

**REQUEST FOR QUALIFICATIONS  
FOR  
INDEFINITE-DELIVERY INDEFINITE-QUANTITY  
(IDIQ)  
FACILITIES PROGRAMMING SERVICES  
  
FOR THE  
TEXAS STATE UNIVERSITY SYSTEM  
AUSTIN, TEXAS**

***RFQ No.:***

**758-23-00086**

***Submission Date:***

**August 3, 2023 – 2:00 p.m. (C.D.T.)**

**Prepared By:**

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**REQUEST FOR QUALIFICATIONS FOR  
IDIQ FACILITIES PROGRAMMING SERVICES FOR  
THE TEXAS STATE UNIVERSITY SYSTEM  
AUSTIN, TEXAS  
RFQ No.: 758-23-00086**

**SECTION 1 – GENERAL INFORMATION & REQUIREMENTS**

- 1.1 **GENERAL INFORMATION:** The Texas State University System (“Owner” or “System”) is soliciting Statements of Qualifications for selection of a firm or firms to provide facilities programming services (“Services”) for its component institutions (“Component(s)”), under an indefinite quantity contract, as and where needed, in accordance with the terms, conditions, and requirements set forth in this Request for Qualifications (“RFQ”). **An Agreement with the selected firm(s) will be issued as an indefinite quantity contract with a term expiring on August 31, 2028, and an option for the Owner to extend the contract for three (3) additional one (1) year terms. The total value of each Agreement will be limited to Four Million Dollars (\$4,000,000);** however, the Owner reserves the right to increase this limit with appropriate internal authorization. This solicitation sets forth the terms, conditions, and requirements for prospective firms to be considered for this work. (Prospective firms are hereinafter referred to as “Respondents”)
- 1.1.1 Collecting Statements of Qualifications (“Qualifications”) in response to this RFQ is the first step in selecting one or more firms to provide Services. This RFQ provides the information necessary for Respondents to prepare and submit Qualifications for consideration and initial ranking by the Owner. In the next step the Owner will determine an initial ranking of the Respondents. If the initial ranking of the Respondents is reasonably conclusive, the Owner may make a “most qualified” selection based upon the written Qualifications only. If not, then the Owner may conduct interviews with a “short list” of Respondents.
- 1.1.2 The Owner may select up to three (3) of the top ranked qualified Respondents to participate in an interview with the Owner to confirm and clarify the qualifications submitted and to answer additional questions. The Owner will then rank the interviewed Respondents in order to determine the most qualified Respondent(s).
- 1.1.3 After selecting the most qualified Respondent(s) the Owner will negotiate an Agreement with each successful Respondent. Further information regarding the Agreement is in Section 1.3. In the event that the Owner is not successful in concluding an Agreement with the most highly qualified Respondent(s), the Owner may terminate negotiations with such Respondent(s) and attempt to negotiate an Agreement with the next highest ranked Respondent, and so forth. The Owner may enter into an Agreement with more than one Respondents as a result of this solicitation.
- 1.2 **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. The Owner complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFQ information. Additionally, pursuant to the provisions of Texas Government Code Section 2261.253, the contract resulting from this solicitation may be posted on the Owner’s website.

1.3 TYPE OF AGREEMENT: Any Agreement resulting from this solicitation will be based on the template attached hereto as Exhibit “A”. While no minimum amount of services is guaranteed to be requested or rendered under the Agreement, the System’s present policies provide that, unless waived on a project-by-project basis, programming of any facilities project with an estimated total project cost of more than \$1,000,000 must be performed by a programming firm under contract to the System for the provision of such services. The System may have one or more firms under contract at any given time. However, it is anticipated that the firm or firms engaged as a result of this RFQ will provide facilities programming services for a substantial percentage of the total capital facilities projects undertaken by the System and its Components during the term of the Agreement(s) resulting from this solicitation. It is also the present policy of the System that, unless waived on a project-by-project basis, different firms be engaged for the programming and the design of a capital project. **The successful Respondent(s) will not be engaged to perform design services for any project for which it has provided programming services.**

1.4 CLARIFICATIONS AND INTERPRETATIONS: Discrepancies, omissions, or doubts as to the meaning of RFQ documents shall be communicated in writing to the Owner for interpretation. Any responses to inquiries, clarifications, or interpretations of this RFQ that materially affect or change its requirements will be posted by the Owner as a written addendum. All such addenda issued by the Owner before the proposals are due shall become part of the RFQ. Respondents shall acknowledge receipt of each addendum in its Qualifications. Respondents shall be required to consider only those clarifications and interpretations that the Owner issues by addenda. Interpretations or clarifications in any other form, including oral statements, will not be binding on the Owner, and should not be relied on in preparing Qualifications. It is the responsibility of all Respondents to regularly check the status of formal addenda and eight (8) business days prior to the submittal deadline. The deadline for the receipt of written questions is stated in Section 2.3.

1.4.1 ADDENDA AND AWARD INFORMATION WILL BE ISSUED BY THE OWNER FOR THIS RFQ VIA THE ELECTRONIC BUSINESS DAILY WEBSITE AT THE FOLLOWING LINK: [HTTP://WWW.TXSMARTBUY.COM/SP](http://www.txsmartbuy.com/sp).

REFERENCE “BOARD OF REGENTS/TEXAS STATE UNIVERSITY SYSTEM - 758” AND THE RFQ NUMBER PROVIDED IN THIS RFQ.

1.5 SUBMISSION OF QUALIFICATIONS:

1.5.1 The Qualifications must be received **at the address specified in Section 1.5.2 prior to the date and time deadline.** The Owner will not consider any response to this solicitation that is not received at the address specified by the deadline.

1.5.2 DEADLINE AND LOCATION: The Owner will receive Qualifications and HUB Subcontracting Plans at the time and location described below.

**August 3, 2023 – 2:00 p.m. (Central Daylight Time)**

Peter Maass, Director of Capital Projects Administration  
The Texas State University System  
601 Colorado Street  
Austin, TX 78701

1.5.3 Submit **five (5)** identical hard copies of the Qualifications and **one (1)** digital copy on a USB/flash drive in Adobe Acrobat PDF format. An original signature must be included

on the Respondent's "Execution of Offer" document submitted with each hard copy of the Qualifications.

- 1.5.4 Submit **one (1) original** hard copy and **one (1) digital copy**, on a USB/flash drive in Adobe Acrobat PDF format, of the HUB Subcontracting Plan ("HSP") as a separate attachment to the Qualifications as described in Section 1.13
  - 1.5.5 Qualifications and HSP materials received after the deadline in 1.5.2 will be returned to the Respondent unopened. The Point-of-Contact identified in Section 1.6 will identify the official time clock at the RFQ submittal location identified above.
  - 1.5.6 The Owner will not acknowledge or consider Qualifications and HSP materials that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).
  - 1.5.7 Properly submitted Qualifications will not be returned to Respondents.
  - 1.5.8 Qualifications and HSP materials must be enclosed in a sealed envelope (box or container) addressed to the Point-of-Contact person. The package must clearly identify the submittal deadline, the RFQ title and number, and the name, return address and email address of the Respondent contact person on all envelopes. The HSP shall be included with the Qualifications packet but sealed separately.
- 1.6 **POINT-OF-CONTACT:** The Owner designates the following person as its representative and Point-of-Contact for this RFQ. Respondents shall restrict all contact with the Owner and direct all questions regarding this RFQ, including questions regarding terms and conditions and technical specifications, to the Point-of-Contact person, **via email only**.
- Peter Maass, Director of Capital Projects Administration  
The Texas State University System  
Email: peter.maass@tsus.edu
- 1.7 **EVALUATION OF QUALIFICATIONS:** The evaluation of the Qualifications shall be based on the requirements described in this RFQ. All properly submitted Qualifications will be reviewed, evaluated, and ranked by a Selection Committee appointed by the System's Director of Capital Projects Administration. The top three (3) or fewer ranked Respondents may be selected by the Owner for further consideration by participating in an interview wherein Qualifications will be presented and examined in further detail and where questions will be posed by the Selection Committee and answered by the Respondent.
- 1.7.1 Qualifications submittals should not include any information regarding Respondent's proposed fees, pricing, or other compensation considerations as these will not be a factor in the selection of the most qualified firm.
- 1.8 **OWNER'S RESERVATION OF RIGHTS:** The Owner reserves the right to reject any and all Qualifications and re-solicit for new Qualifications, or to reject any and all submissions and temporarily or permanently abandon this procurement. Owner makes no representations, written or oral, that it will enter into any form of agreement with any Respondent to this RFQ for any project and no such representation is intended or should be construed by the issuance of this RFQ. The Owner reserves the right to waive the failure of any response to comply with requirements set forth in this RFQ where the failure is not, in the Owner's opinion, substantial in nature.

- 1.9 ACCEPTANCE OF EVALUATION METHODOLOGY: By submitting its Qualifications in response to this RFQ, Respondent accepts the evaluation process and acknowledges and accepts that determination of the “most qualified” Respondent(s) will require subjective judgments by the Owner. Determinations by the Selection Committee will be subject to routine administrative review by the Owner’s executive officers but, once a selection is announced, it will not be subject to further review.
- 1.10 NO REIMBURSEMENT FOR COSTS: Respondent acknowledges and accepts that any costs incurred from the Respondent’s participation in this RFQ shall be at the sole risk and responsibility of the Respondent.
- 1.11 PRE-SUBMITTAL CONFERENCE: There will be no pre-submittal conference conducted for this selection process.
- 1.12 ELIGIBLE RESPONDENTS: Only individual firms or lawfully formed business organizations may apply (This does not preclude a respondent from using consultants.) The Owner will contract only with the individual firm or formal organization that submits a Qualification.
- 1.13 HISTORICALLY UNDERUTILIZED BUSINESSES’ SUBMITTAL REQUIREMENTS: It is the policy of the Owner and each of its Components, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (“HUB” or “HUBs”) in all contracts. Accordingly, specific plans and representations by Respondents that appear to facilitate the State’s commitment to supporting HUB enterprises are required in the selection process. Failure to submit specific plans and representations regarding HUB utilization, or failure to address the subject at all, will be interpreted by the Selection Committee as an intention not to support the program and will disqualify the Respondent.
- 1.13.1 STATEMENT OF PROBABILITY: The System has determined that subcontracting opportunities are probable in connection with this procurement solicitation. Therefore, a HUB Subcontracting Plan (HSP) is required as a part of the Respondent's Qualifications.
- 1.13.2 The HSP information may be downloaded from the Texas State Comptroller’s website at the following URL link:  
<https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>
- 1.14 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 that an individual or business entity holding a state contract was ineligible to have the contract accepted or awarded as described above, the state agency may immediately terminate the contract without further obligation to the vendor. This section does not create a cause of action to contest a proposal or award of a state contract.
- 1.15 SALES AND USE TAXES: Section 151.311, *Texas Tax Code*, permits the purchase free of state sales and use taxes of tangible personal property to be incorporated into realty in the performance of a contract for an improvement to realty for certain exempt entities that include the Owner. The section further permits the purchase tax-free of tangible personal property (other than machinery

or equipment and its accessories and repair and replacement parts) for use in the performance of such a contract if the property is "necessary and essential for the performance of the contract" and "completely consumed at the job site." In addition, the section permits the purchase tax-free of a tangible service for use in the performance of such a contract if the service is performed at the job site and if "the contract expressly requires the specific service to be provided or purchased by the person performing the contract" or "the service is integral to the performance of the contract."

- 1.16 CERTIFICATION OF FRANCHISE TAX STATUS: Respondents are advised that the successful Respondent will be required to submit certification of franchise tax status as required by State Law (*Texas Tax Code* Chapter 171). The Respondent agrees that each subcontractor and supplier under contract will also provide a certification of franchise tax status.
- 1.17 DELINQUENCY IN PAYING CHILD SUPPORT: Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 1.18 SERVICES PREVIOUSLY PROVIDED BY A CONSULTANT. As required by Section 2254.029(b), *Texas Government Code*, the Owner hereby discloses that services described in this RFQ have been previously provided by a consultant to the Owner under an existing contract. While the Owner intends to continue the current contract with this consultant and reserves the right to award a new contract to the current consultant should that consultant respond to this RFQ, all responses to this RFQ will be considered and evaluated on their own merits.
- 1.19 CEO DETERMINATION OF NEED FOR SERVICES: As provided by *Texas Government Code*, Section 2254.028(c), the Chancellor, as Chief Executive Officer ("CEO") of the Texas State University System, has found that the consulting services sought pursuant to this notice are both reasonable and necessary to Owner and its Components. The System Administration has the responsibility of overseeing more than One Billion Dollars (\$1,000,000,000) in construction projects at any given time at up to seven different Component locations. The Chancellor finds that System Administration personnel can oversee these projects in a cost-effective manner by utilizing the programming expertise of consultants on an as-needed basis. Such a structure allows Owner to have the benefit of expertise that it could not reasonably expect to find in a salaried employee and to pay only for the services that it needs to support existing staff's administrative efforts. Moreover, staffing in the planning and construction area at the Components differs widely, and the Chancellor finds that the proposed consulting arrangement will be cost effective in providing assistance to Components on an as-needed basis.
- 1.20 STATE REGISTRATION OF ARCHITECTURAL FIRMS: Respondents are advised that the Texas Board of Architectural Examiners requires that any entity (including architects, landscape architects and interior designers) providing architectural services (including architects, landscape architects and interior designers) to the public must register with the Texas Board of Architectural Examiners. An entity is defined as a sole proprietorship, firm, partnership, corporation, or joint stock association. The Texas Board of Architectural Examiners, 505 East Huntland Drive, Suite 350, Austin, Texas 78752, telephone (512) 305-9000, has jurisdiction over individuals licensed under the Architects' Registration Law, Chapter 1051, *Texas Occupations Code*.
- 1.21 STATE REGISTRATION OF ENGINEERING FIRMS: Respondents are advised that the Texas Board of Professional Engineers requires that any entity providing engineering services to the public must register with the Texas Board of Professional Engineers. An entity is defined as a sole proprietorship, firm, partnership, corporation, or joint stock association.

- 1.22 CURRENT AGREEMENT: Since 2007, the System has been a party to successive contracts with Facility Programming and Consulting of San Antonio, Texas, encompassing the services described in this RFQ. The current agreement expires on August 31, 2023, but may reach the maximum cumulative compensation permitted in the agreement prior to its expiration date. The System intends that the agreement(s) resulting from this solicitation serve as successor agreement(s) to the one currently in place and may have an effective date earlier than the date of expiration of the current contract. Facility Programming and Consulting is eligible to respond to this RFQ.
- 1.23 NONDISCRIMINATION: In their execution of the agreement(s) resulting from this solicitation, the Respondent, subcontractors, their respective employees, and others acting by or through them shall comply with all federal and state policies and laws prohibiting discrimination, harassment, and sexual misconduct. Any breach of this covenant may result in termination of this agreement.
- 1.24 NON-BOYCOTT ISRAEL VERIFICATION: To the extent required in Chapter 271, Texas Government Code, by executing this Agreement, Respondent hereby certifies that it does not boycott Israel and will not boycott Israel during the term of the Agreement. "Boycott Israel" shall have the meaning set forth in Section 808.001, *Texas Government Code*.
- 1.25 CYBERSECURITY TRAINING PROGRAM: Pursuant to Section 2054.5192, *Texas Government Code*, firm and its consultants, officers, and employees who are provided credentials granting access to Component's computer system also known as Component's information system, must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* as selected by the Component. The cybersecurity training program must be completed during the term and any renewal period of the agreement. Firm shall verify in writing completion of the program to the Component within the first thirty (30) calendar days of the term and any renewal period of this agreement. Failure to comply with the requirements of this section are grounds for termination for cause of the agreement.
- 1.26 CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS: Pursuant to Subchapter F, Chapter 2252.152, *Texas Government Code*, Respondent hereby certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Respondent acknowledges the agreement may be terminated and payment withheld if this certification is inaccurate.
- 1.27 NON-DISCRIMINATION OF FIREARM INDUSTRY VERIFICATION: Pursuant to Chapter 2274, *Texas Government Code* (as enacted in SB 19 in the 87<sup>th</sup> Regular Legislative Session [2021]), Respondent hereby verifies that either (i) it has less than ten (10) full time employees; or (ii), it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association (as defined under Section 2274.001, *Texas Government Code*) and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- 1.28 ANTI-BOYCOTT ENERGY COMPANIES VERIFICATION: Pursuant to Chapter 2274.002, *Texas Government Code* (as enacted in SB 13 in the 87<sup>th</sup> Regular Legislative Session [2021]), Respondent hereby certifies that either (i) it has less than ten (10) full time employees or (ii) it does not "boycott energy companies" (as defined under Section 809.001, *Texas Government Code*) and will not "boycott energy companies" during the term of the agreement.
- 1.29 VACCINE PASSPORT PROHIBITION: Pursuant to Section 161.0085, *Texas Health and Safety Code* (as enacted in SB 968 in the 87<sup>th</sup> Regular Legislative Session [2021]), Respondent hereby certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or



to receive service from Respondent's business. Respondent acknowledges that such a vaccine or recovery requirement would make Respondent ineligible for a state-funded contract and shall be grounds for termination of the agreement for cause.

- 1.30 **CRITICAL INFRASTRUCTURE AFFIRMATION:** Pursuant to Section 2274.0102, *Texas Government Code*, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is (i) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103, *Texas Government Code*, or headquartered in any of those countries.

## **SECTION 2 – EXECUTIVE SUMMARY**

- 2.1 **HISTORICAL BACKGROUND:** The Texas State University System, founded in 1911, is the first higher education system established in Texas. Beginning as an administrative means to consolidate the support and management of state teacher colleges, the System has evolved into a network of higher education institutions stretching from the Texas–Louisiana border to the Big Bend region of west Texas. Today, seven component institutions offer a broad range of academic and career opportunities. Throughout the System, faculty and staff are preparing students to work in and contribute to our global society.

The Texas State University System 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 headed by a board-appointed chancellor, is based in Austin, where it provides support to the System components and state government.

- 2.2 **SERVICES DESCRIPTION, SCOPE, AND BUDGET:** The selected Respondent will provide programming services for various facilities projects to be undertaken on the Component campuses or by the Owner. Each project shall be initiated by notice from Owner or a Component to Respondent that programming services are needed for a particular facilities project. Respondent and the Component or Owner shall agree on the scope of programming services required for the project and the Component or Owner shall issue a purchase order directly to Respondent. The programming effort shall typically produce a Program of Requirements including a space program and cost estimates in CSI 50 Division format that can reasonably be expected to be accurate within twenty plus or minus percent (+/- 20%). This degree of accuracy applies to the construction cost (i.e., cost of work, general conditions costs, construction contingencies, and profit/fee), but does not apply to other contingencies and soft costs or the total project cost. Respondent shall provide a copy of the final programming document to the selected Architect/Engineer (“A/E”) firm for the project. Respondent shall then meet with the selected A/E firm and Component personnel to facilitate the design firm’s understanding of the scope of the project.

The selected Respondent must demonstrate competency and successful experience with the provision of programming services similar to those detailed above. Previous experience with programming projects undertaken by the State of Texas and its institutions of higher education is preferred.

**The agreement will have an initial term ending August 31, 2028, with an option for the Owner to extend the contract for three (3) additional one (1) year terms.** The agreement will provide for an indefinite quantity of services to be provided as required by the Owner, with no requirement that Owner request any minimum quantity of services.

2.3 **SCHEDULE:** Key schedule milestones (subject to change) are:

2.3.1 Owner Publishes RFQ.....	07/13/2023
2.3.2 Deadline for submission of written questions (12:00 p.m. C.D.T.).....	07/20/2023
2.3.3 Deadline for submittal of Qualifications (3:00 p.m. C.D.T.).....	08/03/2023
2.3.4 Owner selects short listed Respondents.....	08/10/2023
2.3.5 Interviews of short-listed Respondents (if required) .....	08/17/2023
2.3.6 Owner selects most qualified Respondent(s).....	08/18/2023
2.3.7 Owner negotiates fee schedule(s) and executes Agreement(s) .....	08/28/2023

**SECTION 3 – REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS**

Respondents shall carefully read the information contained in the following criteria and submit a complete statement of Qualifications responding to all questions in Section 3 formatted as directed in Section 4. Incomplete Qualifications will be considered non-responsive and are subject to rejection.

3.1 **CRITERION ONE: STATEMENT OF INTEREST** (Maximum of two (2) printed pages per question) (Criterion Weight: 5%)

- 3.1.1 Provide a statement of interest including a narrative describing the Respondent’s unique qualifications as they pertain to the services described in this RFQ.
- 3.1.2 Provide a statement on the availability and commitment of the Respondent and its principal(s), key professionals, and any consultants to undertake the services described in this RFQ.
- 3.1.3 Provide a brief history of the Respondent and any consultant proposed for the team.
- 3.1.4 Provide a graphic representation of the project team, identifying the Respondent and any consultant proposed for the services described in this RFQ.

3.2 **CRITERION TWO: RESPONDENT’S ABILITY TO PROVIDE SERVICES** (Criterion Weight: 10%)

- 3.2.1 Provide the following information for the Respondent’s firm:
  - Legal name of the company as registered with the Secretary State of Texas
  - Address of the office that will be providing services
  - Number of years in business
  - Type of operation (Individual, Partnership, Corporation, Joint Venture, etc.)
  - Number of employees by skill group
  - Annual revenue totals for the past five (5) years
- 3.2.2 Declare if Respondent’s firm or any of its consultant team are currently for sale or involved in any transaction to expand or to become acquired by another business entity. If yes, please explain the impact both in organizational and directional terms.
- 3.2.3 Provide any details of all past or pending litigation or claims filed against Respondent that would affect Respondent's performance under a contract with the Owner.

- 3.2.4 Identify if the Respondent is 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.
- 3.2.5 Declare if any relationship exists by relative, business associate, capital funding agreement, or any such kinship between your any individual member of the Respondent's team and any Owner employee, officer or Regent. If so, please explain.
- 3.2.6 List the total facilities programming work (based on estimated construction cost) under contract to the Respondent at this time.

3.3 CRITERION THREE: RESPONDENT'S ABILITY TO PROVIDE PROGRAMMING SERVICES (Criterion Weight: 30%)

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

3.4 CRITERION FOUR: RESPONDENT'S PERFORMANCE ON PAST REPRESENTATIVE PROJECTS (Criterion Weight: 30%)

- 3.4.1 It is anticipated that the Services will range from programming small, but relatively complex, renovation projects to large-scale renovation projects and new facilities with total project costs ranging from \$1 million to over \$150 million. List a maximum of five (5) projects for which Respondent has provided services that are most directly analogous to the Services described in this RFQ. If possible, select a range of projects types (i.e. renovations as well as new construction, large and small projects). Provide the following information for each project listed:
  - Project name, location, and description
  - Project owner, including contact information
  - Project construction cost
  - Project size in gross square feet
  - Type of construction (new, renovation, or expansion)
  - Duration of programming effort from inception to delivery of completed facilities program
  - Description of Respondent's contracted responsibility (e.g., prime professional, joint venture, consultant, etc.)
  - Description of services provided by Respondent
  - Name of individual in charge of coordinating the programming effort
  - Statement of how the project is similar and why the services provided are similar to the Services described in this RFQ.

3.5 CRITERION FIVE: REFERENCES (Criterion Weight 10%)

Provide references for any three of the projects listed in response to Criterion Four. Please include the owner's name and owner's representative who served as the day-to-day liaison during the programming phase of the project, including telephone number and email address.

3.6 CRITERION SIX: RESPONDENT'S KNOWLEDGE OF BEST PRACTICES  
(Criterion Weight 10%)

3.6.1 Describe the Respondent's philosophy, methodology, and its processes for (a) discovering failures to adhere to programming requirements carried forth into design and (b) successful management of cost and schedule controls.

3.6.2 Provide specific examples of how these techniques or procedures were used in up to three (3) projects listed in response to Criterion 3.4.

3.6.3 Describe your project team's demonstrated technical competence and management qualifications with institutional projects, particularly those for higher education.

3.7 CRITERION SEVEN: RELATED SERVICES  
(Criterion Weight 5%)

Describe any related services the Respondent is qualified to perform, such as space utilization studies, facility condition reports, etc. Provide details for up to three (3) engagements where such services were provided to a higher education client.

3.8 CRITERION EIGHT: EXECUTION OF OFFER

NOTE TO RESPONDENTS: **SUBMIT ENTIRE SECTION WITH RESPONSE.**

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

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

3.8.1 By signature hereon, Respondent acknowledges and agrees that (1) this RFQ is a solicitation for qualifications and is not a contract or an offer to contract; (2) the submission of Qualifications by Respondent in response to this RFQ will not create a contract between the Owner and Respondent; (3) the Owner has made no representation or warranty, written or oral, that one or more contracts with the Owner will be awarded under this RFQ; and (4) Respondent shall bear, as its sole risk and responsibility, any cost which arises from Respondent's preparation of a response to this RFQ.

- 3.8.2 By signature hereon, Respondent offers and agrees to furnish to the Owner the products and/or services more particularly described in its Qualifications, and to comply with all terms, conditions and requirements set forth in the RFQ documents and contained herein.
- 3.8.3 By signature hereon, Respondent affirms that it has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted Qualifications.
- 3.8.4 By signature hereon, a corporate Respondent certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, *Texas Tax Code*, or that the corporate Respondent is exempt from the payment of such taxes, or that the corporate Respondent is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable.
- 3.8.5 By signature hereon, the Respondent hereby certifies that neither the Respondent nor the firm, corporation, partnership or Owner represented by the Respondent, nor anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state, codified in Section 15.01, ET. seq., *Texas Business and Commerce Code*, or the Federal antitrust laws, nor communicated directly or indirectly the Qualifications made to any competitor or any other person engaged in such line of business.
- 3.8.6 By signature hereon, Respondent represents and warrants that:
- 3.8.6.1 Respondent is a reputable company regularly engaged in providing products and/or services necessary to meet the terms, conditions and requirements of the RFQ;
- 3.8.6.2 Respondent has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the terms, conditions and requirements of the RFQ;
- 3.8.6.3 Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances;
- 3.8.6.4 Respondent, if selected by the Owner, will maintain insurance as required by the Contract;
- 3.8.6.5 All statements, information and representations prepared and submitted in response to this RFQ are current, complete, true and accurate. Respondent acknowledges that the Owner will rely on such statements, information and representations in selecting the successful Respondent. If selected by the Owner as the successful Respondent, Respondent will notify the Owner immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.
- 3.8.7 By signature hereon, Respondent certifies that the individual signing this document and the documents made part of the RFQ is authorized to sign such documents on behalf of the company and to bind the company under any agreements or other contractual arrangements, which may result from the submission of Respondent's Qualifications.
- 3.8.8 By signature hereon, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Bidder as defined in *Texas*

*Administrative Code* Title 34, Part 1, Chapter 20, Subchapter A, Division 2, Rule Section 20.25(8).

- 3.8.9 By signature hereon, Respondent certifies as follows:
- 3.8.9.1 “Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that 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.”
  - 3.8.9.2 “Under Section 2155.004, *Texas Government Code*, the vendor or applicant 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.”
  - 3.8.9.3 “Under Section 2254.004, *Texas Government Code*, the vendor or applicant certifies that each individual or business entity which is an engineer or architect proposed by Respondent as a member of its team was selected based on demonstrated competence and qualifications only.”
- 3.8.10 By signature hereon, Respondent certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship exist between Respondent and an employee of Owner and any Component, or Respondent has not been an employee of Owner and any Component within the immediate twelve (12) months prior to Respondent’s RFQ response. All such disclosures will be subject to administrative review and approval prior to the Owner entering into any agreement with Respondent.
- 3.8.11 By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFQ. (ref. Section 2155.004 *Texas Government Code*).
- 3.8.12 By signature hereon, Respondent signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 3.8.13 By signature hereon, Respondent agrees, to the extent provided by Section 2254.0031 of *Texas Government Code*, to defend, indemnify, and hold harmless the State of Texas, 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 Respondent or any agent, employee, subcontractor, or supplier of Respondent in the execution or performance of any agreements or other contractual arrangements which may result from the submission of Respondent’s Qualifications.
- 3.8.14 By signature hereon, Respondent agrees that any payments that may become due under any agreements or other contractual arrangements, which may result from the submission of Respondent’s Qualifications, will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.
- 3.8.15 By signature hereon, Respondent certifies that no member of the Board of Regents of The Texas State University System, or the executive officers of the Owner or its component institutions, has a financial interest, directly or indirectly, in the transaction that is the

subject of the contract, and that no member of the Board of Regents has a “substantial interest” (as that term is defined in Section 51.923 of the *Texas Education Code*) in the Respondent.

- 3.8.16 Pursuant to Chapter 2274, *Texas Government Code*, Respondent certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.
- 3.8.17 Pursuant to Chapter 2274, *Texas Government Code*, Respondent certifies that it does not boycott energy companies as defined in Section 809.001(1)(a), *Texas Government Code*, (i.e., fossil fuel companies); and will not boycott energy companies during the term of the Agreement.
- 3.8.18 Respondent certifies that it does not require its customers to provide any documentation certifying the customer’s COVID-19 vaccination or post-transmission recovery, on entry to, to gain access to, or to receive service from the Respondent’s business. Respondent acknowledges that such a vaccine or recovery requirement would make Respondent ineligible for a state-funded contract.
- 3.8.19 Pursuant to Section 2274.0102, *Texas Government Code*, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent is majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103, *Texas Government Code*, or headquartered in any of those countries.

[Execution of Offer continues next page]

**3.8.20 Execution of Offer: RFQ No. 758-23-00086, Request For Qualifications For IDIQ Facilities Programming Services for The Texas State University System**

The Respondent must complete, sign, and return this Execution of Offer as part of its submittal response. The Respondent's company official(s) who are authorized to commit to such a submittal must sign submittals. **Failure to sign and return this form will subject the submittal to disqualification.**

Respondent's Company Name: \_\_\_\_\_

Respondent's State of Texas Tax Account No: \_\_\_\_\_  
(This 11 digit number is mandatory)

If a Corporation:

Respondent's State of Incorporation: \_\_\_\_\_

Respondent's Charter No: \_\_\_\_\_

Identify by name, each person who owns at least 10% of the Respondent's business entity:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

Submitted and Certified By:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Fax Number)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Email Address) for RFQ Notification

\_\_\_\_\_  
(Date)

Respondent acknowledges receipt of the following Addenda:

No. 1 \_\_\_\_\_; No. 2 \_\_\_\_\_; No. 3 \_\_\_\_\_; No. 4 \_\_\_\_\_; No. 5 \_\_\_\_\_; No. 6 \_\_\_\_\_



## **SECTION 4 – FORMAT FOR STATEMENT OF QUALIFICATIONS**

### **4.1 GENERAL INSTRUCTIONS**

- 4.1.1 Qualifications shall be prepared simply and economically, providing a straightforward, concise description of the respondent's ability to meet the requirements of this RFQ. emphasis shall be on the quality, completeness, clarity of content, responsiveness to the requirements, and an understanding of Owner's needs.
- 4.1.2 The Statement of Qualifications shall be a maximum of 50 printed pages (25 sheets printed double-sided or 50 sheets single-sided) and could be entirely adequate with considerably fewer pages. The cover, table of contents, divider sheets, HUB Subcontracting Plan, and Execution of Offer do not count as printed pages.
- 4.1.3 Respondents shall carefully read the information contained in this RFQ and submit a complete response to all requirements and questions as directed. Incomplete Qualifications will be considered non-responsive and subject to rejection.
- 4.1.4 Qualifications and any other information submitted by Respondents in response to this RFQ shall become the property of the Owner.
- 4.1.5 The Owner will not compensate Respondents for any expenses incurred in Qualifications preparation or for any presentations that may be made, unless agreed to in writing in advance or required by law. Respondents submit Qualifications at their own risk and expense.
- 4.1.6 Qualifications that are qualified with conditional clauses, alterations, items not called for in the RFQ documents, or irregularities of any kind are subject to rejection by the Owner, at its option.
- 4.1.7 The Owner makes no representations of any kind that an award will be made as a result of this RFQ. The Owner reserves the right to accept or reject any or all Qualifications, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this RFQ when deemed to be in Owner's best interest.
- 4.1.8 Qualifications shall consist of answers to questions identified in Section 3 of the RFQ. It is not necessary to repeat the question in the Qualifications; however, it is essential to reference the question number with the corresponding answer.
- 4.1.9 Failure to comply with all requirements contained in this RFQ may result in the rejection of the Qualifications.

### **4.2 PAGE SIZE, BINDING, DIVIDERS, AND TABS:**

- 4.2.1 Qualifications shall be printed on letter-size (8-1/2" x 11") paper and assembled with spiral-type bindings or staples. do not use metal-ring hard cover binders.
- 4.2.2 Additional attachments shall not be included with the Qualifications. Only the responses provided by the Respondent to the questions identified in Section 3 of this RFQ will be used by the Owner for evaluation.

- 4.2.3 Separate and identify the response to each of the criteria in Section 3 of this RFQ by use of a divider sheet with an integral tab for ready reference.
- 4.3 TABLE OF CONTENTS: Submittals shall include a “Table of Contents” and give page numbers for each part of the Qualifications.
- 4.4 PAGINATION: Number all pages of the submittal sequentially using Arabic numerals (1, 2, 3, etc.); the Respondent is not required to number the pages of financial statements or HUB Subcontracting Plan.

**END OF REQUEST FOR QUALIFICATIONS**

# Exhibit A



## INDEFINITE QUANTITY PROFESSIONAL SERVICES AGREEMENT

### (Facility Programming Services)

THIS AGREEMENT between **The Texas State University System** (“Owner”) and **Company Name** (“Firm”), is effective the **1<sup>st</sup> Day of September 2023**.

WHEREAS, the Owner is a public university system existing under the laws of the State of Texas, presently comprising seven (7) institutions of higher education (“Components” or, individually, a “Component”). Owner is responsible for the administration of planning and construction activities at each of the Components, and desires to engage the services of Firm to provide programming services for various facilities projects to be undertaken on the Component campuses, on an indefinite delivery, indefinite quantity basis.

WHEREAS, Firm has expertise in providing such services for institutions of higher education in the State of Texas, and is willing to provide such services, on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, Owner and Firm agree as follows:

### ARTICLE 1 SCOPE OF SERVICES

1.1 Programming Services. Firm agrees to provide project programming services on a project-by-project basis, as required and requested by Owner or Component. Firm shall assign personnel experienced in project programming as needed to provide these services. The deliverables shall be agreed between Firm and the Owner or Component, but normally shall include a written, comprehensive facility Program of Requirements (“PoR”). Upon completion of programming for each project, Firm will deliver one copy of the final deliverable to Owner.

1.1.1 Project Initiation. Each project shall be initiated by notice from Owner or a Component to Firm that programming services are needed for a particular facilities project. Firm and the Component shall agree upon the scope of programming services required for the project and the Component shall issue a purchase order directly to Firm.

1.1.1.1 Firm shall deliver to Owner one copy of each purchase order, together with the agreed scope of services for the project.

1.1.2 Draft Documentation. After space requirements have been established for any project, but prior to the drafting of final PoR, Firm shall deliver to Owner a draft PoR for review.

1.1.3 Cost Estimate. The programming exercise shall produce a cost estimate in CSI 50 Division format that can reasonably be expected to be accurate within twenty plus or minus percent (+/- 20%). This degree of accuracy applies to the construction cost (i.e., cost of work, general conditions costs, construction contingencies, and profit/fee), but does not apply to other contingencies and soft costs or the total project cost. In the event that this cost estimate is higher than the preliminary project cost figure associated with the project on the Owner’s Capital Improvements Program, Firm shall provide to Owner and the Component a report explaining the causes for the variance. The cost estimate will be packaged as a separate document so that a PoR document may be provided to a prospective

Architect/Engineer and/or Construction Manager firms in the course of design and construction services solicitations.

- 1.1.4 Meeting with Selected Architect/Engineer. Firm shall provide a copy of the final PoR to the selected Architect/Engineer firm for the project. Firm shall then meet with the selected Architect/Engineer and Component personnel to facilitate the design firm's understanding of the scope of the project.
- 1.2 Monthly Reports. Firm shall submit to Owner a written report no later than the fifteenth (15<sup>th</sup>) day of each month containing the following information current as of the end of the previous calendar month:
  - 1.2.1 The name of each active project;
  - 1.2.2 The component for which the project is being performed;
  - 1.2.3 The status of each project;
  - 1.2.4 The contracted fee for the project;
  - 1.2.5 The amount of the fee billed to date;
  - 1.2.6 The amount of the fee collected to date;
  - 1.2.7 The projected date for the completion and delivery of the deliverable for each project; and
  - 1.2.8 The cumulative totals for fees contracted and collected by Firm under this Agreement since its inception.
- 1.3 Indefinite Quantity Contract. Owner is not required to request any particular quantity of services under this Agreement; the quantity of services to be provided hereunder is indefinite and dependent upon the needs and desires of Owner and its Components.
- 1.4 Policy Regarding Award of Design Agreement. Firm acknowledges the policy set forth as Exhibit "B", and further acknowledges that Owner's policy makes Firm ineligible to be awarded an agreement to design facilities for which it has been engaged to provide programming services.

## **ARTICLE 2 FEE FOR SERVICES; REIMBURSABLES**

- 2.1 With respect to each undertaking, the Owner agrees to pay the Firm a fee ("Fee") for services calculated on the basis of the fee schedule attached to this Agreement as Exhibit "A". The Fee will be based solely on the level of effort required of the Firm and shall not change unless the Owner directs significant changes to the quantity, quality standards, or types of services included in the undertaking.
  - 2.1.1 Any expenses that are reimbursable to the Firm under this Agreement shall be billed to the Owner monthly as a direct expense, without any markup for overhead or profit. Owner and Firm may agree to limit reimbursable expenses in the assignment document.

- 2.1.2 The total of all Fees collected under this Agreement by the Firm with respect to all undertakings shall not exceed Four Million Dollars (\$4,000,000) starting on the commencement date of this Agreement and including any renewal term. However, the Owner reserves the right to increase this limit. Firm agrees to notify Owner if, at any time, the amount of Fees collected or contracted for under this Agreement exceeds eighty percent (80%) of the maximum set forth in this paragraph.
- 2.1.3 The rates in Exhibit “A” shall be subject to change by Firm upon the expiration of the initial five (5) year Agreement term and with prior written notice to Owner. Any increase in fees will be limited to three percent (3%) per year.
- 2.2 Payments to Firm. Firm shall invoice for its services as follows:
- 2.2.1 For services rendered to Components pursuant to Article 1 of this Agreement, Firm shall invoice the appropriate Component (or Owner, if such services are to be provided directly to the System Administration) directly on an hourly basis, unless another basis for payment is agreed upon between the Component and Firm, based on the fee schedule attached hereto as Exhibit “A.” A Component shall be solely responsible for the payment of any such fees for services rendered directly to such Component.
- 2.2.2 The cost of transportation, lodging and meals incurred in trips to the Owner’s office and its Component institutions shall be reimbursable at the lesser of:
- 2.2.3.1 Actual expenses incurred; or
- 2.2.3.2 Reasonable expenses for travel, without mark-up, (including meals, rental car or mileage, coach class airfare, and lodging) validly incurred by Firm directly and solely in support of services and approved by Owner or Component. Travel will be limited to amounts authorized under the Owner’s travel policy. A copy of the Owner’s travel policy will be provided to Firm upon request. In the event travel expenses are paid by appropriated funds, travel expenses are limited to amounts authorized by the Comptroller of Public Accounts for the State of Texas for state employees (<https://fm.x.cpa.state.tx.us/fm/travel/travelrates.php>). Firm will not be reimbursed by Owner or Component 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, Firm may be required to submit receipts, invoices, and other documentation requested by Owner or Component.
- 2.3 Insurance Coverage. The Firm shall carry such insurance coverages as further described below, acceptable to and approved by the Owner. The fees for such insurance will be at the expense of the Firm. The insurance policies shall remain in force for a period of one (1) year beyond the final Agreement and/or Assignment expiration date. Within five (5) business days of the Owner’s request, Firm shall provide the Owner a copy of each insurance policy required under this Agreement. A Certificate of Insurance indicating the expiration date, and existence, of the Firm’s insurance coverages is required prior to commencement or continuation of performance of the services under this Agreement. Firm shall deliver to Owner replacement certificates not less than thirty (30) calendar days prior to the expiration of any such insurance. If, however, Firm fails to pay any of the renewal premiums for the expiring policies, Owner shall have the right (but not the obligation) to make such payments and set off the amount thereof against the next payment coming

due to Firm under this Agreement.

2.3.1 On Site Insurance: For services performed on Owner's premises, the Firm shall furnish to Owner Certificates of Insurance as set forth below prior to the commencement of any work hereunder and shall maintain such coverage during the full term of the Agreement.

Worker's Compensation	Statutory Limits
Employer's Liability	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000 each employee
Commercial General Liability	
	\$1,000,000 each occurrence
	\$2,000,000 aggregate
Business Auto Liability	
Combined Single Limit	\$1,000,000 each occurrence

2.3.2 Notice of Cancellation: Required insurance shall not be cancelable without notice to the certificate holder in accordance with the terms of the insurance policy. The Firm agrees to provide to the Owner notice of cancellation of any required insurance within five (5) business days of its receipt of notice of such cancellation.

2.3.3 Firm shall include the Owner as an additional insured on the General Liability policy, and the Worker's Compensation policy shall include a waiver of subrogation in favor of the Owner. To the fullest extent permitted by applicable law, including but not limited to Section 271.904 of the Texas Local Government Code, such General Liability policy shall provide for the defense of the additional insureds in suits or legal actions brought against additional insureds on claims that, if proven by final judgment, would constitute covered claims under such General Liability policy.

2.3.4 Firm shall require its Consultants to maintain Commercial General Liability and Business Auto Liability coverage with a company satisfactory to Owner and with limits acceptable to Owner.

**ARTICLE 3 TERMINATION OF AGREEMENT**

The term of this Agreement shall commence on the effective date and end on the fifth anniversary of the effective date, August 31, 2028. Owner shall have the option to extend this Agreement for three (3) additional one (1) year terms upon written notice to Firm. This Agreement may be terminated earlier by either party upon at least sixty (60) calendar days' written notice to the other party, or upon fourteen (14) calendar days written notice should the other party fail substantially to perform in accordance with its terms and conditions. However, the breaching party will have an opportunity to cure within the fourteen (14) calendar days. In the event of a termination that is not the fault of Firm, Firm shall be paid for services performed prior to the date upon which notice of termination was delivered to Firm. As a condition of the final payment involving such a termination, Firm shall promptly and orderly arrange data accumulated and products of its professional services and deliver the same to the Owner.

#### ARTICLE 4 SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the Firm, its partners, successors, assigns, and legal representatives and shall inure to the benefit of the Owner, its successors, assigns and legal representatives. Neither the Owner nor the Firm shall assign, delegate, or transfer their respective interests in or duties under this Agreement without the written consent of the other. Firm shall not replace the in-house personnel named in its submitted Qualifications to lead the projects without prior written approval from the Owner.

#### ARTICLE 5 MISCELLANEOUS PROVISIONS

- 5.1 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted, and applied in accordance with and governed by, and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Travis County, Texas shall be the exclusive venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.
- 5.2 Dispute Resolution. In the event of any dispute arising under this Agreement, the parties agree to follow the procedures set forth in Chapter 2260 of the Texas Government Code. The Owner designates the Vice Chancellor and Chief Financial Officer as its officer for examining, negotiating, and resolving claims and counterclaims under Chapter 2260 of the Texas Government Code.
- 5.3 Public Information Pertaining to the Official Business of Governmental Bodies and to Contracts by Certain State Governmental Entities that Involve the Exchange or Creation of Public Information. Owner 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. Firm is required to make any information created or exchanged with the Owner pursuant to this Agreement, that is not otherwise excepted from disclosure under the TPIA, available in a format reasonably requested by the Owner that is accessible by the public. The following format(s) shall be deemed to be in compliance with this provision: electronic files in Word, PDF, or similar generally accessible format. The parties acknowledge that, if required pursuant to the provisions of Texas Government Code Section 2261.253, this Agreement may be posted on the Owner’s website.
- 5.4 State Auditor’s Office. Firm understands that acceptance of state funds under this Agreement acts as acceptance of the authority of the State Auditor’s Office to conduct an audit or investigation in connection with those funds. Firm further agrees to cooperate fully with the State Auditor’s Office in the conduct of the audit or investigation, including providing all records requested. Firm shall ensure that this clause concerning the State Auditor’s Office’s authority to audit state funds and the requirement to cooperate fully with the State Auditor’s Office is included in any subcontracts it awards. Additionally, the State Auditor’s Office shall at any time have access to and the right to examine, audit, excerpt and transcribe any pertinent books, documents, working papers and records of Firm relating to this Agreement. Firm further understands that Owner may conduct a financial and/or performance audit of this Agreement and agrees to cooperate fully in such an audit to the same extent as an audit by the State Auditor’s Office. The provisions of this paragraph 5.4 shall survive the termination of this Agreement.
- 5.5 Family Code Certification. By signing this Agreement Firm is certifying, pursuant to Section 231.006 of the Texas Family Code, that it is not ineligible to receive the award of or payments under this Agreement by reason of its Family Support requirements and acknowledges that this Agreement may

be terminated and/or payments may be withheld if this certification is inaccurate.

- 5.6 Eligibility Certification. By signing this Agreement Firm is certifying that, pursuant to Section 2155.004 of the Texas Government Code, the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 5.7 Franchise Tax Certification. By signature hereon, Firm is certifying that it is a “taxable entity” under Section 171.0002 of the Texas Tax Code and that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, Texas Tax Code.
- 5.8 Debts Owed to State. By signing this Agreement Firm agrees that, pursuant to Sections 2107.008 and 2252.903 of the Texas Government Code, any payments owing to Firm under this Agreement may be applied directly toward any debt or delinquency that Firm owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 5.9 No Conflict of Interest Certification. By signing this Agreement, Firm is certifying that no member of the Board of Regents of The Texas State University System, or its Executive Officers (including Component institutions) has a financial interest, directly or indirectly, in the transaction that is the subject of this Agreement.
- 5.10 Ethics Matters; No Financial Interest. Firm and its employees, agents, representatives, and Consultants have read and understand Owner’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>

The Texas State University System Rules and Regulations, Chapter VIII, and applicable state ethics laws and rules. Neither Firm nor its employees, agents, representatives, or Consultants will assist or cause Owner’s employees to violate Owner's Conflicts of Interest Policy as stated in The Texas State University System Rules and Regulations. Firm represents and warrants that no previously undisclosed member of The Texas State University System Board of Regents, The Texas State University System’s Chancellor, or any of its Executive Officers, or any Presidents or executive officers of its respective components has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

- 5.11 Nondiscrimination. In their execution of this Agreement, the parties and others acting by or through them shall comply with all federal and state policies and 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.
- 5.12 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Contract. Notwithstanding any provision of this Agreement, nothing herein constitutes a waiver of the constitutional, statutory, or common law rights, privileges, defenses, or immunities of the parties.



- 5.13 Non-Boycott Israel Verification: To the extent required in Chapter 271, Texas Government Code, by executing this Agreement, Firm certifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. “Boycott Israel” shall have the meaning set forth in Section 808.001, Texas Government Code.
- 5.14 Cybersecurity Training Program: Pursuant to Section 2054.5192, Texas Government Code, Firm and its Consultants, officers, and employees who are provided credentials granting access to Component’s computer system also known as Component’s information system, must complete a cybersecurity training program certified under Section 2054.519, Texas Government Code as selected by the Component. The cybersecurity training program must be completed during the term and any renewal period of this Agreement. Firm shall verify in writing completion of the program to the Component within the first thirty (30) calendar days of the term and any renewal period of this Agreement. Failure to comply with the requirements of this section are grounds for termination for cause of the Agreement.
- 5.15 Firm Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252.152, Texas Government Code, by executing this Agreement, Firm hereby certifies Firm is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Firm acknowledges the Agreement may be terminated and payment withheld if this certification is inaccurate.
- 5.16 Non-Discrimination of Firearm Industry Verification. Pursuant to Section 2274.002, Texas Government Code (as enacted in SB 19 in the 87<sup>th</sup> Regular Legislative Session [2021]), by executing this Agreement Firm hereby certifies that either (i) it has less than ten (10) full time employees; or (ii), it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association (as defined under Section 2274.001, Texas Government Code) and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- 5.17 Anti-Boycott Energy Companies Verification. Pursuant to Section 2274.002, Texas Government Code (as enacted in SB 13 in the 87<sup>th</sup> Regular Legislative Session [2021]), by executing this Agreement Firm hereby certifies that either (i) it has less than ten (10) full time employees or (ii) it does not “boycott energy companies” (as defined under Section 809.001, Texas Government Code) and will not “boycott energy companies” during the term of this Agreement.
- 5.18 Critical Infrastructure Affirmation. Pursuant to Section 2274.0102, Texas Government Code, by executing this Agreement Firm hereby certifies that neither it nor its parent company, nor any affiliate of Firm or its parent company, is (i) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103, Texas Government Code, or headquartered in any of those countries.
- 5.19 Other Provisions Required by Applicable Law. In accordance with Section 51.9335(h), Texas Education Code, the parties acknowledge and agree that any other provision required by Applicable Law to be included in the Agreement or Contract is considered to be a part of the executed Agreement or Contract without regard to:
- 5.19.1 Whether the provision appears on the face of the Agreement of Contract; or
- 5.19.2 Whether the Agreement of Contract includes any provisions to the contrary.
- 5.20 Presence on Campus. Firm agrees to comply with all Component policies including but not limited to the following and, at a minimum, shall apply to the Firm's employees, Consultants, and agents

while on the Component campus:

- 5.20.1 On-campus driving and parking;
  - 5.20.2 Prohibition on smoking or tobacco use;
  - 5.20.3 Fire safety;
  - 5.20.4 Hazardous Materials;
  - 5.20.5 Drug-free workplace; and,
  - 5.20.6 Prohibition of sexual harassment, or harassment or discrimination based on race, color, national origin, age, sex, religion, disability, or sexual orientation, gender identity or expression.
- 5.21 Background Checks. Firm will provide representation that it has conducted the following background checks on its officers, employees, or other persons it causes to be on the Component campus. Firm will provide Owner a letter signed by an authorized representative of Firm certifying compliance with this Section. Firm will provide Owner an updated certification letters each time there is a change in the individuals assigned to perform the work.
- 5.21.1 Sex offender and criminal history databases where the above individuals will be placed on the campus, working with or around students;
  - 5.21.2 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 Owner;
  - 5.21.3 Firm will determine on a case-by-case basis whether each individual assigned to perform the services is qualified to provide the services. Firm will not knowingly assign any individual to provide services on Component's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses.
- 5.22 Relationship of Parties. Firm shall be an independent contractor of Owner, and shall have no authority to bind Owner in any way. No employee or agent of Firm shall be deemed to be an employee of Owner for any purpose.

## ARTICLE 6 INDEMNIFICATION

Firm will and does hereby agree to indemnify and hold harmless Owner, University, and their Regents, Officers, Directors, attorneys, employees, representatives and agents (collectively "Indemnitees") from and against all damage to the extent caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Firm or the Firm's agents, the Firm's consultants under contract, or another entity over which the Firm exercises control.

The indemnity provided for in this paragraph does not apply to the extent of any liability caused by the negligence or fault, the breach or violation of applicable law, or the breach of contract of the Indemnitees

or their agents or employees, or any third party under their control or supervision other than the Firm or its agents, employees, subcontractors, or consultants of any tier.

HOWEVER, IN THE EVENT FIRM AND OWNER OR OTHER INDEMNITEES ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSE OF THE PARTIES UNDER TEXAS LAW.

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.

## ARTICLE 7 REPRESENTATIVES AND NOTICES

7.1 All notices, consents, approvals, demands, requests, or other communications permitted or required to be given under this Agreement shall be given to the party's representative designated pursuant to Article 7 and shall be in writing. Written notice shall be deemed to have been given when delivered in person; sent by U. S. Mail; or transmitted by fax machine. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

7.2 Notices required or permitted under this Agreement shall be given in writing, and delivered by postal mail, overnight delivery, courier, or facsimile, and addressed as follows:

7.2.1 If to Owner:

The Texas State University System  
The Office of Finance  
601 Colorado Street  
Austin, Texas 78701  
Phone (512) 463-1808  
Email: finance@tsus.edu

7.2.2 If to Firm:

Name, Title  
Company Name  
Address  
City, State Zip  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

7.3 Any notices required or permitted under this Agreement shall be effective if sent to the representatives designated pursuant to this Article 7. The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement, to be effective on the day and year first above written.

**For Firm:**  
**Company Name**

**For Owner:**

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
Brian McCall, Ph.D., Chancellor  
The Texas State University System

Name: \_\_\_\_\_  
*Type or Write Name*

\_\_\_\_\_  
Date

Title: \_\_\_\_\_

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

**Reviewed And Recommended:**

\_\_\_\_\_  
Daniel Harper  
Vice Chancellor and Chief Financial Officer  
The Texas State University System

\_\_\_\_\_  
Date

**Approved As To Legal Form:**

\_\_\_\_\_  
Nelly R. Herrera  
Vice Chancellor and General Counsel  
The Texas State University System

\_\_\_\_\_  
Date

**EXHIBIT "A"**

**Company Name**  
**Hourly Rate Schedule**

**CLASSIFICATION** **HOURLY RATE / US \$**

**EXHIBIT “B”**

This policy addresses the impact of Texas Government Code Section 2155.004 on the participation of design consultants and subconsultants in the programming process for Owner’s facilities projects.

1. Any design professional or other person who participates in the preparation of a Request for Qualifications or Request for Proposal for Owner or any of its Components with respect to an Owner capital project and was compensated for doing so, directly, or indirectly, is disqualified from being awarded a contract as a result of the procurement, and from being a subconsultant or subcontractor to a firm that is awarded such a contract.
2. A design professional or other person who participates in the programming effort, with or without compensation, with respect to an Owner’s capital project is not disqualified from being awarded a contract as a result of the procurement, or from being a subconsultant or subcontractor to a firm that is awarded such a contract, solely because of such participation, provided all of the following are true:
  - a. The programming effort does not produce a design document of any kind;
  - b. The programming effort does not produce technical specifications for any equipment to be included in the project; and
  - c. The programming effort does not involve the drafting or review of procurement documents.
3. Firms that program Owner projects shall disclose to Owner the identities of all firms that are compensated for participating in the programming effort.

# **Addendum No. 1**

**Issued July 21, 2023**

## **REQUEST FOR QUALIFICATIONS FOR**

### **INDEFINITE-DELIVERY INDEFINITE-QUANTITY (IDIQ) FACILITIES PROGRAMMING SERVICES**

### **FOR THE TEXAS STATE UNIVERSITY SYSTEM AUSTIN, TEXAS**

**RFQ No.:**

**758-23-00086**

**Notice To All Respondents:**

The following is Addendum No. 1 to the Request for Qualifications (RFQ)  
ESBD Posting No. 758-23-00086 was posted on July 13, 2023

**Prepared By:**

Peter Maass, Director of Capital Projects Administration  
The Texas State University System  
601 Colorado Street  
Austin, TX 78701 - 512-463-1808  
Peter.Maass@tsus.edu

**I. GENERAL:**

**A.** Below are the questions that were presented along with answers to each in relation to this RFQ as of July 20, 2023, 12:00 p.m.

**1. Question:** We're reviewing the referenced RFQ above and I wanted to confirm my understanding of Exhibit B. If we make the IDIQ list, are we ineligible from submitting on any project that we do the programming for? I wasn't 100% sure reading the following clip from Exhibit B. With our experience doing programming in TX, a, b, and c are NOT part of programming deliverables.

**Answer:** Most of the Program of Requirements our Institutions and the System requires will delve into the subjects covered by Exhibit B, items 2.b and sometimes 2.a. Once that occurs, the firm that prepared the program would be disqualified from pursuing A/E or construction services for those projects. The basic question revolves around the definition of technical specifications and to avoid any issues or challenges, the System will rely on a broad definition of that term to include most anything that looks or acts like a specification.

**2. Question:** For the Texas State IDIQ for Facility Programming Services are sub consultants excluded from submitting on the resulting projects if they are currently working on the programming?

**Answer:** Refer to Answer No. 1. The answer applies to any subconsultants employed and compensated by the programming firm.

**II. REVISIONS:**

**A.** Page 10 of 30, SECTION 2.3.3 Deadline for Submittal of Qualifications (3:00 p.m. C.D.T.): The Submittal deadline time is revised to **2:00 p.m. C.D.T.**

2.3.3 *Deadline for submittal of Qualifications (~~3:00~~2:00 p.m. C.D.T.) .....08/03/2023*

**- END OF ADDENDUM NO. 1 -**