



THE TEXAS
STATE
UNIVERSITY
SYSTEM

REQUEST FOR PROPOSAL

Request for Proposal (“RFP”) No: 758-19-00062

FOR

GOVERNMENTAL RELATIONS

ALL PROPOSALS MUST BE RECEIVED NO LATER THAN:

FRIDAY, FEBRUARY 22, 2019 AT 3:00PM CENTRAL

Prepared by:

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The Texas State University System

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Issue Date: 2/1/19

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Section 1 – General Information

1.1 OBJECTIVE: The Texas State University System (“**TSUS**” or “**University**”) is soliciting proposals in response to this Request for Proposal RFP No. 758-19-00062 (this “**RFP**”), from qualified vendors to provide support and services to the University in both state and federal governmental relations (the “**Services**” or “**Project**”). The University expects to enter into a contract with the selected firm or firms to provide the Services as further described in **Section 5** of this RFP.

This solicitation sets forth, at a minimum, the specifications, terms, conditions, and requirements to be considered for this solicitation. University will select the proposal(s) that offers the “best value” based on the published selection criteria and on its ranking evaluation of submitted proposals. University expects firms that respond to this RFP (“**Proposers**” or “**Respondents**”) may have governmental relations experience at the state level, federal level, or both therefore University reserves the right to make multiple awards against this RFP.

1.2 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, TSUS 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 TSUS, faculty and staff are preparing students to work in and contribute to our global society. The Texas State University System and its component institutions (“**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 Component Institutions and state government.

1.3 BACKGROUND & SPECIAL CIRCUMSTANCES: The Office of Governmental Relations at TSUS seeks support to coordinate communications and activity regarding legislative and policy matters affecting higher education on behalf of the Board of Regents, the chancellor and the Component Institutions.

A successful Respondent to this RFP will have knowledge, experience and expertise in areas including, but not limited to:

- A. Agriculture;
- B. the bill process (from formation until signed into law);
- C. the legislative and executive branches of government;
- D. legislative strategies for higher education institutions; and
- E. higher education issues pertaining to both two-year and four-year degree granting institutions.

1.4 CONTRACT TERM: The initial contract term shall be for three (3) years, beginning on or before March 15, 2019 or when contract is fully executed. University may renew the contract: for up to two (2) additional two (2) year terms. Notice of renewal to be issued in writing at least thirty (30) days prior to the end of the current performance period. The total duration of the contract, including the exercise of renewals, shall not exceed seven (7) consecutive years.

1.5 SCHEDULE OF EVENTS:

- a. Issue RFP on or about: Friday, February 1, 2019
- b. Last Day for questions: **Monday, February 11, 2019 at 3:00 p.m. (Central Time)**
- c. Proposal due: **Friday, February 22, 2019 at 3:00 p.m. (Central Time)**
- d. Anticipated Contract Start Date: March 15, 2019

1.6 CLASS AND ITEM (NIGP) CODES: The related Class and Item code(s) for goods / services requested are: 918-58

1.7 GROUP PURCHASING AUTHORITY: Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Respondent under this RFP.

Section 2 – Notice to Respondents

2.1 PUBLIC INFORMATION: All information, documentation, and other materials submitted in response to this Solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, et seq.) after the Solicitation is completed.

2.1.1 University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act*, Chapter 552, and *Texas Government Code*.

2.1.2 Proposer is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise exempted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

2.1.3 Information provided to Proposer by the University, including information from representatives of TSUS or any of its Component Institutions, and information provided to Proposer by members of the public or any other third party shall belong to the University.

2.1.4 Information created or otherwise produced by Proposer shall remain the exclusive property of Proposer. Proposer acknowledges any final report or papers will be provided in accordance with this RFP, and that any information contained in any report or papers, which Proposer believes is confidential under Texas law will be clearly designated as such by Proposer.

2.1.5 If the University receives a request for public information for any portion of any final report or papers that have been designated by Proposer to be confidential, the University will provide notice to Proposer and Proposer may submit a brief to the Office of the Attorney General, as provided by Chapter 552, Tex. Govt. Code.

2.2 POINT OF CONTACT: University designates the following person as its representative and Point of Contact for this RFP. Proposers shall restrict all contact with University and direct all questions regarding this RFP in writing to the Point of Contact:

Jennifer DeLeon

Email: Jennifer.Deleon@tsus.edu

2.3 PROPOSER QUESTIONS: After the RFP is advertised, Proposers will have until the question deadline of **Monday, February 11, 2019, 3:00 p.m.** Central, to submit written questions, including questions regarding terms and conditions or for clarification of the proposal, to University's Point of Contact (ref. **Section 2.2**). All questions submitted and received prior to the deadline will be reviewed, consolidated where possible, and answered in an 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 The Texas State University System, used to search the ESB, is 758. Addenda are usually posted within 2 business days after the question deadline unless the questions involve legal issues or complex subjects. It is the Proposer's responsibility to continually check the website for Addenda.

2.4 CLARIFICATIONS AND INTERPRETATIONS: Any clarifications or interpretations of this RFP that materially affect or change its requirements will be issued formally by University as a written addendum. Addenda, if required, will be issued by University for this RFP via the Texas Electronic State Business Daily (ref. **Section 2.3**). It is the responsibility of all potential 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 University before the submittals are due shall be acknowledged by Respondents and incorporated into the RFP response (ref. **Section 7**).

2.5 EVALUATION OF PROPOSALS: It is the intent of the University to award a contract to the responsible, responsive Proposer(s) that submits a proposal that meets the minimum criteria set forth herein, and that represents the best value to the University. All properly submitted proposals will be reviewed, evaluated, and ranked by University. Proposals will be evaluated by a review panel on the basis of the criteria and relative criteria weights listed below. Only criteria designated in the solicitation can be considered in the award determination.

EVALUATION CRITERIA AND WEIGHTED VALUES (100 point maximum):

- 25 Points Respondent's proposed cost of services (ref. **Section 6**)
- 25 Points Respondent's qualifications and background (ref. **Section 8.1**)
- 20 Points Respondent's project approach and quality of service (ref. **Section 8.3**)
- 15 Points Respondent's organizational and staff structure (ref. **Section 8.2**)
- 15 Points Respondent's references and overall reputation (ref. **Section 8.4**)

2.6 UNIVERSITY'S RESERVATION OF RIGHTS: University may evaluate the Proposals based on the anticipated completion of all or any portion of the Project. University 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. University 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.

2.7 ACCEPTANCE OF EVALUATION METHODOLOGY: By submitting its proposal in response to this RFP, Respondent accepts the evaluation process and acknowledges and accepts that the determination of the "best value" firm(s) will require subjective judgments by University.

2.8 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.

2.9 CONFLICTS/CONTACT: Respondents shall not contact existing members of the TSUS Board of Regents, University employees, including those of Component Institutions during the open period.

2.10 OWNERSHIP AND USE OF WORK MATERIAL: All work material, whether or not accepted or rejected by University, is the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restriction.

Section 3 – Requirements of Proposal

3.1 PROPOSAL SUBMISSION DEADLINE: University will receive proposals, including HUB Plan, for RFP NO.: 758-19-00062 at the time and location described below. The Proposer (not TSUS, the carrier, mail service/courier, or other party) is solely responsible for ensuring that the proposal is received prior to the specified due date and time noted in this Section. Proposals must be received, as described below, by the following submittal deadline and addressed to the Point of Contact:

Submittal Deadline: FRIDAY, FEBRUARY 22, 2019 AT 3:00PM CENTRAL

Point of Contact:

Jennifer DeLeon
The Texas State University System
601 Colorado Street
Austin, Texas 78701
RE: RFP 758-19-00062

3.2 PROPOSAL FORMAT AND REQUIRED COPIES:

- 3.2.1 Proposer should submit one (1) complete paper copy (including HUB plan) of the entire proposal and one (1) complete electronic copy (including HUB plan) of their entire proposal 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's firm must appear on the Execution of Offer included in the submitted proposals, both paper and electronic.
- 3.2.2 Unacceptable Proposal Delivery Methods: University will not accept proposals submitted by telephone, facsimile (fax) transmission, or electronic email submission in response to this RFP.
- 3.2.3 Proposal Envelope/Box/Container: Proposal must be placed in a sealed envelope, box, or container that is completely and properly identified with the name of Proposer's firm, RFP number, due date and time. It is the Proposer's responsibility to have the proposal correctly marked, addressed and delivered to University's point of contact by the submittal deadline for receipt by the Point of Contact.
- 3.2.4 Format for Proposal: Proposer should submit the complete proposals, both the paper and electronic copy, using a format substantially similar to the following in terms of order of content. Proposer shall make every effort to present the required information in a detailed, orderly (tabbed sections are preferred), and compact presentation. Proposer should provide visual examples of functionality to clarify and reinforce key product features and services. Long or elaborate proposals are not desired.
 - A. Cover page
 - B. Table of Contents
 - C. Executive Summary of Proposal
 - D. Pricing and Delivery Schedule (ref. **Section 6**)

- E. Execution of Offer (ref. **Section 7**)
- F. Proposer's Questionnaire (ref. **Section 8**)
- G. HUB Subcontracting Plan Form and all required HUB documentation (ref. **Section 3.4**)
- H. Supplemental Information: Proposer may submit any additional information Proposer feels is relevant to the proposal.

NOTE: Proposers are responsible for submitting all required information as requested in this RFP. The above listing of items to be included in the proposal submission is a summary provided to aid Proposers in putting together the 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.

3.3 ALTERNATE PROPOSALS: University 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 RFP and (ii) include a detailed description of the alternative(s) proposed. Proposer may suggest additions to the requirements and specifications set forth in this RFP, 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.

3.4 HISTORICALLY UNDERUTILIZED BUSINESSES SUBMITTAL REQUIREMENTS: It is the policy of the University to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUB) in all contracts. Accordingly, University 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 University 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 Form will result in rejection of the Proposal.

3.4.1 University has determined that subcontracting opportunities are probable for this solicitation.

3.4.2 The HUB Subcontracting Plan Form 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>

3.5 EXECUTION OF OFFER: Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 7**) as part of the proposal. The Execution of Offer must be signed by a representative of Proposer's firm 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.

3.6 PROPOSER'S QUESTIONNAIRE: Proposer must completely answer all questions on Proposer's Questionnaire (ref. **Section 8**). By submitting a proposal, Proposer certifies that, to the best of its knowledge, all responses are true, correct and complete.

3.7 PRICING: Proposer shall provide all-inclusive pricing as requested in **Section 6** of this RFP. All pricing must be in United States Dollars.

3.8 PRESENTATIONS: University may, at its sole discretion, invite select responsive firm(s), at the firm(s) expense, to give an oral and/or written presentation and respond to questions. Presentations, at University's discretion, may be either on site at University's offices in Austin, Texas or by video conference.

3.9 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. Proposer's are strongly encouraged to submit the best offer at the time proposals are due.

3.10 VALIDITY PERIOD: By submitting a proposal in response to this RFP, Respondent accepts that the proposal 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.

3.11 AWARD OF CONTRACT

3.11.1 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 or fully executed contract. Any 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.

3.11.2 Tie Proposals: Awards will be made in accordance with Rule 1 TAC Section 113.6 (b) and 113.8 (preferences).

3.11.3 Multiple Awards and Utilization: It may be determined that having the Services provided by multiple Proposers is more advantageous to University. University reserves the right to make multiple awards against this RFP. University will only pay for Services utilized and makes no guarantee of a maximum amount to be paid over the course of any contract that may result from the RFP.

3.11.4 No Guarantee of Award: University makes no warranty or guarantee that an award will be made as a result of this RFP. University 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 University's best interest. University 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 University, at University's discretion. Representations made by Proposer within its proposal will be binding on Proposer. University will not be bound to act by any previous communication or response submitted by Proposer, other than this RFP.

3.12 CONTRACT ADMINISTRATION: Contract administration will be by University. Proposer shall provide, as part of their response, a copy of Proposer's Standard Contract Agreement. University, at its discretion, may choose to use this contract, with appropriate amendments and changes, or its own contract.

3.13 TERMINATION/CANCELLATION: University may terminate any resulting Contract for any reason, including material changes to Contractor's firm, upon thirty (30) days written notice to the other party.

Section 4 – Terms & Conditions of Proposal

The items below apply to and become a part of proposal. Any exceptions thereto must be in writing.

4.1 PROPOSAL REQUIREMENTS:

- 4.1.1 Rules, Regulations & Statutes: University 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. Upon engagement, any successful Proposer shall confirm its compliance with all necessary State and/or Federal requirements relative to work performed.
- 4.1.2 Unit Price: Proposers must price per unit shown. Unit prices shall govern in the event of extension errors.
- 4.1.3 Submittal: Proposals must be submitted on or before the specified opening date and time.
- 4.1.4 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, University, or other party) 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.
- 4.1.5 FOB Designation: Shipping terms will be FOB Destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 4.1.6 Pricing: Proposal prices are requested to be firm for University 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. All costs/pricing must be in United States dollars.
- 4.1.7 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.
- 4.1.8 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.
- 4.1.9 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 University.
- 4.1.10 Proposal Costs: Proposers electing to respond to this RFP are responsible for any and all costs of proposal preparation. University is not liable for any costs incurred by a Proposer in response to this RFP.
- 4.1.11 Exceptions: If a Proposer takes exception to any specifications within this RFP, they must notify the University in writing prior to the scheduled proposal opening date and time.

4.2 SPECIFICATIONS:

- 4.2.1 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 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.
- 4.2.2 New Items: Unless otherwise specified, items shall be new and unused and of current production.
 - 4.2.3 Electrical Standards: All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
 - 4.2.4 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 University.
 - 4.2.5 Oral Statements: University will not be bound by any oral statement or representation contrary to the written specifications of the RFP.
 - 4.2.6 Manufacturer's Warranty: Manufacturer's standard warranty shall apply unless otherwise stated in the RFP.
 - 4.2.7 Warranty-Product: Proposer shall not limit or exclude any implied warranties and any attempt to do so shall render any contract voidable at the option of University. 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.
 - 4.2.8 Safety Warranty: Proposer warrants that the product sold to University 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, University 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 University will be at Proposer's expense.
 - 4.2.9 No Warranty by University 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. University 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 University 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 University to this effect in writing within two weeks after the signing of this agreement. If University does not receive notice and is subsequently held liable for the infringement or the like, Proposer will save University 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 University will pay Proposer the reasonable cost of this search as to infringements.

4.8 NON-DISCLOSURE: No public disclosures or news releases pertaining to this RFP shall be made without prior written approval of University.

4.9 CONFLICTS: In event of a conflict between standard proposal requirements and conditions and the attached detailed specification, the detailed specification shall govern.

4.10 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).

4.11 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:

4.11.1 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.

4.11.2 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/>

4.11.3 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.

4.11.4 The Proposer has not received compensation for participation in the preparation of the specifications for this RFP.

4.11.5 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.

4.11.6 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.

4.11.7 The Proposer shall defend, indemnify, and hold harmless the State of Texas, University, 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.

- 4.11.8 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.
- 4.11.9 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> .
- 4.11.10 Vendor Ethics - Gratuities: As an agency of the State of Texas University holds the trust of the public. All Proposers and persons doing business with University 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 University 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 University pursuant to this provision, University 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.
- 4.11.11 Prohibition Against Personal Interest in Contracts: No faculty, staff or other employee of University 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 University.
- 4.11.12 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: _____

4.12 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 University under the contract (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 University may terminate the contract and Proposer will refund to the University all amounts the University has paid under the contract 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.

4.13 The Proposer agrees to protect, defend, and save the University, 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 University under the contract 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.

4.14 NOTICE TO PROPOSER:

- 4.14.1 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.
- 4.14.2 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.
- 4.14.3 In the event that University 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.

4.15 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.

4.16 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.

4.17 DELINQUENCY IN PAYING CHILD SUPPORT: Under Section 231.006, Family Code, the firm 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.

Section 5 – Scope of Work

The purpose of this RFP is to solicit proposals to enter into a contract with a qualified and experienced firm(s) to obtain timely and professional Services as described herein. The successful Proposer, if any, is referred to as the “**Contractor.**” Services described in this RFP will be provided to, and on behalf of, TSUS which includes the TSUS System Administration and all Component Institutions.

Proposers shall submit a complete response to all requirements and specifications set forth in this RFP. Proposers may expand or offer any additional suggestions and/or services that their firm feels may benefit University in addition to the requirements listed in this RFP.

Contractor will provide the following Services to TSUS:

5.1 Serve as primary liaison between TSUS and other parties on state and federal issues important to TSUS. Parties include, but are not limited to:

- 5.1.1 State and federal elected officials, including associated staff;
- 5.1.2 State and federal agencies;
- 5.1.3 City, county, state, and national organizations;
- 5.1.4 Industry associations; and
- 5.1.5 Non-profit organizations (e.g. think tanks, philanthropies, etc.).

5.2 Provide support and service to TSUS:

- 5.2.1 Assist in strategic planning and opportunity identification.
- 5.2.2 Assist in developing and maintaining relationships with relevant parties (ref. **Section 5.1**):
 - A. Assist in communication approaches and interaction strategies.
 - B. Schedule meetings.
 - C. Develop talking points, prepare briefing materials and conduct preparatory briefing sessions prior to key meetings.
 - D. Propose events to showcase TSUS work / projects.
 - E. Look for opportunities to advance research.
- 5.2.3 Respond to legislative requests.
- 5.2.4 Monitor and analyze legislation.
- 5.2.5 Foster relations with members of the government / community and assist in communication of goals to constituencies.
- 5.2.6 Work with faculty members to develop research programs.
- 5.2.7 Promote TSUS research and agendas.
- 5.2.8 Identify grant opportunities and assist with grant applications.
- 5.2.9 Formulate and implement comprehensive federal advocacy plans, revising as needed.
- 5.2.10 Draft and / or prepare materials and communications as needed including, but not limited to:
 - A. Legislation, amendments, and committee report language;
 - B. Letters of comment on agency actions affecting TSUS;

- C. Design and implement advocacy plans to enact legislation, amendments, and Committee report language;
 - D. Compile reports;
 - E. Prepare briefing materials for meetings;
 - F. Prepare statements, issue memorandums, talking points, and correspondence; and
 - G. Provide routine verbal and written advocacy and federal funding status reports.
- 5.2.11 Identify potential policy, legislative issues of interest, projects and programs eligible for funding, committees, groups, and task forces that could be of value to TSUS and assist as needed with appointments to boards, consortiums, task forces, etc.
- 5.2.12 Represent TSUS before state and/or federal agencies and legislative bodies.
- 5.2.13 Assist in hosting logistics for events, receptions, retreats, etc. as needed including, but not limited to, event locations, lodging, transportation, and catering.
- 5.3** Remain engaged on issues and projects with TSUS.
- 5.3.1 Visit institutions throughout the year.
 - 5.3.2 Participate in quarterly chief research officer (“CRO”) meetings.
 - 5.3.3 Provide advocacy reports for TSUS Board of Regents meetings.
 - 5.3.4 Identify new opportunities and address challenges as they emerge.
- 5.4** Advocate for TSUS priorities.
- 5.4.1 Monitor political activities for opportunities to provide written testimony on projects and priorities.
 - 5.4.2 Attend regular meetings of associations, organizations and other groups that are of interest to TSUS.
 - 5.4.3 Seek partnership opportunities for TSUS component institutions with private companies, industry associations and non-governmental organizations (“NGOs”).
 - 5.4.4 Develop and lead coalitions to address priorities shared with other organizations.
- 5.5** Follow and provide guidance on trends related to:
- 5.5.1 higher education funding;
 - 5.5.2 higher education policy; and
 - 5.5.3 public views on higher education.
- 5.6** Provide quarterly written reports of all services/activity under the agreement to designated TSUS contact.
- 5.7** Perform additional duties, tasks or services not specifically identified but related to the Services (e.g., advising on relevant emerging issues) described in this RFP.
- 5.8** Contractor will comply, at Contractor’s sole expense, with all state and federal lobbying laws when performing work, both with and on behalf of TSUS.

Section 6 – Pricing & Delivery

6.1 PRICING FOR WORK AND EXPENSES: Proposer shall include in response to this Section any and all costs associated with the Services as requested in **Section 5** or any other part of this solicitation. All pricing must be in United States Dollars and is considered all inclusive.

Indicate annual fee to be charged to TSUS for provision of Services:

\$_____ Annual Fee – Years 1-3

\$_____ Annual Fee – Optional Years 4-5

\$_____ Annual Fee – Optional Years 6-7

Note: TSUS will pay annual fee in equal monthly installments.

In addition to the annual fee, University will reimburse, without mark-up, reasonable expenses for travel (including meals, rental car or mileage, coach class airfare, and lodging) validly incurred by Contractor directly and solely in support of Services and approved by University. **Travel will be limited to amounts established by the Comptroller of Public Accounts for the State of Texas for state employees.** Contractor will be subject to the then-current Travel Reimbursement Rates promulgated by the Comptroller at <https://fm.xcpa.state.tx.us/fm/travel/travelrates.php> with regard to all travel expenses. Contractor will not be reimbursed by University for expenses that are prohibited or that exceed the allowable amounts provided in the then current Travel Reimbursement Rates. As a condition precedent to receiving reimbursement for expenses, Contractor must submit to University receipts, invoices, and other documentation requested by University.

Reimbursement for expenses and disbursements will not exceed a maximum expense cap (*to be mutually agreed by Contractor and Respondent and provided in the Agreement*), without the prior written approval of University.

6.2 DELIVERY: Indicate number of calendar days needed to commence performance of the Services after the execution of the Contract:

_____ Calendar Days

6.3 INVOICING: TSUS will pay annual fee in equal monthly installments. Contractor will invoice TSUS each month and include any approved expenses incurred during the prior month. Invoices must reference the valid contract number, description and date range of Services and itemize any approved expenses. Invoices should be submitted via email to: finance@tsus.edu

6.4 PAYMENT TERMS: University's standard payment terms are "net 30 days" as mandated by the *Texas Prompt Payment Act* (ref. [Chapter 2251, Government Code](#)). University will be entitled to withhold _____ percent (____%) of the total payment due under the Agreement until after University's acceptance of the final work product.

Indicate below the prompt payment discount that Proposer offers:

Prompt Payment Discount: _____% _____ days/net 30 days.

[Section 51.012, Education Code](#), authorizes University to make payments through electronic funds transfer methods. Respondent agrees to accept payments from University through those methods, including the automated clearing house system (ACH). Respondent agrees to provide Respondent's banking information to University in writing on Respondent letterhead signed by an authorized representative of Respondent. Prior to the first payment, University will confirm Respondent's banking information. Changes to Respondent's bank information must be communicated to University in writing at least thirty (30) days before the effective date of the change and must include an [IRS Form W-9](#) signed by an authorized representative of Respondent.

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with [§151.309, Tax Code](#), and [Title 34 TAC §3.322](#). Pursuant to [34 TAC §3.322\(c\)\(4\)](#), University is not required to provide a tax exemption certificate to establish its tax exempt status.

Section 7 – Execution of Offer

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.

7.1 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.

7.2 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.

7.3 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 proposal lists.

7.4 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.

7.5 Acknowledgement of Addenda: The undersigned Proposer hereby acknowledges receipt of the following Addenda issued as a part of this solicitation (initial only if applicable).

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____ No. 6 _____

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:** _____

Section 8 – Proposer’s Questionnaire

The Proposer recognizes that in selecting a Contractor, TSUS will rely in part on the answers provided in response to this Section. Accordingly, Proposer certifies that to the best of its knowledge, all responses are true, correct and complete. TSUS reserves the right to contact each and every reference or contact name listed below and shall be free from any liability to Proposer for conducting such inquiry. To be considered, Proposer must address and include a response to each question in this Section in their proposal in the order asked.

All Proposals submitted must contain, at a minimum, full and complete responses to each of the following questions about Proposer’s firm (“**Company**”). Proposer must demonstrate the ability to successfully provide the Services. If a Proposer cannot meet any qualifications or responsibilities, it must state that, and when appropriate, offer an alternative response. Failure to respond to any item listed may disqualify the Proposal.

8.1 QUALIFICATIONS AND BACKGROUND:

- 8.1.1 How long has the Company been in business under the current name?
- 8.1.2 Provide a brief history of the Company. Indicate the number of years the Company has provided the type of services for which this proposal is submitted. Provide a current client list.
- 8.1.3 Present evidence that the Company is licensed to solicit business in the State of Texas. Include a copy of the license(s).
- 8.1.4 Identify the organizational status of the Company, i.e., corporation, partnership, or sole proprietorship. Include the date of incorporation, name of corporate president/principals, and federal employment identification number (corporations) or social security number (sole proprietorship).
- 8.1.5 Does any relationship exist by relative, business associate, capital-funding agreement, or any other such kinship between the Company and any employee, officer or Regent of TSUS, including Component Institutions? If so, please explain.
- 8.1.6 Provide the complete name of the Company, the address and telephone number of the office which will handle this contract, should a contract be offered by TSUS, and the locations of all other offices from which the Company conducts business.
- 8.1.7 Demonstrate that the Company has a minimum of five years’ experience during the preceding eight years performing the work described in this RFP.
- 8.1.8 Provide copies of the two most recent audited financial statements.
- 8.1.9 Provide at least two financial references. Include name, company, address, and telephone.

- 8.1.10 Is the Company currently for sale or involved in any transaction to expend or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
- 8.1.11 Is the Company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.
- 8.1.12 Provide any details of all past or pending litigation or claims filed against the Company that would negatively impact the Company's performance under any agreement with TSUS.

8.2 ORGANIZATIONAL AND STAFF STRUCTURE:

- 8.2.1 Discuss the structure of the organization, including the role and function of each department in the Company.
- 8.2.2 Provide the number of full-time and part-time employees. Provide a breakdown of the number of employees in each department by staff position. Indicate whether each employee is full-time or part-time. Indicate employees that will provide any level of support in performance of Services if awarded this RFP.
- 8.2.3 Provide the name, title, and telephone number of the individual within the Company who will serve as the primary contact should a contract be awarded based on this Proposal.
- 8.2.4 Provide the name, title, area of responsibility, type and years of experience, education, and length of employment with the Company for officers and senior management.
- 8.2.5 Describe the training afforded Company employees.
- 8.2.6 State the Company's capability to offer services in a multi-lingual environment.

8.3 PROJECT APPROACH AND QUALITY OF SERVICE:

- 8.3.1 Discuss the means of maintaining relationships between the Company and a client. Describe the customer service that will be offered to TSUS.
- 8.3.2 Describe the Company's plan to maintain a high level of effective communication with TSUS.
- 8.3.3 Will the Company provide a yearly review with TSUS of customer service and performance with suggested improvements including future roadmaps? If so, explain.
- 8.3.4 Describe Company's methodology for providing the requested goods or services and the service support philosophy.
- 8.3.5 Describe how Company will measure the quality of service provided to a Component Institution for this Project.

8.4 REFERENCES AND OVERALL REPUTATION:

- 8.4.1 Provide the following information for at least five current clients which share similar characteristics to TSUS for which the Company has provided at least three years of service:
- A. Name of institution, dates of service, name of contact, contact's title, address and telephone number.
 - B. Type of service provided for the institution.
- 8.4.2 Provide the following information for all institutions, which have become former clients during the past two years.
- A. Name of institution, dates of service, name of contact, contact's title, address and telephone number.
 - B. Type(s) of services provided for the institution
 - C. Reason for ending of client relationship.
- 8.4.3 Discuss the Company's experience and knowledge as it relates to how State of Texas agencies and Institutions of Higher Education function.
- 8.4.4 State the number and type of institutions, preferably Institutions of Higher Education and state agencies, as well as the volume of business during the past five calendar years for which the Company has provided the services for which the proposal is submitted.
- 8.4.5 Describe Company's unique qualifications as they pertain to this project.
- 8.4.6 Provide a statement on the availability and commitment of the Company, its principal(s) and assigned professionals to undertake the Project.
- 8.4.7 Identify and describe the proposed Project team's past experience for providing services that are MOST RELATED TO THIS PROJECT within the last ten (10) years. List the projects in order of priority, with the most relevant project listed first. Emphasis on projects for Higher Education. Provide the following information for each project listed (Minimum of 3 Maximum of 5 Projects):
- A. Project name, location, and description
 - B. The firm's name and representative who served as the day-to-day liaison during the project, including telephone number and/or email address; and
 - C. Length of business relationship with the firm

TSUS may contact references at any time. TSUS reserves the right to contact any other relevant references during the solicitation process.

- 8.4.8 Provide résumés for all proposed personnel that will be assigned to this Project. Resumes should include, at minimum: name, title, area of responsibility in Company, type and years of experience, education, length of employment with the Company, specific experience as it pertains to the Services, and any relevant certifications.

SECTION 9 – General Terms & Conditions of Contract

These General Terms and Conditions, or ones that are substantially similar, will be contained in any resulting Contract arising out of this RFP.

9.1 INSURANCE REQUIREMENTS: 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 University may require:

9.1.1 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;

9.1.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit \$1,000,000
Damage to Rented Premises \$ 300,000
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.

9.1.3 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;

9.1.4 Errors and Omissions Insurance with limits of not less than \$1,000,000 per claim.

Contractor will deliver to TSUS:

9.1.5 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.

9.1.6 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 for on-going and completed operations. 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. Notice of Cancellation shall be provided by the carrier to TSUS in accordance with policy provisions, however 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.

The insurance policies required in this Agreement will be kept in force for the periods specified below:

- 9.1.7 Commercial General Liability Insurance, Business Automobile Liability Insurance; will be kept in force until receipt of Final Payment by TSUS to Contractor.
- 9.1.8 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.
- 9.1.9 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.

9.2 DELIVERY

- 9.2.1 Foreseen Delays: If delay is foreseen, Contractor shall give written notice to TSUS. Contractor 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 Contractor.
- 9.2.2 Substitutions: No substitutions will be permitted without written approval of TSUS.
- 9.2.3 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.

9.3 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.

9.4 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.

9.5 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.

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

9.7 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

9.8 PATENTS OR COPYRIGHTS: The Contractor agrees to protect TSUS from claims involving infringement of patents or copyrights.

9.9 INDEMNIFICATION

9.9.1 To the fullest extent permitted by Applicable Laws, Contractor will and does hereby agree to indemnify, protect, defend with counsel approved by University, and hold harmless University and Institutions, their regents, officers, directors, attorneys, employees, representatives and agents (collectively, Indemnitees) from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, (collectively, Claims) by any person or entity, arising out of, caused by, or resulting from Contractor's performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of Contractor, anyone directly employed by Contractor or anyone for whose acts Contractor may be liable. The provisions of this Section will not be construed to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

9.9.2 In addition, Contractor will and does hereby agree to indemnify, protect, defend with counsel approved by University, and hold harmless Indemnitees from and against all claims arising from infringement or alleged infringement of any patent, copyright, trademark or other proprietary interest arising by or out of the performance of services or the provision of goods by Contractor, or the use by Indemnitees, at the direction of Contractor, of any article or material; provided, that, upon becoming aware of a suit or threat of suit for infringement, University will promptly notify Contractor and Contractor will be given the opportunity to

negotiate a settlement. In the event of litigation, University agrees to reasonably cooperate with Contractor. All parties will be entitled to be represented by counsel at their own expense.

9.10 RELATIONSHIP OF THE PARTIES: For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of University or Requesting Institution. Contractor will not bind nor attempt to bind University or Requesting Institution to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

9.11 MISCELLANEOUS

- 9.11.1 **Assignment and Subcontracting.** Except as specifically provided in **INSERT EXHIBIT**, Historically Underutilized Business Subcontracting Plan, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §§20.285\(g\)\(5\), 20.585 and 20.586](#). The benefits and burdens of this Agreement are assignable by University.
- 9.11.2 **Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Contractor certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 9.11.3 **Tax Certification.** If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#), then Contractor certifies it is not currently delinquent in the payment of any taxes due under Chapter 171, Contractor is exempt from the payment of those taxes, or Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 9.11.4 **Payment of Debt or Delinquency to the State.** Pursuant to [§§2107.008](#) and [2252.903, Texas Government Code](#), Contractor agrees any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency Contractor owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until paid in full.
- 9.11.5 **Loss of Funding.** Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The Texas State University System (**Board**). If Legislature fails to appropriate or allot necessary funds, or Board fails to allocate necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond University's control.
- 9.11.6 **Entire Agreement; Modifications.** This Agreement (including all exhibits, schedules, supplements and other attachments (collectively, **Exhibits**)) supersedes all prior agreements,

written or oral, between Contractor and University and will constitute the entire Agreement and understanding between the parties with respect to its subject matter. This Agreement and each of its provisions will be binding upon the parties, and may not be waived, modified, amended or altered, except by a writing signed by University and Contractor. All Exhibits are attached to this Agreement and incorporated for all purposes.

9.11.7 **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (**force majeure occurrence**). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide during the occurrence.

9.11.8 **Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

9.11.9 **Venue; Governing Law.** Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions and all of the rights and obligations of its parties, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

9.11.10 **Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

9.12 **Confidentiality and Safeguarding of University Records; Press Releases; Public Information.** Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University or Requesting Institution, or (3) have access to, records or record systems (collectively, **University Records**). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws, including student records and protected health information as defined by the [Health Insurance Portability and Accountability Act](#) and [45 Code of Federal Regulations \(CFR\) Part 160](#) and [subparts A and E of Part 164](#) (collectively, **HIPAA**). Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Family Educational Rights and Privacy Act, [20 United States Code \(USC\) §1232g \(FERPA\)](#) are addressed in Section 17.24. Additional mandatory confidentiality and security compliance requirements with respect to HIPAA records are addressed in Section 17.23. Contractor represents, warrants, and agrees that it will: (1) hold University or Requesting Institution Records in strict confidence and will not use or disclose University or Requesting Institution Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University or Requesting Institution Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security) that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University or Requesting Institution Records are safeguarded and the confidentiality of University or Requesting Institution Records is maintained in accordance with all Applicable Laws and

the terms of this Agreement; and (4) comply with the TSUS Information Security Policy detailed in Appendix A-3, *The Texas State University System Rules and Regulations* at <https://gato-docs.its.txstate.edu/jcr:34a3f1a1-48af-4b2b-9abb-42921fb9ae23/Rules%20and%20Regulations%20May%202018.pdf>. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University or Requesting Institution Records.

9.12.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University or Requesting Institution Records occurs, Contractor will provide written notice to University or Requesting Institution within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University or Requesting Institution with all information requested by University regarding the impermissible use or disclosure.

9.12.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University or Requesting Institution Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University or Requesting Institution Records, Contractor will provide University or Requesting Institution with written notice of Contractor's intent to destroy University or Requesting Institution Records. Within five (5) days after destruction, Contractor will confirm to University or Requesting Institution in writing the destruction of University or Requesting Institution Records.

9.12.3 **Disclosure.** If Contractor discloses any University or Requesting Institution Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this **Section 17.11**.

9.13 **Press Releases.** Except when defined as part of Covered Services, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University or Requesting Institution.

9.14 **Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act (TPIA)*, [Chapter 552, Texas Government Code](#). In accordance with §§[552.002](#) and [2252.907](#), *Texas Government Code*, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.

9.15 **Termination.** In addition to any other termination rights in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.

9.16 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

9.17 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

9.18 **Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Covered Services and payments will be available to University or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Covered Services, unless University or Requesting Institution otherwise instructs Contractor in writing.

9.19 **Notices.** Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications required or permitted under this Agreement, will be in writing and sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is provided below), or email (to the extent an email address is provided below) as indicated below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is provided below) or email (to the extent an email address is provided below), when received:

If to University: INSERT CONTACT INFORMATION

Email: ENTER EMAIL ADDRESS

with copy to: INSERT CONTACT INFORMAITON

If to Contractor: INSERT CONTACT INFORMATION

or other person or address as may be given in writing by either party to the other in accordance with this Section.

9.20 **Severability.** In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

9.21 **State Auditor's Office.** Contractor understands acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds (ref. §§[51.9335\(c\)](#), *Texas Education Code*). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

9.22 **Limitation of Liability.** EXCEPT FOR UNIVERSITY'S AND REQUESTING INSTITUTION'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UNIVERSITY WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY AND REQUESTING INSTITUTION TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UNIVERSITY, OR THE TEXAS STATE UNIVERSITY SYSTEM, OR ANYONE CLAIMING UNDER UNIVERSITY AND REQUESTING INSTITUTION HAS OR WILL HAVE ANY PERSONAL LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

9.23 Survival of Provisions: No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination, including **Sections [Insert Sections]**

9.24 Undocumented Workers: The *Immigration and Nationality Act* ([8 USC §1324a](#)) (**Immigration Act**) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the [Form I-9 Employment Eligibility Verification Form \(I-9 Form\)](#) as the document to be used for employment eligibility verification ([8 CFR §274a](#)). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, University may terminate this Agreement in accordance with **Section 13**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

9.25 Limitations: THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (**LIMITATIONS**) ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

9.26 **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy and Code of Ethics at <https://gato-docs.its.txstate.edu/jcr:34a3f1a1-48af-4b2b-9abb-42921fb9ae23/Rules%20and%20Regulations%20May%202018.pdf>, and applicable state ethics laws and rules, including Senate Bill 20 (84th Texas Legislature, 2015). Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, University's Ethics Code, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

Further, Contractor agrees to comply with [§2252.908, Texas Government Code \(Disclosure of Interested Parties Statute\)](#), and [1 TAC §§46.1 through 46.5 \(Disclosure of Interested Parties Regulations\)](#), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and University with information required on the form promulgated by TEC. Proposers may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html.

9.27 **Enforcement.** Contractor agrees and acknowledges that University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing Work. Contractor's services provide a peculiar value to University. University cannot be reasonably or adequately compensated in damages for the loss of Contractor's services. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Agreement will cause University irreparable injury and damage. Contractor, therefore, expressly agrees that University will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

9.28 **HIPAA Compliance.** Requesting Institution may be a HIPAA Covered Entity and some of the information Contractor receives on behalf of Requesting Institution while engaging in Services may constitute Protected Health Information (PHI) that is subject to HIPAA. Before Contractor may receive any University Records subject to HIPAA, Contractor will execute the attached HIPAA Business Associate Agreement (BAA), found in **Exhibit G**. To the extent that the BAA conflicts with any term contained in this Agreement, the terms of the BAA will control.

9.29 **FERPA Compliance.** Some of the University Records Contractor receives, creates or maintains for or on behalf of the Requesting Institution may constitute **Education Records** (as defined by [FERPA](#)), or **Personally Identifiable Information from Education Records** (as defined by [FERPA](#)) (collectively, **FERPA Data**). Contractor will hold University FERPA Records in strict confidence. Contractor will not use or disclose FERPA Records received from or on behalf of University, except as permitted or required by this Agreement in order to execute required Services to the Requesting Institution.

Contractor will use the administrative, technical and physical security measures, including secure encryption in the case of electronically maintained or transmitted FERPA Records, approved by University and that are at least as stringent as the requirements of Title 34, Part 99 – Family Educational Rights and Privacy noted at <https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=34:1.1.1.1.33> to preserve the confidentiality and security of all FERPA Records received from, or on behalf of University, its students or any third party pursuant to this Agreement. Contractor agrees that no later than 30 days after expiration or termination of the Services to Requesting Institution, or any reason, or within thirty (30) days after University’s written request, Contractor will halt all access, use, or processing of FERPA Records and will return to University all FERPA Records, including any copies created by Contractor or any subcontractor; and Contractor will certify in writing to University that all FERPA records have been returned to University. Contractor will restrict disclosure of FERPA Records solely to those employees, subcontractors, or agents of Contractor that have a need to access the FERPA Records in order for Contractor to perform its obligations under this Agreement. If Contractor discloses any FERPA Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with restrictions and obligations that align with the restrictions and obligations imposed on Contractor by this Agreement, including requiring each subcontractor or agent to agree to the same restrictions and obligations in writing.

9.30 Historically Underutilized Business Subcontracting Plan. Contractor agrees to use good faith efforts to subcontract Work in accordance with the Historically Underutilized Business Subcontracting Plan (**HSP**) (ref. **Exhibit F**). Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, **TPSS**). Submission of compliance reports will be required as a condition for payment under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC §§20.285(g)(5), 20.585 and 20.586. University may also revoke this Agreement for breach and make a claim against Contractor.

9.30.1 Changes to the HSP. If at any time during the Term, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC §20.285; (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 17.6** to replace the HSP with the revised subcontracting plan.

9.30.2 Expansion of Work. If University expands the scope of Work through a change order or any other amendment, University will determine if the additional Work contains probable subcontracting opportunities *not* identified in the initial solicitation for Work. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC §20.285 before (a) this Agreement may be amended to include the

additional Work; or (b) Contractor may perform the additional Work. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with [34 TAC §20.285](#), Contractor will be deemed to be in breach of this Agreement under **Section 13** and will be subject to any remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §20.285](#). University may report nonperformance under this Agreement to the TPSS in accordance with [34 TAC §§20.285\(g\)\(5\), 20.585](#) and [20.586](#).

9.31 Responsibility for Individuals Performing Work; Criminal Background Checks. Each individual who is assigned to perform Covered Services under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing Covered Services under this Agreement.

Prior to commencing Services, Contractor will provide representation that it has conducted the following background checks on its officers, employees, or other persons it causes to be on the campus:

- Sex offender and criminal history databases where the above individuals will be placed on the campus, working with or around students; and
- Criminal history and credit history background checks where the above individuals will be handling money, informational technology, or other security-sensitive areas as determined by University.

Contractor will determine on a case-by-case basis whether each individual assigned to perform the Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University or Requesting Institution's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses.

Prior to commencing performance of Services under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an updated certification letter each time there is a change in the individuals on the List.

9.32 Debarment. Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States (U.S.) federal government procurement or non-procurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs (<http://www.sam.gov/>) issued by the U.S. General Services Administration. "Principals" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to University if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when University executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous

certification, in addition to the other remedies available to University, University may terminate this Agreement for default by Contractor.

9.33 Office of Inspector General Certification. Contractor acknowledges that University is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Contractor to work on site at University's premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General (**OIG**) to work on site at University's premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at University's premises or facilities. Contractor acknowledges that University will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at University's premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: <http://exclusions.oig.hhs.gov/>

9.34 Access to Documents. To the extent applicable to this Agreement, in accordance with §1861(v)(1)(i) of the Social Security Act ([42 USC §1395x](#)) as amended, and the provisions of [42 CFR §420.300 et seq.](#), Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

9.35 OSHA Compliance. To the extent applicable to the services to be performed under this Agreement, Contractor represents and warrants, that all articles and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and its regulations in effect or proposed as of the date of this Agreement.

9.36 Nondiscrimination. In their execution of this agreement the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this agreement.

9.37 External Terms. This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Agreement (**External Terms**). External Terms are null and void and will have no effect under this Agreement, even if University or its employees, contractors, or agents express assent or agreement to External Terms. External Terms include any shrinkwrap, clickwrap, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.

9.38 Contractor Certification regarding Boycotting Israel. Pursuant to [Chapter 2270, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

9.39 Contractor Certification regarding Business with Certain Countries and Organizations. Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.



HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

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

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

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? - Yes - No
- c. Requisition #: _____ Bid Open Date: _____

(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)
- *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____	Requisition #: _____
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SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date <small>(mm/dd/yyyy)</small>
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Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

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Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "Yes" to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____	Requisition #: _____
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IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If *Yes*, continue to SECTION B-4.)
- No / Not Applicable (If *No* or *Not Applicable*, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond?
			- Yes - No
			- Yes - No
			- Yes - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	Was the Notice Accepted?
		- Yes - No
		- Yes - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

SECTION A: PRIME CONTRACTOR'S INFORMATION	
Company Name: _____	State of Texas VID #: _____
Point-of-Contact: _____	Phone #: _____
E-mail Address: _____	Fax #: _____
SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION	
Agency Name: _____	Phone #: _____
Point-of-Contact: _____	Bid Open Date: _____
Requisition #: _____	<small>(mm/dd/yyyy)</small>
SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION	
1. Potential Subcontractor's Bid Response Due Date:	
If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than _____ on _____ . <div style="display: flex; justify-content: space-around; width: 100%; font-size: small;"> Central Time Date (mm/dd/yyyy) </div>	
<p><i>In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).</i></p> <p><i>(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</i></p>	
2. Subcontracting Opportunity Scope of Work:	
3. Required Qualifications:	- Not Applicable
4. Bonding/Insurance Requirements:	- Not Applicable
5. Location to review plans/specifications:	- Not Applicable