephone and two (2) hour on-site limit, as defined in this specification above in Section 1.3].

### SECTION III PROPOSAL INFORMATION

**3.1 SCHEDULE OF EVENTS.** The solicitation process for this RFP will proceed according to the following schedule:

<b>EVENT</b>	<b>DATE</b>
Issue RFP/ESBD Posting Date	
Pre-Proposal Conference	
Deadline for Submission of Questions	
Deadline for Submission of Proposals/RFP	
Official Response to Questions Posted on the ESBD	
Opening	
Vendor Discussions	
Request for Best and Final Offers (BAFO)	
Response to Best and Final Offers (BAFO)	
Expected Award of Contract	
Expected Contract Start Date	

**3.2 REVISIONS TO SCHEDULE.** \_\_\_\_\_ *{Insert agency name here}* reserves the right to change the dates in the schedule of events above upon written notification to prospective Respondents through a posting on the Electronic State Business Daily (ESBD) as an Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal. The Respondent's failure to neither periodically check the ESBD will in no way release the selected Contractor from the requirements of "addenda or additional information" nor will any resulting additional costs to meet the requirements be allowed after award(s).

**3.3 PRE-PROPOSAL CONFERENCE.** Attendance at the pre-Proposal conference *[insert applicable: is/is not]* mandatory. A pre-proposal conference is scheduled for *[list date(s), day of the week, and time here]* (Central Time, Austin, Texas). The location of the pre-proposal conference is *[list Building Name and/or address, room number, etc. here]*.

#### **3.4 PROPOSAL REQUIREMENTS.**

(a) Submissions: Respondents shall submit one original of *[list Exhibit A HUB Subcontracting Plan, for solicitations over \$100K]*, and one original Exhibit B, Execution of Proposal, along with one (1) original and *[state number of copies here]* copies of the Proposal. Proposal pages should be numbered and contain an organized, paginated table of contents corresponding to the section and pages of the Proposal.

(b) Costs: The *{Insert agency name}* will not reimburse the Respondent for any cost related to its Proposal. The Respondent is responsible for any expense related to the preparation and submission of its Proposal.

(c) *{Insert agency name here}* will not consider any Proposal that bears a copyright. Proposals will be subject to the Texas Public Information Act (PIA), Tex. Government Code, Chapter 552, and may be disclosed to the public upon request. The Proposal and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies.

If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the specific exception to disclosure in the PIA. Merely making a blanket claim the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable, and shall make the entire Proposal subject to release under the PIA. In order to initiate the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential must be clearly labeled as described below. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA. Subject to the Act, Respondents may protect trade and confidential information from public release. Trade secrets or other confidential information, submitted as part of a Proposal, shall be clearly marked at each page it appears. Such marking shall be in boldface type at least **14 point font**.

(d) Contents: Listed below is a summary of all information to be included in a Proposal submitted in response to this RFP. *{Insert agency name here}* reserves the right, in its sole judgment and discretion, to waive minor technicalities and errors in the best interest of the state.

- (1) Respondent Information: Include the following information related to the responding business entity: formal name and all assumed names used by the business entity; structure of business entity (i.e. sole proprietorship, partnership, corporation, etc.); state in which business entity was formed or incorporated; physical address and mailing address; principal place of business; whether, and to what extent, Respondent has established a physical presence in the State of Texas including relevant timeframes; and name, title, address, telephone number, facsimile number, and e-mail address of Respondent's primary contact.
- (2) The Respondent must provide evidence of financial responsibility and stability for performance of the requirements/services for which a proposal is submitted. In addition, the Respondent must disclose the source of any outside financial resources that will be utilized by the Respondent to enable it to perform any Contract awarded pursuant to the RFP. If requested by *{insert agency name here}* Respondent must provide copies of documents to show the financial capability to demonstrate financial solvency, and to verify the capacity to fulfill the requirements of this RFP. The documents may include but are not limited to the Respondent's most recent audited financial statement. *{Insert agency name here}* reserves the right to require any additional information necessary to determine the financial integrity and responsibility of a Respondent and to reject a response on the grounds of the Respondent's financial soundness.
- (3) Exhibit A—Historically Underutilized Businesses (HUB) Subcontracting Plan: The HUB Subcontracting Plan (the "Plan") must be completed, signed, and returned with the Proposal. Include all subcontractors on the Plan; state whether each subcontractor has been certified as a HUB by the State of Texas; and if certified, provide the most recent date of certification. Complete the remainder of the Plan forms as directed. Failure to complete and return the Plan with the submitted Proposal will result in rejection of the Proposal. In the event the Respondent should determine it is necessary to execute additional or alternative subcontracts for any of the performances under the Contract, the Respondent shall submit a revised HUB Subcontracting Plan for prior approval before executing any subcontracts. The Respondent shall also transmit to *{Insert agency name here}* for review and prior approval a true copy of the subcontract it proposes to execute with a subcontractor. The Respondent, in subcontracting for any performances specified herein, expressly understands and acknowledges that in entering into such subcontract(s), the *{Insert agency name here}* is in no manner liable to any subcontractor(s) of the Respondent. In no event shall this provision relieve the Respondent of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this RFP and Contract. The Respondent shall manage all quality

and performance, project management, and schedules for subcontractors. The Respondent shall be held solely responsible and accountable for the completion of all work for which the Respondent has subcontracted.

(4) Exhibit B – Execution of Proposal: Failure to sign and return the Execution of Proposal with the submitted Proposal will result in rejection of the Proposal.

(5) Exhibit C – Compensation and Fees: Provide requested information as directed.

*[List any other applicable Exhibits or required documents, (such as an Excel sheet for pricing), associated with the solicitation]*

(6) Proposed Products/Services: With respect to each of the services outlined in Section 2.1, provide the information requested below:

*[Other examples of Proposal Contents:]*

*Experience and Qualifications: Describe services your organization has provided in the past 5 years that demonstrates your organization's capability to carry out the proposed services. Include the nature of the services provided, scope of activities, and the organization for which the service was provided. Also, provide any experience in providing similar services to public entities. Include resumes for all personnel who will be responsible for the management and day-to-day operations of the products/services solicited in this RFP.*

*Compensation and Fees: Provide a compensation schedule for each product/service to be performed in response to this RFP, including an estimated maximum amount. This information should be included on list Compensation and Fees Exhibit, if applicable, here.*

*References: Include a minimum of three (3) references from clients for whom similar services were performed or products were provided. Include project description, contact names, position, and company name and telephone number for each reference listed.]*

### **3.5 INQUIRIES.**

(a) All inquiries shall be submitted in writing to *[list Purchaser name here]* at facsimile *[list fax number here]* or by e-mail to *[list email address here]* by *[list date for deadline of submission of questions here; must match Schedule of Events listed in Section 3.1 above]* Central Time, Austin, Texas, the date listed as the deadline for submission of questions as specified in Section 3.1 above.

(b) All inquiries will result in written responses with copies posted to the Electronic State Business Daily, available at <http://esbd.cpa.state.tx.us>. If a Respondent does not have Internet access, a copy of all written responses may be obtained through the point of contact listed above.

(c) Except as otherwise provided in this Section, upon issuance of this RFP, other employees and representatives of *{Insert agency name here}* will not answer questions or otherwise discuss the contents of the RFP with any potential Respondent or its representatives. Failure to observe this restriction may result in disqualification of any subsequent response. This restriction does not preclude discussions unrelated to this RFP.

(d) If Respondent takes any exceptions to any provisions of this RFP, these exceptions must be specifically and clearly identified by Section in Respondent's Proposal in response to this RFP and Respondent's proposed alternative must also be provided in the Proposal. Respondents cannot take a 'blanket exception' to this entire RFP. If any Respondent takes a 'blanket exception' to this entire RFP or does not provide proposed alternative language, the Respondent's Proposal may be disqualified from further consideration. Any exception may result in the Contract not being awarded to the Respondent.

Respondents are strongly encouraged to submit written questions during the official question and answer period regarding any term or condition of this RFP and whether *[Insert name of agency here]* may negotiate that provision under this particular RFP.

**3.6 PROPOSAL SUBMISSION.**

(a) All Proposals shall be received and time stamped at *{Insert agency name here}* prior to *[insert time of RFP Opening here]*, Central Time, Austin, Texas, on the date specified in the Schedule of Events above. *{Insert agency name here}* reserves the right to reject late submittals.

(b) Proposals should be placed in a separate envelope or package and correctly identified with the RFP number and submittal deadline/RFP opening date and time. It is Respondent’s responsibility to appropriately mark and deliver the Proposal to \_\_\_\_\_ *{Insert agency name here}* by the specified date. A U.S. Postal Service (USPS) postmark or round validation stamp; a mail receipt with the date of mailing, stamped by the USPS; a dated shipping label, invoice, or receipt from a commercial carrier; or any other documentation in lieu of the on-site time stamp WILL NOT be accepted.

(c) Telephone and facsimile Proposals will not be accepted.

(d) Receipt of all addenda to this RFP should be acknowledged by returning a signed copy of each addendum with the submitted Proposal.

**1.7 DELIVERY OF PROPOSALS.** Proposals shall be submitted to *{Insert agency name here}* by one of the following methods:

U.S. Postal Service	Overnight/Express Mail	Hand Deliver
<i>{Insert appropriate Agency Name and Mailing Address here}.</i>	<i>{Insert appropriate Agency Name and Mailing Address here}.</i>	<i>{Insert appropriate Agency Name and Physical Address here}. Hours – 8:00 AM to 5:00 PM (CT)</i>

**3.8 PROPOSAL OPENING.** Proposals will be opened at the *{Insert appropriate Agency Name and Mailing Address here}*.

- (a) All submitted Proposals become the property of *{Insert agency name here}* after the RFP submittal deadline/opening date. The submitted Proposals and accompanying documentation will not be returned.
- (b) Proposals submitted shall constitute an offer for a period of ninety (90) days or until selection is made by *{Insert agency name here}*, whichever occurs earlier.

**3.9 PROPOSAL EVALUATION AND AWARD.**

a) *{Insert agency name here}* shall award a contract to a Respondent whose Proposal is considered to provide the best value to the State of Texas, as defined by Tex. Government Code, Section 2155.074.

b) A committee will be established to evaluate the Proposals. The committee will include employees of *{Insert agency name here}* and other persons invited by *{Insert agency name here}* to participate.

c) {Insert agency name here} reserves the right to award contract(s) without any negotiations and reserves the right to not make awards.

d) The Respondent is strongly encouraged to provide its best price in its Proposal because (Insert agency name here) makes absolutely no guarantee that there will be any opportunity to negotiate or provide alternative pricing at any point during the RFP process.

e) The evaluation committee will determine best value by applying the following criteria and assigned weighted values:

[Example:

<b><u>Criteria</u></b>	<b><u>Weight</u></b>
<u>Company Information</u>	<u>5%</u>
<u>Proposed Services</u>	<u>5%</u>
<u>Experience and Qualifications</u>	<u>10%</u>
<u>Compensation and Fees</u>	<u>70%</u>
<u>References</u>	<u>10%</u>
	<u>100%</u>

In determining the best value {Insert agency name here} shall consider the following best value factors:

- 1) Price of the item, to include total cost of ownership, such as installation costs, life cycle costs, and warranty provisions.
- 2) Compliance with the stated specifications(s) coupled with the quality and reliability of the goods and services, such as fitness for use that meets or exceeds Customer expectations, and the characteristics of the product or service that bear on its ability to meet the stated/implied needs.
- 3) Delivery time frame from receipt of purchase order (ARO).
- 4) Indicators of probable performance under the Contract include; past vendor performance, financial resources and ability to perform, experience or demonstrated capability and responsibility, references, and the vendor's ability to provide reliable maintenance agreements and support.
- 5) Other relevant factors, such as the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment, the effect of a purchase on agency productivity, and the cost of any employee training associated with the purchase.

f) The evaluation committee will determine if Best and Final Offers are necessary. Award of a contract may be made without Best and Final Offers. {Insert agency name here} may, at its discretion, elect to have Respondents provide oral presentations and respond to inquiries from the evaluation committee related to their Proposals. A request for a Best and Final Offer is at the sole discretion of {Insert agency name here} and will be extended in writing.

#### **SECTION IV GENERAL TERMS AND CONDITIONS**

1.1 Any Contract awarded as a result of this RFP will contain the general terms and conditions listed below in this Section. Subcontractors are also obliged to comply with these provisions.

**CONTRACT TO PERFORM**  
**1. BETWEEN**  
*{Insert agency name here}* **AND**

\_\_\_\_\_  
**Contract No.**\_\_\_\_\_

This agreement ("Contract") is entered into by the *{Insert agency name here}*, an agency of the State of Texas, and \_\_\_\_\_ ("Contractor"), located at \_\_\_\_\_.

**I. Recitals**

Whereas, on \_\_\_\_\_, 20XX *{Insert agency name here}* issued a Request for Proposals from qualified, independent firms to \_\_\_\_\_ and on \_\_\_\_\_, 20XX issued its official response to questions (collectively "RFP"); and

Whereas, Contractor submitted a proposal (Proposal) dated \_\_\_\_\_, 20XX, in response to *{Insert agency name here}* RFP; and

Whereas, Contractor was selected to \_\_\_\_\_ (short statement of the work to be performed;

Now Therefore, the *{Insert agency name here}* and Contractor hereby agree as follows:

**II. Authority**

This Contract is entered into pursuant to \_\_\_\_\_.

**III. Services, Standards of Performance and Contract Administration**

Contractor shall provide the services and the deliverables described herein in the manner required by all of the following documents:

1. This Contract
2. Exhibit A: The Statement of Work
3. Exhibit B: The RFP and Addenda
4. Exhibit C: Authorized Key Personnel List
5. Exhibit D: Contractor's Proposal and Contractor's Best and Final Offer

*[List any additional exhibits here in the order they appear in RFP.]*

All of the above are attached to and incorporated as part of this Contract for all purposes. All of these documents constitute the Standards of Performance for this Contract.

In the case of conflicts between this Contract and any of the above exhibits, the following shall control in this order of priority:

1. This Contract
  2. Exhibit A: The Statement of Work
  3. Exhibit B: The RFP
  4. Exhibit C: Authorized Key Personnel List
  5. Exhibit D: Contractor's Proposal and Contractor's Best and Final Offer
- [List any additional exhibits here in the order they appear in RFP.]*

Contractor shall provide all of the above services and all reasonably related services in accordance with applicable professional standards of a Contractor providing \_\_\_\_\_. Contractor represents and warrants that it has the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Contract.

*{Insert agency name here}* shall designate a Project Manager for this Contract. The Project Manager will serve as the point of contact between the *{Insert agency name here}* and Contractor. *{Insert agency name here}* Project Manager shall supervise *{Insert agency name here}* review of Contractor's technical work, deliverables, draft reports, the final report, payment requests, schedules, financial budget administration and similar matters. The Project Manager does not have any express or implied authority to vary the terms of the Contract, amend the Contract in any way or waive strict performance of the terms or conditions of the Contract.

#### **IV. Funding**

All obligations of the *{Insert agency name here}* and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to the Contract. The Respondent acknowledges that the ability of the *{Insert agency name here}* and the Customers to make payments under the Contract is contingent upon the continued availability of funds. The Respondent further acknowledges that funds may not be specifically appropriated for the Contract and the *{Insert agency name here}* or Customers continual ability to make payments under the Contract is contingent upon the funding levels appropriated for each particular appropriation period. The *{Insert agency name here}* and the Customers will use all reasonable efforts to ensure that such funds are available. The Respondent agrees that if future levels of funding for *{Insert agency name here}* or a Customer are not sufficient to continue operations without any operational reductions, *{Insert agency name here}* or the Customer, in its discretion, may terminate the Contract or a pending order under the Contract, either in whole or in part. In the event of such termination, *{Insert agency name here}* or the Customer will not be considered to be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. *{Insert agency name here}* and the Customer shall make best efforts to provide reasonable written advance notice to the Respondent of any such Contract or order termination. In the event of such a termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on the particular order if an order is being terminated, or the Contract, if the Contract is being terminated. *{Insert agency name here}* or the Customer shall be liable for payments limited only to the portion of work the *{Insert agency name here}* or the Customer authorized in writing and which the Respondent has completed, delivered to the *{Insert agency name here}* or Customer, and which has been accepted by *{Insert agency name here}* or Customer. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

#### **V. Personnel**

Contractor shall assign only qualified personnel to this Contract. On the date of *{Insert agency name here}* execution of this Contract, *{Insert agency name here}* project manager shall authorize the key personnel listed in Exhibit D of this Contract to provide services under this Contract. Contractor, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required. Contractor shall provide to *{Insert agency name here}*

prior written notice and obtain written approval from {Insert agency name here} prior to any change in key personnel involved in providing services under this Contract.

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Contractor. No subcontract under the Contract shall relieve Contractor of responsibility for ensuring the requested services are provided. If Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply:

(a) Contractors planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.

(b) Subcontracting shall be solely at Contractor's expense.

(c) {Insert agency name here} retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors.

(d) Contractor shall be the sole contact for {Insert agency name here}. Contractor shall list a designated point of contact for all {Insert agency name here} inquiries.

## **VI. Payments**

Prior to authorizing payment to Contractor, {Insert agency name here} shall evaluate Contractor's performance using the performance standards set forth in all documents constituting this Contract. Contractor shall provide invoices to {Insert agency name here} for Commodities/Services provided/performed. Invoices must be submitted not later than the 15th day of the month after the Services are completed. No payment whatsoever shall be made under this contract without the prior submission of detailed, correct invoices. Subject to the foregoing, {Insert agency name here} must make all payments in accordance with the Texas Prompt Payment Act, Government Code, Chapter 2251. Payments under this Contract are subject to the availability of appropriated funds. Contractor acknowledges and agrees that payments for services provided under this Contract are contingent upon {Insert agency name here} receipt of funds appropriated by the Texas Legislature.

## **VII. Term and Termination**

This Contract shall become effective on the date signed by the appropriate official of {Insert agency name here} and shall expire on \_\_\_\_\_ unless otherwise sooner terminated as provided in this Contract. Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Contract. {Insert agency name here} may, in its sole discretion, terminate this Contract upon thirty (30) days' written notice to Contractor. Such notice may be provided by facsimile or certified mail; return receipt requested and is effective upon Contractor's receipt.

### Convenience

{Insert agency name here} may, in its sole discretion, terminate this Contract upon thirty (30) days' written notice to Contractor. Such notice may be provided by facsimile or certified mail return receipt requested and is effective upon Contractor's receipt. In the event of such termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Customers shall be liable only for payments for any goods or services ordered from the Respondent before the termination date.

### Cause/Default

If the Respondent fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract. {Insert agency name here} may, upon written notice of default to the Respondent, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract. {Insert agency name here} may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless {Insert agency name here} notifies the Respondent in writing prior to the exercise of such remedy. The Respondent shall be liable for all costs and expenses, including court costs, incurred by {Insert agency name here} with respect to the enforcement of any of the remedies listed herein.

### Rights upon Termination or Expiration

In the event that the Contract is terminated for any reason, or upon its expiration, the {Insert agency name here} and Customers shall retain ownership of all associated work products and documentation obtained from the Respondent under the Contract.

### Survival of Terms

Termination of the Contract for any reason shall not release the Respondent from liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.

## **VIII. Confidentiality and Public Information**

Notwithstanding any provisions of this Contract to the contrary, Contractor understands that {Insert agency name here} will comply with the Texas Public Information Act, Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. {Insert agency name here} agrees to notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this contract. Contractor will cooperate with {Insert agency name here} in the production of documents responsive to the request. {Insert agency name here} will make a determination whether to submit a Public Information Act request to the Attorney General. Contractor will notify {Insert agency name here} General Counsel within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

## **IX. Insurance and Other Security**

Contractor represents and warrants that it will, within five (5) business days of executing this agreement, provide {Insert agency name here} with current certificates of insurance or other proof acceptable to {Insert agency name here} of the following insurance coverage:

Standard Workers Compensation Insurance covering all personnel who will provide services under this Contract;

Commercial General Liability Insurance, personal injury and advertising injury with, at a minimum, the following limits: \$500,000 minimum each occurrence; \$1,000,000 per general aggregate.

Contractor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with "A" rating from Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that

all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to *{Insert agency name here}*. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide *{Insert agency name here}* with an executed copy of the policies immediately upon request.

## **X. INDEMNIFICATION**

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND *[INSERT NAME OF AGENCY HERE]*, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY *[INSERT NAME OF AGENCY HERE]*.**

**THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR *[INSERT NAME OF AGENCY HERE]* FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF *[INSERT NAME OF AGENCY HERE]* OR ITS EMPLOYEES.**

## **XI. Dispute Resolution**

The dispute resolution process provided for in Texas *Government Code*, Chapter 2260 shall be used by *{Insert agency name here}* and Contractor to resolve any dispute arising under the Contract.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by the Respondent under the Contract. If the Respondent's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Respondent shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Respondent with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is the Respondent's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the *{Insert agency name here}* if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by the *{Insert agency name here}* nor any other conduct of any representative of the *{Insert agency name here}* relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the Contract, the *{Insert agency name here}* and the Respondent shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the *{Insert agency name here}* and the Respondent within fifteen (15) days after written notice by one them demanding mediation under this Section. The Respondent shall pay all costs of the medication unless the *{Insert agency name here}* in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the *{Insert agency name here}* and the Respondent may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the *{Insert agency name here}* and the Respondent shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The *{Insert agency name here}* participation in, or the results of, any mediation or other non-binding dispute

resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the {Insert agency name here} of (1) any rights, privileges, defenses, remedies or immunities available to the {Insert agency name here} as an agency of the State of Texas or otherwise available to the {Insert agency name here}; (2) the {Insert agency name here} termination rights; or (3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the {Insert agency name here} the Respondent shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Respondent may suspend performance during the pendency of such claim or dispute if the Respondent has complied with all provisions of §2251.051, Gov't Code, and such suspension of performance is expressly applicable and authorized under that law.

## **XII. Representations, Warranties, and General Provisions**

### **12.1. Family Code**

Under Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to Section 231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.

### **12.2. Eligibility**

Under Government Code, Section 2155.004 (relating to certain taxes), Contractor represents and warrants that Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate. Contractor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas. Also, Government Code, Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

### **12.3. Liability for Taxes**

Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. {Insert agency name here} shall not be liable for any taxes resulting from this Contract.

### **12.4. HUBs**

Contractor represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Government Code, Chapter 2261. A HUB Subcontracting Plan form must be filled out and returned with the Proposal to be considered responsive. If the Proposal does not include a HUB Subcontracting Plan, it shall be rejected as a material failure to comply with advertised specifications.

### **12.5. Amendments**

Except as provided in Section 11.12 of this Contract, this Contract may be amended only upon written agreement between {Insert agency name here} and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.

### **12.6. Applicable Law; Venue**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

## **12.7. Strict Compliance**

Time is of the essence in the performance of this Contract. Contractor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

## **12.8. Assignments**

Without the prior written consent of *{Insert agency name here}* Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

## **12.9. Partially Completed Work**

No later than the first calendar day after the termination of this Contract, or at *{Insert agency name here}* request, Contractor shall deliver to *{Insert agency name here}* all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of this Contract. Contractor shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the *{Insert agency name here}*.

## **12.10. Federal, State, and Local Requirements**

Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

## **12.11. Severability Clause**

In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

## **12.12. Applicable Law and Conforming Amendments**

Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. *{Insert agency name here}* reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for *{Insert agency name here}* or Contractor's compliance with all applicable State and federal laws, and regulations.

## **12.13. No Waiver**

Nothing in this Contract shall be construed as a waiver of the state's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. *{Insert agency name here}* does not waive any privileges, rights, defenses, or immunities available to *{Insert agency name here}* by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

#### **12.14. No Liability upon Termination**

If this Contract is terminated for any reason, *{Insert agency name here}* and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Government Code, Chapter 2260.

#### **12.15. Independent Contractor**

Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any PO resulting from this RFP. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees of *{Insert agency name here}*. Should Contractor subcontract any of the services required in this RFP, Contractor expressly understands and acknowledges that in entering into such subcontract(s), *{Insert agency name here}* is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve bidder of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this RFP.

#### **12.16. Limitation on Authority; No Other Obligations**

Contractor shall have no authority to act for or on behalf of *{Insert agency name here}* or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or *{Insert agency name here}*.

#### **12.17. Patent, Trademark, Copyright and Other Infringement Claims**

Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify *{Insert agency name here}* of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without *{Insert agency name here}* prior written approval. Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

#### **12.18. Supporting Documents, Retention; Right to Audit; Independent Audits**

Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the "Work" as defined in paragraph 11.30 of this Contract. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by *{Insert agency name here}* and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize the *{Insert agency name here}* and the State of Texas to immediately assess appropriate

damages for such failure. Pursuant to Government Code, §2262.003 the acceptance of funds by Contractor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Contractor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

#### **12.19. Deceptive Trade Practices; Unfair Business Practices**

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

#### **12.20. Equal Opportunity**

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

#### **12.21. Antitrust**

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

#### **12.22. No Conflicts**

Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

#### **12.23. Financial Interests; Gifts**

Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from *{Insert agency name here}* or any agency of the State of Texas for participation in preparation of specifications for this Contract. Contractor represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Contract.

#### **2.24. Felony Criminal Convictions**

Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised *{Insert agency name here}* as to the facts and circumstances surrounding the conviction.

## **12.25. Notices**

Any written notices required under this Contract will be by either hand delivery to Contractor's office address specified on Page 1 of this Contract or by U.S. Mail, certified, return receipt requested, to *[Insert appropriate agency name and mailing address here]*. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

## **12.26. False Statements; Breach of Representations**

By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signed its Proposal with a false statement or signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract and *{Insert agency name here}* may terminate or void this Contract for cause and pursue other remedies available to *{Insert agency name here}* under this Contract and applicable law.

## **12.27. Force Majeure**

Neither Contractor nor *{Insert agency name here}* shall be liable to the other for any delay in, or failure of performance, of any requirement included in any PO resulting from this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

## **12.28. Debts or Delinquencies to State**

The Comptroller is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under this Contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

## **12.29. Buy Texas**

In accordance with Government Code, Section 2155.4441, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.

## **12.30. Work Made for Hire**

For the purposes of this Contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of *{Insert agency name here}*. All right, title and interest in and to said property shall vest in *{Insert agency name here}* upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in *{Insert agency name here}*, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to *{Insert agency name here}*. *{Insert agency name here}* shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such

other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give *{Insert agency name here}* and/or the State of Texas, as well as any person designated by *{Insert agency name here}* and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.

**12.31. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213  
(Applicable to State Agency and Institution of Higher Education Purchases Only)**

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

**12.32. Default**

If Contractor is found to be in default under any provision of this Contract, *{Insert agency name here}* may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Contractor will be responsible for paying damages to *{Insert agency name here}* including but not limited to re-procurement costs, and any consequential damages to the State of Texas or *{Insert agency name here}* resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

**12.33. Note to Respondent**

Any terms and conditions attached to the response will not be considered unless specifically referred to on this Request for Proposal and may result in disqualification of the response.

**12.34. Prohibited Use of Appropriated or other Funds under Control of State Agency; Lobbying**

The Contractor represents and warrants that ordering entities' payments to the Contractor and Contractor's receipt of appropriated or other funds under any of this or any resulting agreement are not prohibited by Government Code §556.005 or §556.008.

**12.35 Certification Concerning Hurricane Relief**

Sections §2155.006 and §2261.053, Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004 Gov't code, occurring after September 24, 2005. Under §2155.006, Gov't Code, the Respondent certifies that the individual or business entity named in its Proposal is no ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certifications inaccurate.

### **12.36 Immigration**

The Contractor represents and warrant that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verifications forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

### **12.37 Drug Free Work Place**

The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

### **12.38 Substitutions**

Substitutions are not permitted without written approval of {Insert agency name here}.

### **12.39 Public Disclosure**

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of {Insert agency name here}.

### **12.40 Testing and Inspection**

{Insert agency name here} may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFP and the Contract. The {Insert agency name here} may also test and inspect goods and services before they are purchased under the Contract. Authorized {Insert agency name here} personnel shall have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, the {Insert agency name here} inspections will not disrupt the Respondent's daily operations. Tests shall be performed on samples submitted with the Proposal or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Respondent. In the event the goods tested fail to meet or exceed all conditions and requirements of the RFP and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Respondent or held for disposition at the Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state.

If material fails to meet specifications, the Respondent will be notified by fax/mail or e-mail. The Respondent will have ten (10) working days after receipt of the notification to remove the rejected material from state property. Material will be removed at the Respondent's expense. Material not removed in the allotted time period will be disposed by the Customer. The Respondent will be charged for all disposable expenses conducted by the Customers.

### **12.41 Order Precedence**

In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed Contract (or Notice of Award), Attachments to the Contract (or Notice of Award), Request for Proposals, and Respondent's Response to Request for Proposals.

### XIII. Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective parties.

### XIV. Merger

This Contract contains the entire agreement between Contractor and *{Insert agency name here}* and supersedes any prior understandings or oral or written agreements between *{Insert agency name here}* and Contractor on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Contract and any attachments shall be valid unless in writing and executed by *{Insert agency name here}* and Contractor.

By: \_\_\_\_\_  
\_\_\_\_\_

By:

Jane Doe,  
\_\_\_\_\_

Name:

*{Title of Appropriate Official}*, *{Insert agency name here}* Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_

Janet Doe, *{Appropriate Title for Attorney}*, *{Insert agency name here}*

Date: \_\_\_\_\_



**EXHIBIT A OF CONTRACT NO. \_\_\_\_\_**  
**Statement of Work**

**Signatures:**

• \_\_\_\_\_

• *{Insert agency name here}*

•

• **Date:** \_\_\_\_\_

• \_\_\_\_\_

•

•

• **Date:** \_\_\_\_\_



**EXHIBIT B OF CONTRACT NO. \_\_\_\_\_**  
**RFP**

The attached true and correct copy of *{Insert agency name here}*'s Request for Proposal is incorporated into Contract No. \_\_\_\_\_.

**Signatures:**

· \_\_\_\_\_

· *{Insert agency name here}*

·

· **Date:** \_\_\_\_\_

· \_\_\_\_\_

·

·

· **Date:** \_\_\_\_\_



EXHIBIT C OF CONTRACT NO. \_\_\_\_\_

**AUTHORIZED KEY PERSONNEL**

This Exhibit C is incorporated into this Contract.

**Authorized Key Personnel:**


**Signatures:**

• \_\_\_\_\_

• *{Insert agency name here}*

•

• **Date:** \_\_\_\_\_

• \_\_\_\_\_

•

•

• **Date:** \_\_\_\_\_



EXHIBIT D OF CONTRACT NO. \_\_\_\_\_

**Contractor's Proposal and Contractor's Best and Final Offer**

The attached true and correct copy of Contractor's Proposal and Contractor's Best and Final Offer is incorporated into Contract No.

**Signatures:**

· \_\_\_\_\_

· *{Insert agency name here}*

·

· **Date:** \_\_\_\_\_

· \_\_\_\_\_

·

·

· **Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Reviewed:**

\_\_\_\_\_  
**Janet Doe, General Counsel, {Insert agency name here}**

**Date:** \_\_\_\_\_



**EXHIBIT A to RFP No. \_\_\_\_\_**

**HUB SUBCONTRACTING PLAN**



# HUB SUBCONTRACTING PLAN (HSP)

In accordance with Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, respondents, including State of Texas certified Historically Underutilized Businesses (HUBs), must complete and submit a State of Texas HUB Subcontracting Plan (HSP) with their solicitation response.

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB goals defined in 1 TAC §111.13 are: **11.9 percent for heavy construction other than building contracts, 26.1 percent for all building construction, including general contractors and operative builders contracts, 57.2 percent for all special trade construction contracts, 20 percent for professional services contracts, 33 percent for all other services contracts, and 12.6 percent for commodities contracts.**

## -- Agency Special Instructions/Additional Requirements --

### SECTION 1

#### - RESPONDENT AND SOLICITATION INFORMATION

- a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Solicitation #:

### SECTION 2

#### - SUBCONTRACTING INTENTIONS

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the respondent must determine what portion(s) of work, including goods or services, will be subcontracted. Note: In accordance with 1 TAC §111.12., a "Subcontractor" means a person who contracts with a vendor to work, to supply commodities, or contribute toward completing work for a governmental entity. Check the appropriate box that identifies your subcontracting intentions:

- Yes, I will be subcontracting portion(s) of the contract.  
 (If Yes, in the spaces provided below, list the portions of work you will be subcontracting, and go to page 2.)
- No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources.  
 (If No, complete SECTION 9 and 10.)

Line Item # - Subcontracting Opportunity Description	Line Item # - Subcontracting Opportunity Description
( #1) -	(#11) -
( #2) -	(#12) -
( #3) -	(#13) -
( #4) -	(#14) -
( #5) -	(#15) -
( #6) -	(#16) -
( #7) -	(#17) -
( #8) -	(#18) -
#9) -	(#19) -
(#10) -	(#20) -

\*If you have more than twenty subcontracting opportunities, a continuation page is available at [http://www.tbpc.state.tx.us/hub/forms/HSP\\_sep06\\_cont1.doc](http://www.tbpc.state.tx.us/hub/forms/HSP_sep06_cont1.doc).

**IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 2. You may photocopy this page or download copies at [http://www.window.state.tx.us/procurement/prog/hub/hub-forms/hsp\\_sep06\\_cont2.doc](http://www.window.state.tx.us/procurement/prog/hub/hub-forms/hsp_sep06_cont2.doc)**

**SECTION 3**

**- SUBCONTRACTING OPPORTUNITY**

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # \_\_\_\_\_ Description: \_\_\_\_\_

**SECTION 4**

**- MENTOR-PROTÉGÉ PROGRAM**

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting their Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the portion of work (subcontracting opportunity) listed in SECTION 3, constitutes a good faith effort towards that specific portion of work. Will you be subcontracting the portion of work listed in SECTION 3 to your Protégé?

- Yes (If Yes, complete SECTION 8 and 10.)  - No / Not Applicable (If No or Not Applicable, go to SECTION 5.)

**SECTION 5**

**- PROFESSIONAL SERVICES CONTRACTS ONLY**

This section applies to Professional Services Contracts only. All other contracts go to SECTION 6.

Does your HSP contain subcontracting of 20% or more with HUB(s)?

- Yes (If Yes, complete SECTION 8 and 10.)  - No / Not Applicable (If No or Not Applicable, go to SECTION 6.)

In accordance with Government Code §2254.004, "Professional Services" means services: (A) within the scope of the practice, as defined by state law of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or (B) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

**SECTION 6**

**- NOTIFICATION OF SUBCONTRACTING OPPORTUNITY**

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 7, 8 and 10.

- a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more HUBs. Use the State of Texas' Centralized Master Bidders List (CMBL), found at <http://www2.cpa.state.tx.us/cmb/cmbhub.html>, and its HUB Directory, found at <http://www2.cpa.state.tx.us/cmb/hubonly.html>, to identify available HUBs. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- b. Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers may be accessed at <http://www.cpa.state.tx.us/procurement/prog/hub/mwb-links-1/>. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**
- c. Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the HUBs no less than five (5) working days from their receipt of notice to respond, **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than five (5) working days prior to the submission of your response to the contracting agency.

**SECTION 7**

**- HUB FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY**

List **three (3)** State of Texas certified HUBs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
_____	_____	____/____/____	<input type="checkbox"/> - Yes <input type="checkbox"/> - No

**SECTION 8**

**- SUBCONTRACTOR SELECTION**

List the subcontractor(s) you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a Texas certified HUB.

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Texas Certified HUB?
_____	_____	____%	____\$	<input type="checkbox"/> - Yes <input type="checkbox"/> - No*
_____	_____	____%	____\$	<input type="checkbox"/> - Yes <input type="checkbox"/> - No*

**\*If the subcontractor(s) you selected is not a Texas certified HUB, provide written justification of your selection process below:**

\_\_\_\_\_

\_\_\_\_\_





**EXHIBIT B  
EXECUTION OF PROPOSAL  
RFP #303-FY-REQ. No. \_\_\_\_\_**

**NOTE: THIS EXHIBIT MUST BE SIGNED AND RETURNED WITH THE PROPOSAL. PROPOSALS THAT DO NOT INCLUDE THIS EXHIBIT WILL BE DISQUALIFIED. THE PROPOSAL SHALL BE VOID IF FALSE STATEMENTS ARE CONTAINED IN THIS EXHIBIT.**

**By signature hereon, Respondent certifies that:**

All statements and information prepared and submitted in the response to this RFP are current, complete, and accurate.

Respondent has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

Neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent or anyone acting for such firm, corporation, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated the contents of this Proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for this RFP.

When a Texas business address shown hereon that address is, in fact, the legal business address of Respondent and Respondent qualifies as a Texas Resident Bidder under Texas Administrative Code, Title 34, Part 1, Chapter 20.

Under Government Code § 2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent’s Proposal. If Respondent is not eligible, then any contract resulting from this RFP shall be immediately terminated. Furthermore, “under Section 2155.004, Government Code, the vendor [Respondent] certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”

Under Family Code § 231.006, relating to child support obligations, Respondent and any other individual or business entity named in this solicitation are eligible to receive the specified payment and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate.

Any Proposal submitted under this RFP shall contain the names and social security numbers of person or entity holding at least a twenty-five percent (25%) ownership interest in the business entity submitting the Proposal.

<b>Name:</b>	<b>Social Security Number:</b>
<b>Name:</b>	<b>Social Security Number:</b>
<b>Name:</b>	<b>Social Security Number:</b>

Under Government Code § 669.003, relating to contracting with an executive of a state agency, Respondent represents that no person who, in the past four years, served as an executive of the {Insert agency name here} or any other state agency, was involved with or has any interest in this Proposal or any contract resulting from this

RFP. If Respondent employs or has used the services of a former executive head of *{Insert agency name here}* or other state agency, then Respondent shall provide the following information: Name of former executive, name of state agency, date of separation from state agency, position with Respondent, and date of employment with Respondent.

Respondent agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

*{Insert agency name here}* is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS), <http://www.epls.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.

Pursuant to Section 2262.003 of the Texas Government Code, the state auditor may conduct an audit or investigation of the vendor or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the Respondent or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Respondent will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.

**PREFERENCES**

**See Section 2.38 of the State of Texas Procurement Manual regarding preferences.**

**Check below to claim a preference under 34 TAC Rule 20.38**

- Supplies, materials or equipment produced in TX or offered by TX bidder or TX bidder that is owned by a service disabled veteran \*
- Agricultural products produced or grown in TX
- Agricultural products and services offered by TX bidders\*
- USA produced supplies, materials or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy Efficient Products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or Reused Computer Equipment of Other
- Foods of Higher Nutritional Value

Respondent represents and warrants that the individual signing this Execution of Proposal is authorized to sign this document on behalf of Respondent and to bind Respondent under any contract resulting from this Proposal.

**RESPONDENT (COMPANY):** \_\_\_\_\_

**SIGNATURE (INK):** \_\_\_\_\_

**NAME (TYPED/PRINTED)** \_\_\_\_\_

**TITLE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**STREET:** \_\_\_\_\_

**CITY/STATE/ZIP:** \_\_\_\_\_

**TELEPHONE AND FACSIMILE NUMBERS:** \_\_\_\_\_

**TEXAS IDENTIFICATION NUMBER (TIN):** \_\_\_\_\_



**Exhibit C to RFP No. 303-FY- \_\_\_\_\_**  
**Compensation and Fees**