

REQUEST FOR PROPOSALS

FOR

REGIONAL BANKING SERVICES

for

**THE TEXAS STATE UNIVERSITY
SYSTEM**

RFP NO.:
758-18-00058

ALL PROPOSALS MUST BE RECEIVED BY:
September 14, 2018 - 3:00 p.m. (C.D.T)

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SECTION I – INTRODUCTION

The Texas State University System (TSUS) (“System”) and its component Institutions (“Component(s)”) is requesting competitive proposals for a six (6) year regional banking services contract to be awarded November 2018, with service to begin December 2018 and extend through April 2025. All contracts will be subject to the approval of the Texas State University System Board of Regents. Through this contract the System intends to minimize banking costs, improve operational efficiency, and maximize investment capabilities.

It is the intent of TSUS to allow each Component to select a regional banking services institution, should they elect to do so. This regional banking services institution may be the Component’s sole banking services provider or may be in addition to an existing banking services provider. A regional banking institution must be within 10 miles of the main campus address of the Component to qualify as a regional banking service provider.

The Texas State University System and its Components covered under this Request for Proposal are:

The Texas State University System Administration, Austin, Texas
Lamar University, Beaumont, Texas
Sam Houston State University, Huntsville, Texas
Sul Ross State University, Alpine, Texas
Texas State University, San Marcos, Texas
Lamar Institute of Technology, Beaumont, Texas
Lamar State College - Orange, Orange, Texas
Lamar State College - Port Arthur, Port Arthur, Texas

This Request for Proposal (“RFP”) details all TSUS and Components current banking services and specifies all qualifications desired of banking institutions, delineates all banking services needed, sets the method and terms of compensation, establishes required contract provisions, and provides submission instructions.

The banking institution(s) chosen shall agree to make the Required Services available to the System and Components at the proposed pricing levels during the entire contract period and agrees that all applicable service fees will be included on the proposed fee schedule. Initiation of any new service during the contract period but not encompassed by the RFP shall be priced at no more than the then current published rates.

Banks are encouraged to address any service not anticipated by or outlined in this RFP that will improve efficiencies.

All qualified financial institutions are invited to submit a proposal. Every effort has been made to notify banks within the Component(s) local service area. Banks responding to this Request for Proposal must be in good standing with the Texas State Comptroller in accordance with Section 2252.903 of the Texas Government Code, must be insured through the Federal Deposit Insurance Corporation (FDIC), and be able to demonstrate a capacity to meet the Components requirements as stated in this RFP.

SECTION II – GENERAL INFORMATION & REQUIREMENTS

2.1 **PUBLIC INFORMATION:** By submission of this agreement, [Vendor] acknowledges that the agreement, and the contents of any underlying proposals or other documents provided to [TSUS] in response to a competitive bid process from which the Agreement resulted, are public information

under the Texas Public Information Act (Texas Government Code Chapter 552). [Vendor] agrees that [TSUS] may provide a copy of the Agreement and/or bid documents in response to a public information request, post the Agreement on its public website, or otherwise release the contents of the Agreement and/or bid documents at [TSUS's] discretion and without prior notice to [Vendor]. Vendor acknowledges that the TSUS strictly adheres to all statutes, court decisions, and the opinions of the Texas Attorney General with respect to disclosure of public information.

- 2.2 **CLARIFICATIONS AND INTERPRETATIONS:** Any clarifications or interpretations of this RFP that materially affect or change its requirements will be issued formally by TSUS as a written addendum. Addenda, if required, will be issued by TSUS for this RFP via the Texas Electronic State Business Daily at: <http://www.txsmartbuy.com/sp>. The Agency Number for Texas State University System is 758. It is the responsibility of all Respondents to check the status of formal addenda before the submission deadline and to obtain this information in a timely manner. All such addenda issued by TSUS before the submittals are due shall be acknowledged by Respondents and incorporated into its response to the RFP.
- 2.3 **EXECUTION OF OFFER:** Please complete, sign and return the attached Execution of Offer (Section X) as part of the proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. **Failure to sign and return the Execution of Offer will result in the rejection of the proposal.**
- 2.4 **PROPOSER QUESTIONS:** After the RFP is advertised, proposers will have until **Friday, August 31, 2018 at 3:00 p.m. (C.D.T.)**, to submit written questions for clarification of the proposal. Send questions to contact information listed under Section 2.5. All questions submitted and received will be reviewed, consolidated where possible, and answered in one addendum to the proposal. The addendum will be posted on the Texas Electronic State Business Daily at: <http://www.txsmartbuy.com/sp>. The Agency Number for Texas State University System is 758. Addenda are usually posted within 2 business days unless the questions involve legal issues or complex subjects. It is the proposer's responsibility to continually check the website for Addenda.
- 2.5 **POINT-OF-CONTACT:** TSUS designates the following person as its representative and Point-of-Contact for this RFP. Respondents shall restrict all contact with TSUS and direct all questions regarding this RFP, including questions regarding terms and conditions, **in writing** to the Point-of-Contact person no later than **Friday, August 31, 2018 at 3:00 p.m. (Central Daylight Time)**.

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- 2.6 **SUBMISSION OF PROPOSALS:** TSUS will receive Proposals, including HUB Plans, for RFP NO.: 758-18-00058 at the time and location described below. The **Proposer (not the carrier/mail service/other or TSUS)** is solely responsible for ensuring that the proposal is received prior to the specified opening date and time as specified on the RFP form.

Proposals Must Be Received By: September 14, 2018 - 3:00 p.m. (C.D.T)

Proposals Are To Be Submitted To:

Daniel Harper, Vice Chancellor for Finance
The Texas State University System
601 Colorado Street
Austin, Texas 78701

- 2.6.1 Proposer should submit one (1) complete copy (including HUB plan) of its entire proposal in Adobe Acrobat PDF format on a USB drive to the attention and address listed above. A signature by an authorized officer of Proposer must appear on the Execution of Offer included in the submitted proposal.
- 2.6.2 Unacceptable Proposal Delivery Methods: TSUS will not accept proposals submitted on paper, by telephone, facsimile (fax) transmission, or electronic email submission in response to this RFP.
- 2.6.3 Proposal Envelope/Box/Container: Each proposal should be placed in an envelope, box, or container that is completely and properly identified with the RFP number, due date and time. It is the proposer's responsibility to have the proposal correctly marked and to TSUS' point of contact by the specified date and time for receipt.
- 2.6.4 Format for Proposal: Proposer should submit their complete proposals in **Adobe Acrobat PDF format** using substantially the following format in terms of order of content. Proposer shall make every effort to present the required information in a detailed, orderly, and compact presentation. Proposer should provide visual examples of functionality to clarify and reinforce key product features and services.

Cover Page:

- Execution of offer, including pricing page(s):
- Table of Contents:
- Executive Summary of Proposal:
- Company Information and History: including, but not limited to the following:
- Company name, Federal Tax Identification Number, company address, contact information (company and proposer's representative).
- All required information as requested in the Evaluation Criteria and in Requirements and Specifications as well as any additional information the Proposer feels is relevant to their proposal.
- The Contractors HUB Plan and all required HUB documentation.

NOTE: The above listing of items to be included in the proposal submission is a summary provided to aid proposers in putting together their proposal package. Any items stated in other sections of the RFP, but not listed in this section, are still required to be provided as part of the proposal submission.

- 2.7 **EVALUATION OF PROPOSALS:** All properly submitted Proposals will be reviewed, evaluated, and ranked by TSUS. Proposals will be evaluated by a review panel on the basis of the criteria listed below. Relative weights of the criteria are listed below. Only criteria designated in the solicitation can be considered in the award determination.

- 50 % - responsiveness, innovativeness, and ability to provide services required,
- 35 % - banking services and other costs,
- 5 % - potential earnings through banking facilities and sweeps to maximize System income,
- 10 % - creditworthiness and stability of the bank.

Award of the contract may not be made to the bank submitting the lowest price proposal. The System will choose the bank which submits the most responsive overall proposal.

- 2.8 **TSUS RESERVATION OF RIGHTS:** TSUS may evaluate the Proposals based on the anticipated completion of all or any portion of the Project. The TSUS reserves the right to divide the Project into multiple parts, to reject any and all Proposals and re-solicit for new Proposals, or to reject any and all Proposals and temporarily or permanently abandon the Project. TSUS makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.
- 2.9 **ACCEPTANCE OF EVALUATION METHODOLOGY:** By submitting its Proposal in response to this RFP, Respondent accepts the evaluation process and acknowledges and accepts the determination of the “best value” firm(s) will require subjective judgments by TSUS.
- 2.10 **NON REIMBURSEMENT FOR COSTS:** Respondent acknowledges and accepts that any costs incurred from the Respondent’s participation in this RFP process shall be at the sole risk and responsibility of the Respondent. Respondents submit Proposals at their own risk and expense.
- 2.11 **HISTORICALLY UNDERUTILIZED BUSINESSES SUBMITTAL REQUIREMENTS:** It is the policy of The Texas State University System and each of its component institutions, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUB) in all contracts. Accordingly, TSUS has adopted the Policy on Utilization of Historically Underutilized Businesses. The Policy applies to all contracts with an expected value of \$100,000 or more. If TSUS determines that subcontracting opportunities are probable, then a HUB Subcontracting Plan is a required element of the Proposal. Failure to submit a required HUB Subcontracting Plan will result in rejection of the Proposal.
- 2.11.1 TSUS has determined that subcontracting opportunities are probable.
- 2.11.2 Forms and Policy on Historically Underutilized Business can be found on the Texas State Comptrollers website at:
- <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>
- 2.12 **CERTAIN PROPOSALS AND CONTRACTS PROHIBITED:** Under Section 2155.004, Texas Government Code, a state agency may not accept a proposal or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the proposal or contract is based. All vendors must certify their eligibility by acknowledging the following statement, "Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate." If a state agency determines an individual or business entity holding a state contract was ineligible to have the contract accepted or awarded as described above, the state agency may immediately terminate the contract

without further obligation to the vendor. This section does not create a cause of action to contest a proposal or award of a state contract.

- 2.13 **CERTIFICATION OF FRANCHISE TAX STATUS:** Respondents are advised the successful Respondent will be required to submit certification of franchise tax status as required by State Law (H.B. 175, Acts 70th Leg. R.S., 1987, Ch. 283, p. 3242). The contractor agrees each subcontractor and supplier under contract will also provide a certification of franchise tax status.
- 2.14 **DELINQUENCY IN PAYING CHILD SUPPORT:** Under Section 231.006, Family Code, the vendor or applicant certifies the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 2.15 **CONFLICTS/CONTACT:** Respondents shall not contact existing members of the Board of Regents, TSUS employees as well as those of System's component institutions during the open period.
- 2.16 **OWNERSHIP AND USE OF WORK MATERIAL:** All work material, whether or not accepted or rejected by TSUS, is the sole property of TSUS and for its exclusive use and re-use at any time without further compensation and without any restriction.
- 2.17 **VALIDITY PERIOD:** Each proposal should state that it will remain valid for a minimum of one hundred and eighty (180) days after the submittal deadline to allow time for evaluation of proposals, award determination, and any unforeseen delays.
- 2.18 **CONTRACT ADMINISTRATION:** Contract administration will be by TSUS and the respective Component. Proposer shall provide, as part of their response, a copy of Proposer's Standard Contract Agreement.
- 2.19 **PRESENTATIONS:** TSUS may, at its sole discretion, invite selective responsive firm(s), at the firm(s) expense, to give an oral presentation and respond to questions. Presentations, at the TSUS' discretion, may be either on site at TSUS or by video conference.
- 2.20 **NEGOTIATIONS:** If possible, an award will be made without holding negotiations. If negotiations are necessary, they will be scheduled after all proposals are evaluated. Negotiations will only be held with proposer(s) who have a reasonable chance of receiving contract award. Therefore, do not anticipate negotiations being held. Best and Final Offers will only be requested if negotiations are held. Therefore, you are strongly encouraged to submit your best offer at the time proposals are due.

SECTION III -- GENERAL STATEMENT OF BANKING SERVICES REQUIRED

The banking services described in this RFP are directed toward four major goals:

- efficient utilization of available banking services and technologies,
- minimization of banking costs,
- safety of System funds, and
- effective, market rate, investment of idle bank-held funds.

As a public entity the safety of the funds and assets of the System is paramount. The use of technology to minimize manual or time-consuming operations will be a continuing effort and the bank will be expected to bring applicable new technologies to the System's attention through the RFP and throughout the contract period. Dependent upon the rate environment, the System will review the selected bank's short-term investment rates and may consider bank alternatives or short-term money markets through sweeps.

The System requires a depository that is fiscally strong and able to provide the required services on an uninterrupted basis. System funds are public funds and fall under provisions of the Public Funds Investment Act and the Public Funds Collateral Act (Texas Government Code Chapters 2256 and 2257). All time and demand funds above FDIC insurance coverage must be collateralized at a 102% margin by securities authorized as defined in this RFP.

SECTION IV -- PROPOSAL SUBMISSION INSTRUCTIONS AND QUALIFICATIONS

By submitting a proposal in response to this RFP, depositories will be deemed to agree to the mandatory contract and service provisions contained herein. This RFP and the proposal submitted will be incorporated into and form the basis of the final depository contract.

- 4.1 **Local Presence:** To assure a close working relationship and to facilitate services, the System will give preference to those banks with full service capabilities within 10 miles to the Component. Local support for the Component and its programs will also be considered.
- 4.2 **Proposal Format:** In order to fully and equitably evaluate each bank proposal a standard reply format is required. Each proposal must include a response to each numbered item in the RFP in the order given. Only proposals submitted timely and in the prescribed format will be evaluated for contract award. An electronic copy of this proposal is available on the state proposal website.
- 4.3 **Schedule for Proposal Submission:** The System will make every effort to adhere to the following schedule.

08/06/2018	Release of Request for Proposal
08/31/2018	3:00pm CST Deadline for all questions pertaining to Request for Proposal.
09/14/2018	3:00pm CST Deadline for proposal submission
11/15/2018	Award of contract

Implementation will commence after December 1, 2018 with each component representative who has elected to engage in the contracted banking services. The bank will review with each component representative(s) the functionality required and will agree upon an identified transition timeframe.

- 4.4 **Proposal Submission:** Proposals should provide a clear and straightforward description of services and the bank's ability to meet the requirements of the RFP. There is no limit on the size of the proposal, but a complete, succinct, and unambiguous presentation of the services offered and the fees required will be required.
- 4.5 **Pre-Proposal Conference:** No pre-proposal conference will be held for this solicitation.

- 4.6 **Bank Compensation:** Each TSUS Component reserves the right to utilize either a fee basis or compensating balance basis (or a combination of each) for payment of services. TSUS and each Component reserves the right to change the payment methodology during the contract period upon no less than 30 days written notice to the bank with the change commencing the first of the following month in order to react to changing interest rate environments. The intention is to use a fee basis when alternative investment earnings surpass the bank's earnings credit rate (ECR).

A consolidated account, and individual account, account analysis for each Component is required monthly regardless of the payment basis. The analysis, although reviewed monthly, is required to be charged on an annualized basis.

All item and account charges will remain at the proposal price quoted for the duration of the contract period regardless of changes in service volumes. If fees are not listed for services provided as requested in this RFP they will not be applied or valid during the contract period. Should new services be required during the contract period not contemplated by this RFP, those services will be provided at fees not more than the bank's then-current published rate and approved by the System.

SECTION V -- SYSTEM FINANCIAL OVERVIEW

TSUS and its Components require fully automated transactions, accounting and reporting in its goal of limiting and eliminating paper transactions and manual handling. Please note that continuing balances are not guaranteed. (Any data previous to this will not be provided to any proposer.)

The Components use a combination of ZBA and sub account, as well as general accounts. Primary revenue is received from Tuition and fees and received in August, September and January.

All financial transactions and reconciliation are handled and controlled through the General Accounting Office. Payroll is paid a few times per month, but the majority of the payments happen monthly, with a large amount subscribing to direct deposit. The bank will be expected to follow standard NACHA regulations for deposit of employee funds on the scheduled date as defined by the System.

Any or all System funds may be maintained and invested by the System outside the bank or at another banking service provider. The System will be under no obligation to maintain time or demand funds in the bank except when fees are paid under a compensating balance basis or an interest-bearing checking account is desired.

SECTION VI -- REQUIRED FINANCIAL INSTITUTION INFORMATION

To be considered proposal must include a response to each question in this Section in the order asked.

- 6.1 In order to fulfill the System's fiduciary responsibility please provide an audited annual financial statement for the bank's most recent fiscal year. **The bank will be required to submit an audited statement annually during the contract.** Provide the current statement and confirm agreement to this condition.
- 6.2 Provide (a) the bank's most recent Highline, Veribanc or comparable bank rating from an independent rating service or (b) the dual ratings of senior and subordinate holding company debt. The bank will

be responsible for notifying the System within thirty (30) days of any change in this rating during the entire contract period. Provide the ratings and confirm agreement to this ongoing condition.

- 6.3 Provide a copy of all agreements (even if not directly referenced or required in this RFP) which will be required to be executed under the contract for services rendered. Agreements should include all service agreements as well as the depository and collateral agreement. Any changes to provisions required on the agreements will be made and agreed upon **before award** of the contract is made.
- 6.4 Customer Service is a primary focus of the System. Describe the bank's philosophy and approach to satisfying the service requirements in responses to the following.
 - a. How does the bank intend to support the ongoing operational and technical needs of the Components?
 - b. What provisions has the bank made for business continuity planning and operations? What, if any, support does the bank intend to offer the Components in a disaster situation to maintain stable banking functions?
- 6.5 How are the most recent legislative and regulatory changes impacting the bank's ability to service the institution? I.e., Basel III, Department of Education Cash Management Rules, etc.
- 6.6 Provide a detailed timeline for implementation of the contract including the activities required by both parties and assignment of responsibilities during implementation.

SECTION VII-- REQUIRED BANKING SERVICES

To be considered, the proposal must include a response to each of the questions in this Section in the order given. All fees for associated and anticipated services must be detailed.

- 7.1 **Consolidated Account Structure with Sweep Mechanism:** The Components are intent on earning at the best available interest rates at all times. The Components may consider sweeping balances during the term of this contract.

The bank is being asked to offer an automated, daily sweep to a money market mutual fund, or internal bank alternative account, if applicable and competitive, when rates allow in order to reach its investment goal. A AAA-rated, SEC registered government, or enhanced government, money market fund is preferable for the sweep. A repurchase agreement and/or offshore accounts are not authorized as sweep investment vehicles.

The bank shall clearly stipulate and describe the bank's most cost effective methodology for creating the sweep structure. The proposal should present the bank's most efficient and cost effective methodology in different rate environments (which, it is understood, may eliminate use of the sweep).

- a. Fully describe the proposed sweep mechanism focusing on the bank's most cost effective and highest earning structure.
- b. Provide the average monthly rates on your best sweep option for the last twelve months as indicated. Define which fund, of any, is being used.
- c. If the bank is proposing an alternative to a sweep, detail and describe fully. Identify and describe advantages of the account type. Provide twelve month rates history.

- d. Is there a floor or ceiling on the earnings credit rate?

7.2 **Automated Cash Management Information Access:**

The System and Components strive for efficiencies in their operations and attempts to reduce paper transactions and staff time in the processing of transactions. The Components need complete and timely detail and summary Information and prefer cross-functionality of reporting.

The System and Components require timely access to prior and intra-day detail and balance reporting. It requires automation within the various service areas such as ACH, reconciliation, and, increasingly, EDI. Imaging retention and access is required. Imaging of deposit slips and deposit items is preferred. Preferably, all reports, statements, and account analyses are to be available in electronic form.

- a. Fully describe the bank's online service capabilities. List system capabilities by service (i.e. balance reporting, wires, positive pay, stop pay, etc.). Are all services provided through one portal?
- b. Describe the security protocols for online services. How is authentication and authorization provided?

7.3 **Depository Services:** Standard commercial deposit services are required. Deposits are typically made in the late afternoon. It is the desire to avoid a third-party courier service. The Components may use multiple methodologies for deposits. All merchant services are handled outside the banking contract. Merchant services will not be addressed in the RFP nor be a part of this contract.

The Components require same bank day credit on all coin and currency deposits, and on-us checks. All cleared deposits received by the bank's established deadline and in accordance with the banking institution's availability schedule must be processed in accordance with that availability schedule or an expedited schedule as offered by the bank. The bank shall guarantee immediate credit on all incoming wire transfers. Failure to credit System and Components accounts in a timely fashion will require interest payment reimbursement to the institution at the then-current daily Fed Funds rate and represent an event of default.

- a. Describe the bank's depository service capabilities.
- b. Describe the recommended process for depository services at the Component.

Remote Electronic Check Acceptance and Conversion

Remote Electronic Check Acceptance and Conversion may be required during the contract period. It is anticipated that the System and Components will expand this collection process to all its campus locations during the contract period, if cost effective. The remote deposits will potentially be used at both point- of-sale and back office operations.

- a. Describe the bank's remote deposit processing and software capabilities.
- b. Describe the recommended process for remote processing of checks.
- c. Are images provided as part of the processing process? Are images maintained online? When? For how long?

Representment of Checks (RCK)

The System and Components may consider the representment of checks through ACH if it would prove cost efficient and improve collection of NSF checks.

- a. Describe the bank's representment procedure with an example showing timeline for processing.

7.4 Standard Disbursing Services and Positive Payee

Standard disbursing services for all accounts are required to include the payment of all System and Component staff and student checks without charge upon presentation. The System and Components require positive payee services for all its checks and accounts. Currently positive payee is used and will be required on all accounts under this contract. The System and Components require positive payee services with complete indemnification for fraudulent checks.

It is preferred that the proposal provide a fully automated and web compatible transmission process. Transmissions will be made as part of each check run or manual check written. Manual check information must be able to be entered and transmitted online.

The System and Components will be combining positive payee services with partial reconciliation services.

- a. The System and Components require that the bank cash free of charge all on-us checks for employees and students drawn on the System and Components, regardless of the individual's account status with the bank. Confirm agreement with this condition.
- b. Describe the handling of exception or non-standard items through a payment consolidation process.
- c. Are positive payee exceptions managed totally online? Describe the process.
- d. What elements are validated on your positive payee processing? Please confirm that it includes the payee validation?

7.5 Account Reconciliation

Currently the System and Components use partial reconciliation services. Serial sort may be used. The System and Components require availability of reconciliation services combined with positive payee.

- a. Describe the bank's partial reconciliation service.
- b. Describe the bank's full reconciliation service.

7.6 ACH (Automated Clearing House) Services

The System and Components expect to move toward increased use of ACH. The System and Components use electronic transactions (ACH, wires and transfers) to reduce paper transactions and are expected to increase the percentage and volume of electronic transactions. Payments over \$10,000 are mostly made by electronic means. The System and Components will continue to move towards more complete and active use of ACH in both collections and disbursement. Currently, ACH is used for payrolls, transfers, and for many vendor payments and collections. The System and Components

actively encourages their employees to move to direct deposit. Utilization of ACH for collections has been limited but increased use is a goal of the System and Components.

- a. Describe the bank's recommended process for handling ACH transactions

7.7 **Wire and Transfer Services**

Incoming wire transfers must receive immediate same day, collected credit. It is preferred that wire initiation be available online. Real-time online wire and transfer monitoring is preferable. Book internal transfers are used extensively between accounts. There is an ongoing need for occasional international wires.

- a. Describe the bank's recommended process for handling incoming and outgoing wire transfers
- b. Describe the security features that are available to protect Components from unauthorized wire transfers

7.8 **Safekeeping of System and Component Owned Securities**

Although local government pools have been used as the primary investment vehicle, the System and Components may have a need for safekeeping services during this contract period. The ability to clear and safe keep securities must be available. The bank will be required to provide book entry safekeeping services.

All investments will be made by the System and Components or its adviser and instructions for clearing and safekeeping will be provided to the bank in writing via e-mail or fax. All clearing shall be made delivery versus payment (DVP).

The System and Components have no obligation to invest its funds with or through the bank. All investments are made on a competitive basis. The depository bank, or its brokerage subsidiaries, will not be authorized as a broker for the System and Components in order to perfect ownership on a DVP settlement.

- a. Describe the safekeeping services that are available

The System and Components may choose to purchase time deposits from the bank but all time deposits, like securities, will be competitively bid at the time of purchase and not be part of this contract except as regards collateral requirements.

7.9 **Collateralization of Deposits**

The Depository Contract shall address the following conditions for collateral. These requirements are absolute minimums and will not be altered.

In conformance with State law, the bank must agree to obtain and maintain acceptable collateral to cover all time and demand deposits above FDIC coverage daily during the contract period. The proposal must state agreement and compliance to the following terms and conditions on that collateral.

- a. All time and demand deposits will be collateralized at a minimum of a 102% margin on principal plus accrued interest daily, net of FDIC insurance.
- b. The bank will be contractually liable for the daily monitoring and maintaining of collateral at the System and Components required margin level of 102%.
- c. State the bank's acceptance of the collateral conditions above.
- d. Does the bank propose any collateral charges, if so how is the charge applied?

7.10 Account Analysis

A monthly account analysis report must be provided for each account and on a consolidated basis for the System and each Component. After five business days of receipt of the monthly account analysis (and subsequent approval of the fees) the bank may direct debit the designated account for fees due if compensation is being calculated on a straight fee or combined fee/balance basis.

A complete account analysis will be required monthly regardless of the payment basis.

- a. Provide a sample account analysis including calculation methodology.
- b. Is the account analysis available online? In what format?

7.11 Monthly Statements

The bank must provide monthly account statements on all accounts with complete supporting documentation. All accounts must be on a calendar month cycle. Timeliness of statements is critical and non-performance will be grounds for termination of contract.

- a. Provide a sample monthly statement.
- b. State when monthly statements will be available each month on paper and online.

7.12 Stop Payments

The institutions do have occasional stop pays. An automated stop pay process is desired.

- a. Describe the process for initiating and monitoring stop pays

SECTION VIII – INSURANCE

8.1 Insurance

- 8.1.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance in the form, with companies admitted to do business in the State of Texas and having an A.M. Best Rating of A-VII or better, and in amounts (unless otherwise specified), as TSUS may require:

8.1.1.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than

Employers Liability - Each Accident \$1,000,000

Employers Liability - Each Employee \$1,000,000

Employers Liability - Policy Limit \$1,000,000

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation and other rights in favor of TSUS;

- 8.1.1.2 Commercial General Liability Insurance with limits of not less than:
 - Each Occurrence Limit \$1,000,000
 - Damage to Rented Premises \$ 100,000
 - Medical Expenses (any one person) \$ 10,000
 - Personal & Advertising Injury \$1,000,000
 - General Aggregate \$2,000,000
 - Products - Completed Operations Aggregate \$2,000,000
- 8.1.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage;
- 8.1.1.4 Errors and Omissions Insurance with limits of not less than \$1,000,000 per claim.
- 8.1.2 Contractor will deliver to TSUS:
 - 8.1.2.1 Evidence satisfactory to TSUS in its sole discretion, evidencing the existence of all insurance after the execution and delivery of this Contract and prior to the performance or continued performance of any services to be performed by Contractor under this Contract.
 - 8.1.2.2 Additional evidence, satisfactory to TSUS in its sole discretion, of the continued existence of all insurance not less than five (5) days prior to the expiration of any insurance. Insurance policies, with the exception of Workers' Compensation and Employer's Liability, shall be endorsed and name TSUS as an Additional Insured. All policies will be endorsed to provide a waiver of subrogation in favor of TSUS. All policies with the exception of Workers' Compensation and Employer's Liability will be endorsed to provide primary and non-contributory coverage. No policy shall be canceled until after thirty (30) days' unconditional written notice to TSUS. All policies shall be endorsed requiring the insurance carrier providing coverage to send notice to TSUS 30 days prior to any cancellation, material change, or non-renewal (60 days for non-renewal) relating to any insurance policy required herein.
- 8.1.3 The insurance policies required in this Agreement will be kept in force for the periods specified below:
 - 8.1.3.1 Commercial General Liability Insurance, Business Automobile Liability Insurance; will be kept in force until receipt of Final Payment by TSUS to Contractor; and
 - 8.1.3.2 Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until the Work has been fully performed and accepted by TSUS in writing.
 - 8.1.3.3 Errors and Omissions Insurance will be kept in force an additional two years after the Work has been fully performed and accepted by TSUS in writing.

SECTION IX - EXECUTION OF OFFER

- 9.1 In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any and all commodities or services at the prices quoted.
- 9.2 By signature hereon, the offeror hereby certifies that he/she is not currently delinquent in payment of any franchise taxes owed the State of Texas under Chapter 11, Tax Code.
- 9.3 By executing this offer, offeror affirms that he/she has not given, offered, or intends to give at any time hereafter, any economic opportunity, future employment, gift loan, gratuity, special discount, trip, favor, or service to public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the offeror shall be removed from all proposals lists.
- 9.4 By the signature hereon affixed, the offeror hereby certifies that neither the offeror or the firm, corporation, partnership, or institution represented by the offeror or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal anti-trust laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business. By signing this offer, offeror certifies that if a Texas address is shown as the address of the offeror, offeror qualified as a Texas Resident Proposer as defined in Rule 1 TAC 113.8.

This offer consists of RFP# 758-18-00058

Federal Employer Identification Number (FEIN): _____

Proposer/Company: _____

Signature (ink): _____ **Date:** _____

Name (typed/printed): _____

Title: _____

Address: _____

Street or PO Box

City

State
Code

Zip

Telephone Number: _____ **E-mail:** _____

COST OF PROPOSAL: Cost to be submitted on the attachments and/or as called for within the RFP document. **Proposer shall include in their response to this Request for Proposal any and all cost, fees, charges, etc. associated with their Proposal.**

Proposer shall complete, sign, and submit the **Execution of Offer** with their response. The **Execution of Offer** must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. **Failure to sign the Execution of Offer will result in the rejection of proposal.**

SECTION X - TERMS & CONDITIONS

Items below apply to and become a part of proposal. Any exceptions there to must be in writing.

10.1 PROPOSAL REQUIREMENTS:

- 10.1.1 **Rules, Regulations & Statutes:** Proposers must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
- 10.1.2 **Unit Price:** Proposers must price per unit shown. Unit prices shall govern in the event of extension errors.
- 10.1.3 **Submittance:** Proposals must be submitted on or before the specified opening date and time.
- 10.1.4 **Late or Unsigned Proposals:** Late and/or unsigned proposals will not be considered under any circumstances. Person signing the proposal must have the authority to bind the firm in a contract. The proposer (not the carrier/mail service/other or the TSUS) who is solely responsible for ensuring that the documentation is received in The Texas State University System's Office prior to the specified opening date and time.
- 10.1.5 **FOB Point:** Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 10.1.6 **Pricing Firm:** Proposal prices are requested to be firm for TSUS acceptance for 180 days from proposal opening date (**unless otherwise stated in specifications**). "Discount from list" proposals are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts will be taken if earned.
- 10.1.7 **Tax Exempt:** Purchases made for State use are exempt from the State Sales tax and Federal Excise tax, per Texas Tax Code, Section 151.309(4). Do not include tax in the proposal.
- 10.1.8 **Right to accept or reject:** The State reserves the right to accept or reject all or any part of any proposal, waive minor technicalities and award the proposal to best serve the interests of the State.
- 10.1.9 **Withdrawal:** Any proposal may be withdrawn prior to the date and time set for receipt of proposals. Any proposal not so withdrawn shall constitute an irrevocable offer, for a period of 180 days, to provide the commodity or service set forth in the specifications, or until a selection has been made by The TSUS.
- 10.1.10 **Proposal Costs:** Proposers electing to respond to this RFP are responsible for any and all costs of proposal preparation. The TSUS is not liable for any costs incurred by a proposer in response to this RFP.
- 10.1.11 **Exceptions:** If a proposer takes exception to any specifications within this Request for Proposal, they must notify The TSUS in writing prior to the scheduled proposal opening date and time.
- 10.1.12 **Cost/Pricing:** All cost/pricing must be in United States dollars.
- 10.1.13 **Texas Public Information Act:** By submission of this Agreement, [Proposer] acknowledges that the Agreement, and the contents of any underlying proposals or other documents provided to [TSUS] in response to a competitive bid process from which the Agreement resulted, are public information under the Texas Public Information Act (Texas Government Code Chapter 552). [Proposer] agrees that [TSUS] may provide a copy of the Agreement and/or bid documents in response to a public information request, post the Agreement on its public website, or otherwise release the contents of the Agreement and/or bid documents at [TSUS's] discretion and without prior notice to [Proposer]. Proposer

acknowledges that the TSUS strictly adheres to all statutes, court decisions, and the opinions of the Texas Attorney General with respect to disclosure of public information.

10.2 SPECIFICATIONS

- 10.2.1 **Brand Name Descriptive:** Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Proposals on brands of like nature and quality will be considered unless otherwise stated in the Request for Proposal (RFP). If proposing other than brand referenced, proposal should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the proposal. Failure to take exception to specifications or reference data will require proposer to furnish specified brand names, numbers, etc.
- 10.2.2 **New Items:** Unless otherwise specified, items shall be new and unused and of current production.
- 10.2.3 **Electrical Standards:** All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 10.2.4 **Samples:** Samples, when requested, must be furnished free of expense to the State. Each sample should be marked with the proposer's name, address, and RFP number. Do not enclose in or attach proposal to sample. All samples become the property of The TSUS.
- 10.2.5 **Oral Statements:** TSUS will not be bound by any oral statement or representation contrary to the written specifications of the Request for Proposal (RFP).
- 10.2.6 **Manufacturer's Warranty:** Manufacturer's standard warranty shall apply unless otherwise stated in the RFP.
- 10.2.7 **Warranty-Product:** Proposer shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of TSUS. Proposer warrants that the goods furnished will conform to the specifications, drawings, and descriptions listed in the RFP, and to the sample(s) furnished by Proposer, if any. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.
- 10.2.8 **Safety Warranty:** Proposer warrants that the product sold to TSUS shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, TSUS may return the product for correction or replacement at the Proposer's expense. In the event Proposer fails to make the appropriate correction within a reasonable time, correction made by TSUS will be at Proposer's expense.
- 10.2.9 **No Warranty by TSUS Against Infringements:** As part of this contract for sale Proposer agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement or the like. TSUS makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall TSUS be liable to Proposer for indemnification in the event that Proposer is sued on the grounds of infringement or the like. If Proposer is of the opinion that an infringement or the like will result, he will notify TSUS to this effect in writing within two weeks after the signing of this agreement. If TSUS does not receive notice and is subsequently held liable for the infringement or the like, Proposer will save TSUS harmless. If Proposer in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that TSUS will pay Proposer the reasonable cost of this search as to infringements.

10.3 DELIVERY

- 10.3.1 **Delivery Days:** Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days' mean calendar days, unless otherwise specified. Failure to state delivery time obligates proposer to deliver in 14 calendar days. Unrealistic delivery promises may cause proposal to be disregarded.
- 10.3.2 **Foreseen Delays:** If delay is foreseen, vendor shall give written notice to TSUS. Proposer must keep TSUS advised at all times of status of order. Default promised delivery (without accepted reasons) or failure to meet specifications authorizes TSUS to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting proposer.
- 10.3.3 **Substitutions:** No substitutions permitted without written approval of TSUS.
- 10.3.4 **Delivery Hours:** Delivery shall be made during normal working hours (8:00 a.m. to 4:00 p.m.) only, unless prior approval has been obtained from ordering agency.

10.4 INSPECTION AND TESTS

All goods will be subject to inspection and test by TSUS. Authorized TSUS personnel shall have access to supplier's place of business for the purpose of inspection merchandise. Tests shall be performed on samples submitted with the proposal or on samples taken from regular shipment. All costs shall be borne by the proposer in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at TSUS' option, be returned to the vendor or held for disposition at proposer's expense. Latent defects may result in revocation of acceptance.

10.5 AWARD OF CONTRACT

- 10.5.1 A response to this RFP is an offer to contract based upon the best price, terms, conditions and specifications contained herein. **Proposals do not become contracts until they are accepted through a purchase order.** The contract shall be governed, construed and interpreted under the laws of the State of Texas, and TSUS policy as the same may be amended from time to time. Any legal actions must be filed in Travis County, Austin, Texas.
- 10.6 **Incorporated Law:** In accordance with Texas Education Code 51.9335, any contract for the acquisition of goods and services to which an institution of higher education is a party, a provision required by applicable law to be included in the contract is considered to be a part of the executed contract without regard to:
- (1) whether the provision appears on the face of the contract; or
 - (2) whether the contract includes any provision to the contrary.
- 10.7 **Dispute Resolution:** If a dispute, or controversy, or claim arises out of or relates to this contract, the parties will make a good faith attempt to resolve the issues. If the dispute cannot be settled by the parties, the parties agree to follow the dispute resolution process in Chapter 2260 of the Texas Government Code.
- 10.8 **Tie Proposals:** Awards will be made in accordance with Rule 1 TAC Section 113.6 (b) and 113.8 (preferences).
- 10.9 **No Guarantee of Award:** TSUS makes no warranty or guarantee that an award will be made as a result of this RFP. TSUS reserves the right to accept or reject any or all proposals, waive any formalities or minor technical inconsistencies and delete any requirement or specification from this RFP or the Agreement when deemed to be in TSUS's best interest. TSUS reserves the right to seek clarification of any item contained in Proposer's proposal prior to final selection. Such clarification may be provided by telephone or personal meeting with or in writing to TSUS, at TSUS's

discretion. Representations made by Proposer within its proposal will be binding on Proposer. TSUS will not be bound to act by any previous communication or response submitted by Proposer, other than this RFP.

10.10 CANCELLATION OF CONTRACT

If contract is cancelled, for any reason, any prepaid fees shall be refunded on a pro-rated basis.

10.11 PAYMENT

Proposer shall submit an itemized invoice showing TSUS purchase order number. TSUS will incur no penalty for late payment, if payment is made in 30 or fewer days from receipt of goods or services on an uncontested invoice. Regardless of the invoice date, the payment process will begin when TSUS receives the authorized authorization/acceptance from the awarding department, or system components. TSUS may pay proposer for any goods or services provided utilizing any one of the following methods of payment:

- a) Paper check
- b) ACH
- c) Wire
- d) WEX Inc. Financial Services' AP Direct
- e) Procurement Card

10.12 NON-DISCLOSURE

No public disclosures or news releases pertaining to this RFP shall be made without prior written approval of TSUS.

10.13 CONFLICTS

In event of a conflict between standard proposal requirements and conditions and the attached detail specification, the detail specification shall govern.

10.14 PATENTS OR COPYRIGHTS

The vendor agrees to protect TSUS from claims involving infringement of patents or copyrights.

10.15 PROPOSER ASSIGNMENTS

Proposer hereby assigns to ordering agency any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).

10.16 FUNDING OUT CLAUSE

TSUS reserves the right to cancel, without penalty, if funds are not appropriated or otherwise made available at any time during the contract period.

10.17 PROPOSER AFFIRMATION

Submitting this proposal with a false statement is material breach of contract and shall void the submitted proposal or any resulting contracts, and the proposer shall be removed from all proposal lists. By submitting this proposal, the proposer herein affirms:

- 10.17.1 The proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal.
- 10.17.2 The proposer is not currently delinquent in the payment of any franchise tax owed with the Texas Comptroller of Public Accounts. For more information see the website for the Texas Comptroller of Public Accounts: <https://mycpa.cpa.state.tx.us/coa/>
- 10.17.3 Neither the proposer nor the firm, corporation, partnership, or institution represented by the proposer, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State or the Federal Antitrust Laws (See Section 11, above) nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 10.17.4 The proposer has not received compensation for participation in the preparation of the specifications for this RFP.
- 10.17.5 regarding child support, the proposer certifies that the individual or business entity named in this proposal 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 proposer subject to Section 231.006 must include the names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the proposal. This information must be provided prior to contract award.
- 10.17.6 Pursuant to Section 2155.004 Government code re: collection of state and local sales and use taxes, the proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
- 10.17.7 The Proposer shall defend, indemnify, and hold harmless the State of Texas, TSUS, component institutions, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of proposer or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract.
- 10.17.8 Proposer 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
- 10.17.9 Pursuant to Texas Government Code 2252.908 and Texas Ethic Commission Rule 46, for contracts that are either have a value of at least \$1 million or require approval of the TSUS Board of Regents, a business entity (vendor) must submit a copy of Disclosure of Interested Parties filed with the Texas Ethics Commission when the business entity submits the signed contract. No such contract may be presented to the TSUS Board of Regents for approval without the disclosure. Information on the Disclosure of Interested Parties can be found at <http://www.ethics.state.tx.us> .
- 10.17.10 Vendor Ethics -- Gratuities: As an agency of the State of Texas The Texas State University System holds the trust of the public. All Proposers and persons doing business with TSUS must provide the highest level of ethics and service in all business interactions. A Proposer shall not give, offer to give, nor intend to give at any time any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a System employee that might reasonably appear to influence the

employee in the discharge of official duties. TSUS may, by written notice to the Proposer, cancel this contract without liability to Proposer if it determined that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Proposer, or any agent or representative of the Proposer, to any officer or employee of TSUS with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is cancelled by TSUS pursuant to this provision, TSUS shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Proposer in providing such gratuities.

- 10.17.11 Prohibition Against Personal Interest in Contracts: No employee of TSUS shall transact any business in their official capacity with any business entity of which they are officers, agents, or members, or in which they own a controlling interest unless the Texas State University System Board of Regents has reviewed the matter and determined that there is no conflict of interest. Any violation of the section, with the knowledge, expressed or implies, of the person or corporation contracting with TSUS shall render the contract involved voidable by TSUS.
- 10.17.12 Pursuant to Texas Government Code 2252.908 and Texas Ethic Commission Rule 46, for contracts that are either have a value of at least \$1 million or require approval of the TSUS Board of Regents, a business entity (vendor) must submit a copy of Disclosure of Interested Parties filed with the Texas Ethics Commission when the business entity submits the signed contract. No such contract may be presented to the TSUS Board of Regents for approval without the disclosure. Information on the Disclosure of Interested Parties can be found at <http://www.ethics.state.tx.us>.
- 10.17.13 Proposer certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with the executive head of a State agency. If Section 669.003 applies, proposer will submit the following information with their response as an attachment in order for the proposal to be evaluated:
 Name of Former Executive: _____
 Name of State Agency: _____
 Date of separation from State Agency: _____
 Position with proposer: _____
 Date of Employment with proposer: _____
- 10.17.13 No Boycott of Israel: In accordance with Section 2270.002 of the Texas Government Code, Vendor does not, and will not during the term of this Agreement, engage in a boycott of Israel.
- 10.17.14 U.S. Produced Steel: Except as provided below the contract shall include a requirement that any iron or steel product produced through a manufacturing process and used in the Project shall be produced in the United States, within the meaning provided in Texas Government Code Section 2252.201.

Exemptions:

- a. Shall not apply to the Project for which the governing body of the Owner determines that.
 - 1. iron or steel products produced in the United States are not:
 - a. produced in sufficient quantities;
 - b. reasonably available; or
 - c. of a satisfactory quality;

2. use of iron or steel products produced in the United States will increase the total cost of the project by more than 20 percent; or
 3. comply with this Section is inconsistent with the public interest.
- b. Electrical components, equipment and systems, and appurtenances thereto, as described in Texas Government Code Section 2252.203 (b), are exempt from the requirements.

10.18 TECHNOLOGY ACCESS CLAUSE

The Proposer expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Proposer represents and warrants to TSUS that the technology provided to TSUS for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in format intended for non-visual use; and
- being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this paragraph, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives

Access by Individuals with Disabilities. Proposer represents and warrants (the Electronic and Information Resources (EIR) Accessibility Warranty”) that the electronic and information resources and all associated information, documentation and support that it provides to the TSUS under the Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, Rule §206.70 of the Texas Administrative code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent Proposer becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Proposer represents and warrants that it will, at no cost to the TSUS, either (1) perform all necessary remediation to make EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event the Proposer fails or is unable to do so, then the TSUS may terminate the Agreement and Proposer will refund to the TSUS all amounts the TSUS has paid under the Agreement within thirty (30) days after the termination date.

All submissions must include all Voluntary Product Accessibility Templates (VPAT), Information Technology Industry Council (ITIC) and General Services Administration (GSA), that describes compliance with Section 508.

The Proposer agrees to protect, defend, and save the TSUS, its elected and appointed officials, agent, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of

defense thereof, arising in favor of the Proposer's employees or third parties on account of bodily and personal injuries, death, damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Proposer and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the TSUS under this Agreement with regard to Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.) United States Rehabilitation Act of 1973 and its amendments, Section 508; and World Wide Web Consortium (W3C), Web Accessibility Initiative (WAI), Web Content Accessibility Guidelines (WCAG) 1.0 and 2.0AA.

10.19 NOTICE TO PROPOSER

- 10.19.1 Any terms and conditions attached by the proposer to their proposal will not be considered unless specifically referred to in their response and may result in the disqualification of their proposal.
- 10.19.2 Equal opportunity – This contractor and subcontractor shall abide by the requirements of 41 CFR § 60- 1.4(a), 60- 300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, religion, color, national origin, sex, age, sexual orientation, gender identity. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, religion, color, national origin, sex, age, sexual orientation, gender identity, protected veteran status or disability.
- 10.19.3 In the event that TSUS is closed due to inclement weather and/or emergency situations at the time set aside for the published bid opening, the published due date will default to the next open business day at the same time.