

**REQUEST FOR QUALIFICATIONS
FOR
THE TEXAS STATE UNIVERSITY SYSTEM
AUSTIN, TEXAS**

**INDEFINITE QUANTITY THIRD PARTY
CONSTRUCTION AUDIT SERVICES
RFQ NO.: 758-19-00060**

**ALL PROPOSALS MUST BE RECEIVED BY:
September 10, 2018 @ 3:00 p.m. (Central Daylight Time)**

Prepared By:

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SECTION I – GENERAL INFORMATION & REQUIREMENTS

- 1.1 **GENERAL INFORMATION:** The Texas State University System (“TSUS”, “System”) is soliciting Statements of Qualifications (“Qualifications”, “Proposals”) for selection of one or more firms (“Auditor”, whether one or more) to perform **Construction Audits for Construction Manager-At-Risk (CMR) and/or Design-Build (D/B) Construction Contract(s)** that are held by TSUS. The Third Party Construction Audit Contracts with the selected firm(s) will be promulgated as an indefinite quantity form of contract that will have an **initial term beginning on October 1, 2018 and ending on August 31, 2021** with an option for TSUS to extend the Contract for one (1) additional year, **September 1, 2021 through August 31, 2022.** **The total value of the Contract will not exceed \$200,000 (Two Hundred Thousand and no/100 Dollars) per Contract year.** Auditor fees are subject to adjustment on the second anniversary of the Contract in an amount not to exceed 10%. Prospective entities submitting their proposals in response to this solicitation are called “Respondents”, “Vendor”, or “Proposers” herein.
- 1.1.1 Collecting Statements of Qualifications in response to this RFQ is the first step in selecting an Auditor firm. This RFQ provides the information necessary for Respondents to prepare and submit Statements of Qualifications for consideration by the Owner. In the next step TSUS will evaluate the Respondents and may make a “most qualified” selection based upon the written Qualifications only.
- 1.1.2 TSUS, at its discretion, may select up to three (3) Respondents it judges most qualified to participate in an interview with the Owner to confirm and clarify the qualifications submitted and to answer additional questions. TSUS will then determine one or more of the most qualified Respondent(s).
- 1.1.3 After selecting the most qualified Respondent(s) TSUS will negotiate the detailed professional services to be provided by the Auditor and a suitable fee for those services.
- 1.1.4 Contract: Any contract resulting from this solicitation will be in the form of the Owner’s Standard Indefinite Quantity Services Agreement, a copy of which is attached to this RFQ as **Exhibit A.**
- 1.2 **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.

- 1.3 CLARIFICATIONS AND INTERPRETATIONS: Any clarifications or interpretations of this RFQ 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 RFQ 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 their response to the RFQ.
- 1.4 EXECUTION OF OFFER: Please complete, sign and return the attached Execution of Offer (Section VI) 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.**
- 1.5 PROPOSER QUESTIONS: After the RFQ is advertised, proposers will have until **Friday, August 24, 2018 at 3:00 p.m. C.D.T.**, to submit written questions for clarification of the proposal. Send questions to TSUS's Point-of-Contact listed under Section 1.6. 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.
- 1.6 POINT-OF-CONTACT: TSUS designates the following person as its representative and Point-of-Contact for this RFQ. Respondents shall restrict all contact with TSUS and direct all questions regarding this RFQ, including questions regarding terms and conditions, **in writing** to the Point-of-Contact person no later than **Friday, August 24, 2018 at 3:00 p.m. C.D.T.**
- Attn:
Carole M. Fox, CPA, System Audit Director
The Texas State University System
601 Colorado Street
Austin, Texas 78701
Phone: 512-463-1808 Fax: 512-463-1816
Carole.fox@tsus.edu
- 1.7 SUBMISSION OF QUALIFICATIONS: TSUS will receive Qualifications, including HUB Plan, for RFQ NO.: 758-19-00060 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 RFQ form.

PROPOSALS MUST BE RECEIVED BY:

Monday, September 10, 2018 at 3:00 p.m. C.D.T.

PROPOSALS ARE TO BE SUBMITTED TO:

Carole M. Fox, CPA, System Audit Director
The Texas State University System
601 Colorado Street
Austin, Texas 78701

- 1.7.1 Proposer should submit **one (1) complete paper copy (including HUB plan) of their qualifications** and **one (1) complete electronic copy (including HUB plan) of their qualifications** to the attention and address listed above. The electronic copy should be in Adobe Acrobat PDF format on a USB drive. A signature by an authorized officer of Proposer must appear on the Execution of Offer included in the submitted qualifications, both paper and electronic.
- 1.7.2 Unacceptable Proposal Delivery Methods: TSUS will not accept qualifications submitted by telephone, facsimile (fax) transmission, or electronic email submission in response to this RFQ.
- 1.7.3 Proposal Envelope/Box/Container: Qualifications should be placed in an envelope, box, or container that is completely and properly identified with the RFQ number, due date and time. It is the proposer's responsibility to have the package and documents correctly marked, addressed and delivered to TSUS's point of contact by the specified date and time for receipt.
- 1.8 **EVALUATION OF PROPOSALS:** It is the intent of the Texas State University System to award a contract to the responsible, responsive Respondent(s) that submit qualifications that meets the minimum criteria set forth herein, and that represents the best value to the System. All properly submitted Proposals will be reviewed, evaluated, and ranked by TSUS. The top three or fewer Respondents may be selected by TSUS, at its discretion, for further consideration by participating in an interview wherein qualifications will be presented and examined in further detail and where questions will be posed by the Selection Committee and answered by the Respondent.
- 1.8.1 Qualifications submittals should not include any information regarding Respondent's proposed fees, pricing, or other compensation considerations as these will not be a factor in the selection of the best qualified Respondent(s).
- 1.9 **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 RFQ for any project and no such representation is intended or should be construed by the issuance of this RFQ.
- 1.10 **ACCEPTANCE OF EVALUATION METHODOLOGY:** By submitting its Proposal in response to this RFQ, Respondent accepts the evaluation process and acknowledges and accepts that the determination of the "most qualified" firm(s) will require subjective judgments by TSUS.
- 1.11 **NON REIMBURSEMENT FOR COSTS:** Respondent acknowledges and accepts that any costs incurred from the Respondent's participation in this RFQ process shall be at the sole risk and responsibility of the Respondent. Respondents submit Proposals at their own risk and expense.
- 1.12 **HISTORICALLY UNDERUTILIZED BUSINESSES SUBMITTAL REQUIREMENTS:** It is the policy of The Texas State University System 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.**

1.12.1 TSUS has determined that subcontracting opportunities are probable for this solicitation.

1.12.2 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>

- 1.13 **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 qualifications 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.
- 1.14 **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 Proposer agrees each subcontractor and supplier under contract will also provide a certification of franchise tax status.
- 1.15 **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.
- 1.16 **CONFLICTS/CONTACT:** Respondents shall not contact existing members of the Board of Regents, TSUS employees, including all of System's component Institutions during the open period.
- 1.17 **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.
- 1.18 **VALIDITY PERIOD:** Each proposal should state that it will remain valid for a minimum of ninety (90) days after the submittal deadline to allow time for evaluation of proposals, award determination, and any unforeseen delays.
- 1.19 **SECTION 2254.029(b) NOTICE:** Pursuant to section 2254.029(b) of the Texas Government Code, notice is given that the consulting services sought in this solicitation relate to services previously provided by a consultant, and that the Owner intends to award the contract for the consulting services to the consultant that previously provided the services, unless a better offer is received

- 1.20 TERMINATION/CANCELLATION: TSUS may terminate this Agreement for any reason upon thirty (30) days written notice to the other party.
- 1.21 MULTIPLE AWARDS AND UTILIZATION: It may be determined that having the Services requested under this RFQ provided by multiple Proposers is more advantages to TSUS. TSUS reserves the right to make multiple awards against this RFQ. TSUS will pay only for the services utilized and makes no guarantee of a maximum amount paid over the course of any contract resulting from this RFQ.

SECTION II – OVERVIEW

- 2.1 DESCRIPTION OF TSUS: The Texas State University System, founded in 1911, is the first higher education system established in Texas. Beginning as an administrative means to consolidate the support and management of state teacher colleges, the System has evolved into a network of higher education institutions stretching from the Texas–Louisiana border to the Big Bend region of West Texas.

Today, seven component institutions offer a broad range of academic and career opportunities. Throughout the System, faculty and staff are preparing students to work in and contribute to our global society. The Texas State University System and its component institutions 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

The Texas State University System is governed by a nine-member Board of Regents appointed by the governor. In addition, a nonvoting student regent is appointed annually to the board. The administration, which is led by a board-appointed chancellor, is based in Austin, where it provides support to the System components and state government.

- 2.2 DESCRIPTION, SCOPE, AND BUDGET: The purpose of any audit/engagement with one or more selected Respondents will include one or more of the following: (a) to review all documents to identify potential deception and/or fraud; (b) to confirm compliance with the terms of the CMR and/or DB contracts; and (c) to confirm adherence to the approved schedule and budget of active projects. Items that may be considered for any engagement may include but not limited to: prevention of the "ghosting" of payroll, verification of change order billings in accordance with the Uniform General Conditions, analysis of leased equipment contracts for non-compliant charges, review of all subcontracts to verify that values and scopes are in line with the Guaranteed Maximum Price (GMP) proposals, review for double coverage pertaining to insurance and/or general conditions to the contract, assistance in the recovery of losses from any subsequent engagement, review/validation of any claims made against a project, analysis of RFIs, submittals, Architect's Supplemental Instructions and other associated logs and schedules, and any other similar activities that would be beneficial to the Owner to ensure compliance with the applicable agreement. All engagements must be performed in accordance with any applicable guidelines and procedures set forth by the State Auditor's Office, and under the general auspices of the TSUS Office of Audits

and Analysis. Auditor reports prepared under the contract will follow distribution processes utilized by the TSUS Office of Audits and Analysis.

Selected Respondents must demonstrate competence and successful experience with similar types of engagements. Previous experience with construction projects undertaken by the State of Texas and its institutions of higher education is preferred.

The contract will have an initial term ending **August 31, 2021** with a one-year extension option and a total value not to exceed \$200,000 per Contract year. Auditor fees are subject to adjustment on the second anniversary of the Contract in an amount not to exceed 10%. The contract will be an indefinite quantity contract and any services thereunder will be on an “as required” basis with no assurance of any minimum quantity of services. The Owner contemplates that 2-4 audits a year will be initiated under the Contract. Auditor will be expected to work with TSUS in determining the scope for each engagement

2.3 **REQUIRED TIMELINE:**

- a. Issue RFQ on or about: Friday, August 17, 2018
- b. Last Day for questions: Friday, August 24, 2018 at 3:00 p.m. CT
- c. Proposals due: Monday, September 10, 2018 at 3:00 p.m. CT
- d. Anticipated Contract Start Date: October 1, 2018

2.4 Class and Item (NIGP Code): 918-04, 946-20

SECTION III – TSUS REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS

Respondents shall carefully read the information contained in the following criteria and submit a complete Statement of Qualifications to all criterion in Section III formatted as directed in Section IV. Incomplete Qualifications will be considered non-responsive and subject to rejection.

3.1 **CRITERION ONE: RESPONDENT’S STATEMENT OF QUALIFICATIONS AND AVAILABILITY TO UNDERTAKE THE PROJECT**

- 3.1.1 Provide a statement of interest for the project including a narrative describing the Respondent’s unique qualifications as they pertain to Construction Audits.
- 3.1.2 Provide a statement on the availability and commitment of the Respondent and its principal(s) and assigned professionals to undertake the project.
- 3.1.3 Provide a brief history of the Respondent and each consultant proposed for the project.

3.2 **CRITERION TWO: RESPONDENT’S ABILITY TO PROVIDE CONSTRUCTION AUDIT SERVICES**

- 3.2.1 Provide the following information for the Respondent:
 - Legal name of the Respondent as registered with the Secretary State of Texas
 - Address of the office that will be providing services
 - Number of years in business
 - Type of Operation (Individual, Partnership, Corporation, Joint Venture, etc.)
 - Number of Employees by skill group

- 3.2.2 Provide a statement as to whether the Respondent, if applicable, is currently for sale or involved in any transaction to become acquired by another business entity. If so, please describe any impact both in organizational and directional terms.
- 3.2.3 Provide any details of all past or pending litigation or claims filed against the Respondent its owners that would affect the Respondent's performance under a Contract with the Owner.
- 3.2.4 Provide a statement describing any relationship that exists by relative, business associate, capital funding agreement, or any other such kinship between the Respondent, its owners, and any Owner employee, officer, or Regent.
- 3.2.5 Provide a claims history under professional malpractice insurance for the past five (5) years for the Respondent, its owners, and any team members proposed to provide professional services under a Contract with the Owner.

3.3 CRITERION THREE: QUALIFICATIONS OF RESPONDENT'S ASSIGNED PERSONNEL AND THEIR LIKELY ROLES.

- 3.3.1 Identify the key professionals that will be involved in the typical engagement and their likely roles.
- 3.3.2 Provide resumes giving the experience and expertise of the professionals that will be involved in the project, including their experience with similar projects, the number of years with the firm, and their city of residence.
- 3.3.3 Indicate whether the Respondent intends to use consultants or sub-consultants in rendering professional services to the Owner. If so, indicate the roles of such consultants and describe the firm's process in working with consultants and integrating them into the audit process.

3.4 CRITERION FOUR: RESPONDENT'S PERFORMANCE ON PAST REPRESENTATIVE ENGAGEMENTS

- 3.4.1 List a maximum of five (5) engagements for which you have provided services that are most related to this RFQ. Any engagements with TSUS, other Texas public institutions of higher education and other Texas state-funded projects should be included. List the projects in order of priority, with the most relevant project listed first. Provide the following information for each project listed:
 - Client name.
 - Construction Project, location of construction project, and contract delivery method.
 - Type of construction (new, renovation, or expansion).
 - Final Construction Cost, including Change Orders.
 - Final project size in gross square feet.
 - Description of the type of audit services provided.

References (for each project listed above, identify the following):

- The Owner's name and representative who served as the liaison during the audit of the project, including telephone number.
- Length of business relationship with the Owner.

References shall be considered relevant based on specific project participation and experience with the Respondent. The Owner may contact references during any part of this process. The Owner reserves the right to contact any other references at any time during the RFQ process.

- 3.5 ALTERNATE PROPOSALS: TSUS may consider alternate proposals submitted by Proposer. Proposers submitting alternate proposals should (i) clearly identify any exceptions taken to the requirements and specifications set forth in this RFQ and (ii) include a detailed description of the alternative(s) proposed. Proposer may suggest additions to the requirements and specifications set forth in this RFQ, and all such suggestions should be clearly defined. Alternate proposals should be submitted as attachments to the proposal. Alternate proposals shall meet the same requirements and shall be in the same format as the proposal's base format.

SECTION IV – FORMAT FOR STATEMENT OF QUALIFICATIONS

4.1 GENERAL INSTRUCTIONS

- 4.1.1 Qualifications shall be prepared **SIMPLY AND ECONOMICALLY**, providing a straightforward, **CONCISE** description of the Respondent's ability to meet the requirements of this RFQ. Emphasis shall be on the **QUALITY**, completeness, clarity of content, responsiveness to the requirements, and an understanding of Owner's needs.
- 4.1.2 The Statement of Qualifications shall be a maximum of 50 printed and could be entirely adequate with considerably fewer pages. The cover, table of contents, divider sheets, HUB Subcontracting Plan, if any, and Execution of Offer do not count as printed pages.
- 4.1.3 Respondents shall carefully read the information contained in this RFQ and submit a complete response to all requirements and criterion as directed. Incomplete Qualifications will be considered non-responsive and subject to rejection.
- 4.1.4 Qualifications and any other information submitted by Respondents in response to this RFQ shall become the property of the Owner.
- 4.1.5 The Owner will not compensate Respondents for any expenses incurred in Qualifications preparation or for any presentations that may be made, unless agreed to in writing in advance or required by law. Respondents submit Qualifications at their own risk and expense.
- 4.1.6 Qualifications that are qualified with conditional clauses, alterations, items not called for in the RFQ documents, or irregularities of any kind are subject to rejection by the Owner, at its option.
- 4.1.7 The Owner makes no representations of any kind that an award will be made as a result of this RFQ, or subsequent RFQ. The Owner reserves the right to accept or reject any or all Qualifications, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFQ when deemed to be in Owner's best interest.
- 4.1.8 Qualifications shall consist of answers to criterion identified in Section 3 of the RFQ. It is not necessary to repeat the criterion in the Qualifications; however, it is essential to reference the criterion number with the corresponding answer.

- 4.1.9 Failure to comply with all requirements contained in this Request for Qualifications may result in the rejection of the Qualifications.
- 4.2 PAGE SIZE, BINDING, DIVIDERS, AND TABS:
- 4.2.1 Qualifications shall be printed on letter-size (8-1/2" x 11") paper and assembled with spiral-type bindings or staples. DO NOT USE METAL-RING HARD COVER BINDERS.
- 4.2.2 Additional attachments shall NOT be included with the Qualifications. Only the responses provided by the Respondent to the criterion identified in Section 3 of this RFQ will be used by the Owner for evaluation.
- 4.2.3 Separate and identify the response to each of the criteria in Section 3 of this RFQ by use of a divider sheet with an integral tab for ready reference.
- 4.3 TABLE OF CONTENTS:
- 4.3.1 Submittals shall include a "Table of Contents" and give page numbers for each part of the Qualifications.
- 4.4 PAGINATION:
- 4.4.1 Number all pages of the submittal sequentially using Arabic numerals (1, 2, 3, etc.); the Respondent is not required to number the pages of any HUB Subcontracting Plan.

SECTION V – INSURANCE

- 5.1 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:
- 5.1.1 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;
- 5.1.2 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
- Policy will include independent contractor's liability, covering, but not limited to, the liability assumed under the indemnification provision of this contract, fully insuring Contractor's (or Subcontractor's) liability for bodily injury (including death) and property damage.
- 5.1.3 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;

- 5.1.4 Errors and Omissions Insurance with limits of not less than \$1,000,000 per claim.
- 5.1.2 Contractor will deliver to TSUS:
 - 5.1.2.1 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.
 - 5.1.2.2 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.
- 5.1.3 The insurance policies required in this Agreement will be kept in force for the periods specified below:
 - 5.1.3.1 Commercial General Liability Insurance, Business Automobile Liability Insurance; will be kept in force until receipt of Final Payment by TSUS to Contractor; and
 - 5.1.3.2 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.
 - 5.1.3.3 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 VI – EXECUTION OF OFFER

NOTE TO RESPONDENTS: SUBMIT ENTIRE SECTION WITH RESPONSE.

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED, AND RETURNED WITH THE RESPONDENT'S QUALIFICATIONS. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE QUALIFICATIONS MAY RESULT IN REJECTION OF THE QUALIFICATIONS.

SIGNING A FALSE STATEMENT MAY VOID THE SUBMITTED QUALIFICATIONS OR ANY AGREEMENTS OR OTHER CONTRACTUAL ARRANGEMENTS, WHICH MAY RESULT FROM THE SUBMISSION OF RESPONDENT'S QUALIFICATIONS, AND THE RESPONDENT MAY BE REMOVED FROM ALL PROPOSER LISTS. A FALSE CERTIFICATION SHALL BE DEEMED A MATERIAL BREACH OF CONTRACT AND, AT OWNER'S OPTION, MAY RESULT IN TERMINATION OF ANY RESULTING CONTRACT OR PURCHASE ORDER.

- 6.1 By signature hereon, Respondent acknowledges and agrees that (1) this RFQ is a solicitation for Qualifications and is not a contract or an offer to contract; (2) the submission of Qualifications by Respondent in response to this RFQ will not create a contract between the Owner and Respondent; (3) the Owner has made no representation or warranty, written or oral, that one or more contracts with the Owner will be awarded under this RFQ; and (4) Respondent shall bear, as its sole risk and responsibility, any cost which arises from Respondent's preparation of a response to this RFQ.
- 6.2 By signature hereon, Respondent offers and agrees to furnish to the Owner the products and/or services more particularly described in its Qualifications, and to comply with all terms, conditions and requirements set forth in the RFQ documents and contained herein.
- 6.3 By signature hereon, Respondent affirms that he has not given, 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 Qualifications.
- 6.4 By signature hereon, a corporate Respondent certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, Texas Tax Code, or that the corporate Respondent is exempt from the payment of such taxes, or that the corporate Respondent is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable.
- 6.5 By signature hereon, the Respondent hereby certifies that neither the Respondent nor the firm, corporation, partnership, or Owner represented by the Respondent, nor 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 antitrust laws, nor communicated directly or indirectly the Qualifications made to any competitor or any other person engaged in such line of business.
- 6.6 By signature hereon, Respondent represents and warrants that:
 - 6.6.1 Respondent is a reputable individual or company regularly engaged in providing the services necessary to meet the terms, conditions, and requirements of the RFQ;
 - 6.6.2 Respondent has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the terms, conditions, and requirements of the RFQ.
 - 6.6.3 Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances.
 - 6.6.4 Respondent, if selected by the Owner, will maintain insurance as required by the Contract.
 - 6.6.5 All statements, information and representations prepared and submitted in response to this RFQ are current, complete, true, and accurate. Respondent acknowledges that the Owner will rely on such statements, information, and representations in selecting the successful Respondent. If selected by the Owner as the successful Respondent, Respondent will notify the Owner immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.

- 6.7 By signature hereon, Respondent certifies that the individual signing this document and the documents made part of the RFQ is authorized to sign such documents on behalf of the company and to bind the company under any agreements or other contractual arrangements, which may result from the submission of Respondent's Qualifications.
- 6.8 By signature hereon, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas bidder as defined in 34 TAC 20.32(68).
- 6.9 By signature hereon, Respondent certifies as follows:
- 6.9.1 "Under Section 231.006, *Texas Family Code*, the Respondent certifies that the individual or business entity named in the Qualifications is not ineligible to receive payments from state funds under a contract to provide the services described in this RFQ and acknowledges that any resultant contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent 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 Qualifications in response to this RFQ and that this information must be provided prior to contract award."
- 6.9.2 "Under Section 2155.004, *Texas Government Code*, the 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."
- 6.9.3 "Under Section 2254.004, *Texas Government Code*, the Respondent certifies that each individual or business entity which is an engineer or architect proposed by Respondent as a member of its team was selected based on demonstrated competence and qualifications only."
- 6.10 By signature hereon, Respondent certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship exist between Respondent and an employee of any TSUS component, or Respondent has not been an employee of any TSUS component within the immediate twelve (12) months prior to your RFQ response. All such disclosures will be subject to administrative review and approval prior to the Owner entering into any contract with Respondent.
- 6.11 By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFQ. (ref. Section 2155.004 Texas Government Code).
- 6.12 By signature hereon, Respondent agrees that any payments that may become due under any agreements or other contractual arrangements, which may result from the submission of Respondent's Qualifications, will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.
- 6.13 By signature hereon, Respondent certifies that no member of the Board of Regents of the TSUS, or the Executive Officers of the TSUS or its component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of the contract.

EXECUTION OF OFFER

This offer consists of RFQ# 758-19-00060

Federal Employer Identification Number (FEIN): _____

Proposer/Company: _____

Signature (ink): _____ Date: _____

Name (typed/printed): _____

Title: _____

Address: _____
Street or PO Box City State Zip Code

Telephone Number: _____ E-mail: _____

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 VII -- TERMS & CONDITIONS

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

7.1 PROPOSAL REQUIREMENTS:

- 7.1.1 **Rules, Regulations & Statutes:** The Texas State University System (“TSUS”) is an agency of the State of Texas. Proposers must comply with all rules, regulations, and statutes relating to purchasing of the State of Texas, The Texas State University System Rules and Regulations, in addition to the Terms and Conditions of this form.
- 7.1.2 **Unit Price:** Proposers must price per unit shown. Unit prices shall govern in the event of extension errors.
- 7.1.3 **Submittance:** Proposals must be submitted on or before the specified opening date and time.
- 7.1.4 **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.
- 7.1.5 **FOB Point:** Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 7.1.6 **Pricing Firm:** Proposal prices are requested to be firm for TSUS acceptance for 90 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.

- 7.1.7 **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.
- 7.1.8 **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.
- 7.1.9 **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 90 days, to provide the commodity or service set forth in the specifications, or until a selection has been made by The TSUS.
- 7.1.10 **Proposal Costs:** Proposers electing to respond to this RFQ 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 RFQ.
- 7.1.11 **Exceptions:** If a proposer takes exception to any specifications within this Request for Qualifications, they must notify The TSUS in writing prior to the scheduled proposal opening date and time.
- 7.1.12 **Cost/Pricing:** All cost/pricing must be in United States dollars.
- 7.1.13 **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.

7.2 SPECIFICATIONS

- 7.2.1 **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 Qualification (RFQ). 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.
- 7.2.2 **New Items:** Unless otherwise specified, items shall be new and unused and of current production.
- 7.2.3 **Electrical Standards:** All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 7.2.4 **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 RFQ number. Do not enclose in or attach proposal to sample. All samples become the property of The TSUS.
- 7.2.5 **Oral Statements:** TSUS will not be bound by any oral statement or representation contrary to the written specifications of the Request for Qualification (RFQ).
- 7.2.6 **Manufacturer’s Warranty:** Manufacturer’s standard warranty shall apply unless otherwise stated in the RFQ.

- 7.2.7 **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 RFQ, 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.
- 7.2.8 **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.
- 7.2.9 **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.

7.3 DELIVERY

- 7.3.1 **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.
- 7.3.2 **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.
- 7.3.3 **Substitutions:** No substitutions permitted without written approval of TSUS.
- 7.3.4 **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.

- 7.4 **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.

7.5 AWARD OF CONTRACT

- 7.5.1 A response to this RFQ 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.

- 7.5.2 **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.
- 7.5.3 **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.
- 7.5.4 **Tie Proposals:** Awards will be made in accordance with Rule 1 TAC Section 113.6 (b) and 113.8 (preferences).
- 7.5.5 **No Guarantee of Award:** TSUS makes no warranty or guarantee that an award will be made as a result of this RFQ. 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 RFQ 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 RFQ.
- 7.6 **CANCELLATION OF CONTRACT** – If contract is cancelled, for any reason, any prepaid fees shall be refunded on a pro-rated basis.
- 7.7 **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) Financial Services' Payment Card
 - e) Procurement Card
- 7.8 **NON-DISCLOSURE:** No public disclosures or news releases pertaining to this RFQ shall be made without prior written approval of TSUS.
- 7.9 **CONFLICTS:** In event of a conflict between standard proposal requirements and conditions and the attached detail specification, the detail specification shall govern.
- 7.10 **PATENTS OR COPYRIGHTS** – The vendor agrees to protect TSUS from claims involving infringement of patents or copyrights.

- 7.11 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).
- 7.12 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.
- 7.13 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:
- 7.13.1 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.
 - 7.13.2 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/>
 - 7.13.3 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.
 - 7.13.4 The proposer has not received compensation for participation in the preparation of the specifications for this RFQ.
 - 7.13.5 If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, Section 231.006(d), 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.
 - 7.13.6 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.
 - 7.13.7 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.
 - 7.13.8 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.
 - 7.14.9 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> .

- 7.13.10 Vendor Ethics -- Gratuities: As an agency of the State of Texas TSUS 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 or its Components 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.
- 7.13.11 Prohibition Against Personal Interest in Contracts: No faculty, staff or other employee of TSUS or its Components 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.
- 7.13.12 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: _____

- 7.13.13 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.
- 7.13.14 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.

7.14 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 (“TAC”) 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). Accordingly, Seller represents and warrants to TSUS that the EIR provided to TSUS complies with the accessibility requirements as outlined in TAC 206 and 213 by providing (1) a completed Voluntary Product Accessibility Template (VPAT) attesting to the EIR’s accessible features and capabilities or (2) providing a similarly formatted document as the VPAT attesting to the EIR’s accessible features and capabilities. 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. Updated VPAT documents should be provided on an annual basis at each invoice period.

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.

7.15 NOTICE TO PROPOSER:

- 7.15.1 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.
- 7.15.2 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.
- 7.15.3 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.