

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
REQUEST FOR PROPOSAL

PROPOSAL NO. 332-RFP23-1001
PROPOSAL DUE 2:00 PM: **November 30, 2022**
at 221 East 11th Street
Austin, Texas 78701

REQUEST FOR PROPOSALS
DEPARTMENT OF ENERGY WEATHERIZATION INSPECTIONS
Compliance Division Subrecipient Section

Authorized signature

Title

Date

FAILURE TO MANUALLY SIGN WILL DISQUALIFY PROPOSAL
VENDOR AGREES TO COMPLY WITH ALL TERMS & CONDITIONS OF THIS RFP.

By signing this proposal, vendor certifies that if a Texas address is shown as the address of the vendor, vendor qualifies as a Texas Resident Bidder as defined in 34 TAC Rule 20.32(68).

Company Name: _____

Address: _____

City – State – Zip Code: _____

Contact Name: _____

Phone Number: __ (____) _____ **Fax Number:** __ (____) _____

E-mail: _____

Vendor ID # _____

An Identification Number is required to process payment for goods/services purchased against contract awards. The Federal Employers Identification Number (EIN) will be used to establish a Payee ID Number:

PLEASE ENTER YOUR FEDERAL EIN: ☐☐☐☐☐☐☐☐☐☐

Every vendor **MUST** have an EIN prior to receiving payment under an awarded contract. This is being required in an effort to minimize identity theft. For information on obtaining your EIN, you may call the IRS at 800-829-4933 or visit the following website: <https://www.irs.gov/>

Check here if you are a sole ownership or partnership and complete Exhibit B, Execution of Proposal: ☐

Excess Obligations Prohibited: Any contract resulting from this solicitation is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, provisions of the Termination Article shall apply. The Respondent agrees that in the event of such termination, the TDHCA will not be considered to be in default or breach under the contract, nor shall it be liable for any further payments ordinarily due under the contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
REQUEST FOR PROPOSAL**

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PROPOSAL DUE 2:00 PM: November 30, 2022
at 221 East 11th Street
Austin, Texas 78701

PREFERENCES: See Section 2.38 of the State of Texas Procurement Manual regarding preferences. Check below to claim a preference under 34 TAC Rule 20.38.

- ☐ Goods produced or offered by a TX bidder that is owned by a Texas resident service-disabled veteran
- ☐ Goods produced or offered by a TX bidder that is not owned by a Texas resident service-disabled veteran
- ☐ Agricultural products grown in TX
- ☐ Agricultural products offered by TX bidder
- ☐ Services offered by a TX bidder that is owned by a Texas resident service-disabled veteran
- ☐ Services offered by a TX bidder that is not owned by a Texas resident service-disabled veteran
- ☐ Texas Vegetation Native to the Region
- ☐ USA produced supplies, materials or equipment
- ☐ Products of persons with mental or physical disabilities
- ☐ Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- ☐ Energy efficient products
- ☐ Rubberized asphalt paving material
- ☐ Recycled motor oil and lubricants
- ☐ Products produced at facilities located on formerly contaminated property
- ☐ Products and services from economically depressed or blighted areas
- ☐ Vendors that meet or exceed air quality standards
- ☐ Recycled or Reused Computer Equipment of Other Manufacturers
- ☐ Foods of Higher Nutritional Value

Delivery in _____ days, cash discount _____ % _____ days

WHEN RESPONDING - The PROPOSAL must be placed in an envelope or a box with the PROPOSAL due date and PROPOSAL number annotated immediately below return address on SEALED OFFER ENVELOPE. QUOTE F.O.B. DESTINATION for shipment to TDHCA, 221 East 11th Street, Austin TX 78701.
--FAXED RESPONSES WILL NOT BE ACCEPTED FOR THIS RFP--

RETURN SEALED RESPONSES TO:

Texas Department of Housing and Community Affairs
Attention: Purchasing #332-RFP23-1001
PO Box 13941, Austin, TX 78711-3941

OR HAND DELIVER TO: 221 East 11th Street Austin, TX 78701 (8am-5pm)

OR OVERNIGHT/ EXPRESS MAIL TO: 221 East 11th Street Austin, TX 78701

FOR ADDITIONAL INFORMATION REGARDING THIS RFP, CONTACT: John Stewart @
john.stewart@tdhca.state.tx.us

IF NOT RESPONDING DO NOT RETURN THIS FORM

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REQUEST FOR PROPOSALS
UNIFORM PHYSICAL CONDITION STANDARDS INSPECTIONS
Compliance Division, Physical Inspection Section

I. INTRODUCTION

The Texas Department of Housing and Community Affairs ("TDHCA/The Department") seeks proposals in response to this Request for Proposals from individuals/firms with experience conducting Weatherized Assistance Program (WAP) unit inspections. The purpose is to inspect weatherized homes funded by The Department of Energy (DOE) and Health and Human Services Low Income Home Energy Assistance Program (LIHEAP) through the Department to insure compliance with the requirements established by DOE Weatherization Assistance Program for Low-Income Persons at 10 CFR 440, DOE Weatherization Program Notice (WPN) 22-4 Quality Work Plan Requirement Update, DOE WPN 17-7 Weatherization Health and Safety Guidance, Standard Work Specification (SWS) and Building Performance Institute (BPI) Quality Control Inspector (QCI) testing standards. The Department is currently projecting approximately 200 unit inspections to be conducted by contractors or Department staff, with a majority of inspections conducted by contractors.

A. BACKGROUND

The Department of Energy (DOE) implemented the Quality Work Plan (QWP) in Weatherization Program Notice (WPN) 14-4, Quality Work Plan Requirement, in 2013 pursuant to [10 CFR 440.12\(b\)\(6\)](#). In 2014, WPN 15-4, Quality Work Plan Requirement Update, superseded WPN 14-4 and in December 2021, WPN 22-4, Quality Work Plan Requirement Update, superseded WPN 15-4. The purpose of these Weatherization Program Notices (WPN) establish the Weatherization Assistance Program (WAP) benchmarks for energy efficiency retrofits in the Program and outlined specifications for work quality and individuals performing inspections of WAP work. WPN 22-4 Section 1 defines the minimum acceptable outcomes for home energy upgrades installed on single-family, multifamily, and manufactured housing through the [Standard Work Specifications](#) (SWS). WPN 22-4 Section 2 outlines the requirement for individuals who approve Subgrantee Final Inspections and Grantee technical monitoring, must have an active Quality Control Inspector (QCI) certification and possess skills outlined in the [NREL Single-Family Quality Control Inspector Job Task Analysis](#) and successfully complete a comprehensive training program based on the [NREL Multifamily Quality Control Inspector Job/Task Analysis and Report](#) for multifamily inspections. To maintain consistency with monitoring practices, 10 CFR Part 440 and the Department's Rules at 10 Texas Administrative Code, Chapters 1,2,and 6 (as applicable), the Department will use DOE Standard Work Specification (SWS), WPN 15-4, WPN 17-7, ASHRAE 62.2 and 2015 International Residential Code (IRC), 2015 International Energy Conservation Code (IECC) to determine compliance for all homes weatherized through WAP administered through the Department.

B. ONSITE REVIEWS

TDHCA must conduct onsite WAP reviews with a sampling of the low income units and files annually. It is the normal procedure of the Department to make inspection assignments at least one month in advance. At the time of assignment, a list of units to be inspected is transmitted to the contractor performing the LIHEAP unit and/or DOE QCI inspections.

C. MULTIPLE AWARDS

More than one contractor may be selected based on qualification and selection criteria and scoring of responses.

D. DEFINITIONS

The following items are referenced throughout this RFP. Definitions for frequently referenced items are listed below:

DOE – Department of Energy
LIHEAP – Low Income Home Energy Assistance Program
WAP – Weatherization Assistance Program
QCI – Quality Control Inspector certification
JTA – Job Task Analysis for Quality Control Inspectors
SWS – Standard Work Specifications
CAZ – Combustion Appliance Zone
IECC – International Energy Conservation Code
TDHCA/The Department – Texas Department of Housing and Community Affairs
FTP – File Transfer Protocol
RFP – Request for Proposal
ASHRAE 62.2 – Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings
IRC – International Residential Code

II. MINIMUM REQUIREMENTS FOR ELIGIBILITY

- A. Required experience, knowledge, skills, and abilities are as follows:
1. Three years experience in conducting QCI inspections as established by [Single-Family Quality Control Inspector Job Task Analysis](#) and [Multifamily Quality Control Inspector Job/Task Analysis and Report](#).
 2. Experience in conducting inspections to determine compliance with material and installation consistent with the SWS, 10 CFR 440 DOE Weatherization Assistance Program for Low-Income Persons, ASHRAE 62.2 Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings, 2015 IECC prescriptive requirements for the building thermal envelope requirements, 2015 International Residential Code.
 3. Ability to complete assigned inspections within an defined time frame; and
 4. Ability to identify and photograph deficiencies, complete WAP Unit Inspection Checklist and prepare concise written explanation of deficiencies.
- B. The successful individual(s)/firm(s)/contractor(s) will inspect specific units for compliance and submitting all working papers, reports, and photographs to TDHCA.

III. SCOPE OF WORK

Respondents are expected to provide services as required and to assign experienced professionals who are best suited to respond appropriately to requirements.

A. SERVICES

1. Upon notification by the Department, the contractor will conduct inspections of assigned units with the responsible Subrecipient staff. The QCI inspection will focus on all DOE funded units requiring the following diagnostic tests to be conducted:
 - (a.) Gas leak test (as applicable)
 - (b.) Ambient carbon monoxide (“CO”) on going testing (as applicable)
 - (c.) Blower door
 - (d.) Duct blaster (as applicable)
 - (e.) Pressure pan (as applicable)
 - (f.) Zonal pressure diagnostics
 - (g.) ASHRAE fan flow meter (on all exhaust fans/vent hoods at the final inspection, then re-run the calculator to ensure ASHRAE compliance and make adjustments to fan speed/run time as necessary) (as applicable)
 - (h.) CO testing on combustion stoves (as applicable)
 - (i.) Hot water temperature test

- (j.) Furnace steady state efficiency and heat rise testing (as applicable)
 - (k.) CAZ testing, under worst case conditions, the following tests are required on combustion appliances: spillage, draft, and CO testing (as applicable)
2. All tests will be performed by the responsible Subrecipient staff to verify level of ability. If responsible Subrecipient staff is unable to complete tests required by the QCI standards, contractor will complete required tests and document results on WAP Unit Inspection Checklist along with explanation of responsible Subrecipient staff testing difficulty. The remaining inspections for LIHEAP funded units will focus on, although not limited to, the following diagnostic tests to be conducted, as applicable:
- (a.) Gas leak test (as applicable)
 - (b.) Ambient carbon monoxide (“CO”) on going testing (as applicable)
 - (c.) Blower door
 - (d.) Duct blaster (as applicable)
 - (e.) Pressure pan (as applicable)
 - (f.) Zonal pressure diagnostics
 - (g.) ASHRAE fan flow meter (on all exhaust fans/vent hoods at the final inspection, then re-run the calculator to ensure ASHRAE compliance and make adjustments to fan speed/run time as necessary) (as applicable)
 - (h.) CO testing on combustion stoves (as applicable)
 - (i.) Hot water temperature test
 - (j.) Furnace steady state efficiency and heat rise testing (as applicable)
 - (k.) CAZ testing, under worst case conditions, the following tests are required on combustion appliances: spillage, draft, and CO testing (as applicable)
3. All tests will be performed by the responsible Subrecipient staff to verify level of ability. If responsible Subrecipient staff is unable to complete the required tests, contractor will complete required tests and document results on WAP Unit Inspection Checklist along with explanation of responsible Subrecipient staff testing difficulty. TDHCA will provide the list of specific units to be inspected, addresses, and contact information for each owner.
- (a.) Contractor will conduct the Inspection within a 30 calendar day time frame established by TDHCA for assigned units. TDHCA will provide at least 30 calendar days notice before the beginning of the required timeframe.
 - (b.) Failure to perform the inspection within the allotted time frame may result in a 10% reduction in the invoiced amount for every week or portion thereof the inspection is delayed.
 - (c.) TDHCA reserves the right to assign all unit inspections to specific Contractors.

B. REPORTING

For each unit inspected, contractor shall prepare and submit a completed WAP Unit Inspection Checklist to TDHCA within 14 calendar days of the date of each inspection visit. If conditions set forth in B. Reporting 1-5 below are not satisfactorily met, the Department may withhold payment until remedied, if possible. The Report is to include the following:

1. A comprehensive report detailing all test results, disposition of all measures indicated as installed (installed correctly in check box beside the listed measure, not installed indicated by blank check box beside measure, deficient measures with blank checkbox require detailed corrective action in the section listed Returns The current version of the WAP Unit Inspection Checklist will be provided to the Successful Proposer(s) once the contract(s) is awarded.

2. Upload a digitally signed copy of the WAP Unit Inspection Checklist in a single PDF format through the Department File Transfer Protocol (FTP) system as assigned.
3. Video of the identified deficiencies with complete explanation of deficiencies. Videos must be clear and in focus to identify deficiency.
4. All deficiencies identified during the inspection must be visually and verbally conveyed to the responsible Subrecipient staff on the deficiency video.
5. A copy of any communication, i.e. correspondence, documentation, summary of telephone meetings, or other documentation or documented communication relating to this contract, other than the documents specifically bound by timeframes described above, must be provided to TDHCA upon request.

C. ADDITIONAL SERVICES

The contractor shall serve as an expert witness on behalf of TDHCA for any adjudicative proceedings, including but not limited to contested case hearings and litigation, related to Uniform Physical Condition Standards on an “as needed basis at an hourly rate.

IV. INTENT

TDHCA shall offer inspection assignments as the budget and inspection requirements allow. Assignments will be determined at the discretion of TDHCA Compliance Subrecipient Monitoring.

V. CONTRACT TERM

The initial term of the Contract shall be from date of Contract Execution to August 31, 2023. TDHCA may, in its sole discretion, exercise the option to extend the Contract for up to four (4) additional, one (1) year periods. The optional additional periods are September 1, 2023 through August 31, 2024; September 1, 2024 through August 31, 2025; September 1, 2025 through August 31, 2026; and September 1, 2026 through August 31, 2027. To exercise the option to renew, TDHCA will send a renewal letter signed by the authorized Procurement official, delivered prior to the expiration of the current Contract, stating the new Contract expiration date, provided it is signed by a vendor representative by the date of the original contract or extension termination date and promptly returned to the Department. Notwithstanding the termination or expiration of the Contract, certain provisions, e.g., indemnification, confidentiality, dispute resolution, records retention, and right to audit, shall survive the termination or expiration of the Contract. Vendor will not be paid for performance rendered after the Contract expires unless the Contract is renewed prior to the expiration of the Contract. (Term and Termination information is located in *Exhibit A, 55. Term and Termination*).

VI. RESPONSE TIME FRAME AND OTHER INFORMATION

A. TIME FRAME

Posting date for RFP:	November 9, 2022
Questions Due:	November 15, 2022 2:00PM (CT)
Questions/Answers Posted	November 17, 2022 (no later than)
Response Due:	November 30, 2022 2:00PM (CT)

Proposals must comply with rules and statutes relating to purchasing in the State of Texas. Late and/or unsigned proposals will not be considered. The person submitting the proposal must have the authority to bind the organization in a contract.

B. DELIVERY ADDRESS

One (1) original copy and three (3) digital copies in PDF format on thumb drives should be delivered to the following address (facsimiles will not be accepted):

Mailing Address:

Texas Department of Housing and Community Affairs
Attn: Purchasing #332-RFP23-1001
PO Box 13941

Austin, TX 78711-3941

Overnight/Hand Delivery Address:

Texas Department of Housing and Community Affairs
Attn: Purchasing #332-RFP23-1001
221 East 11th Street
Austin, TX 78701

PROPOSAL OPENING. Proposals will be opened at the TDHCA Headquarters located at 221 East 11th Street Austin, TX 78701.

C. QUESTIONS/CONTACT INFORMATION

It is the express policy of the Department that parties responding to this request refrain from initiating any direct contact or communication with members of the Compliance Division with regard to this RFP during the selection process. Any violation of this policy will be considered a basis for disqualification.

Additional information regarding this RFP may be obtained from John Stewart at the Department. **Attempt to obtain information from staff other than John Stewart is prohibited and any violation of this policy will be considered a basis for disqualification.** All requests must be in writing to john.stewart@tdhca.state.tx.us (email). **The deadline for questions is 11/15/2022 at 2:00 PM Central Time (CT).** All questions and responses will be made available via the Department's website (www.tdhca.state.tx.us) and via the Electronic State Business Daily at (<https://www.txsmartbuy.com/esbd>) and will be subject to disclosure under the Public Information Law.

D. AMENDMENT/ADDENDUM

Any Amendment to this procurement solicitation will be posted as an addendum on the TDHCA website and on the Electronic State Business Daily ("ESBD"). It is the responsibility of interested parties to periodically check the TDHCA website and ESBD for updates to the procurement prior to submitting a proposal. The Respondent's failure to periodically check the TDHCA website and ESBD will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFP.

E. OTHER

The Department shall not be obligated to proceed with any action and may decide it is in the Department's best interest to refrain from pursuing any selection process.

All costs directly or indirectly related to the preparation of a response to this RFP shall be the sole responsibility of and shall be borne by the respondent.

VII. PERFORMANCE STANDARDS

- A. Performance under this RFP will be measured by, but not limited to, 1) ability to provide in-depth inspections of units (to include the areas listed in Section III, Scope of Work); 2) quality of inspection (detail, scope and clarity); 3) timeliness of inspection (within 30 calendar days of notification); and, if applicable 4) ability to provide expert witness services.
- B. Professional Appearance and Attire - During working hours, Inspectors should appear neat and professional at all times. Inspectors are expected to be suitably attired and well groomed, and to ensure that their clothing is clean, and not torn, ripped, or stained. Inspectors should use common sense and good judgment in determining what to wear for performance of inspections. Generally, if the inspector is doubtful about some clothing, it is not appropriate.
- C. Professionalism – TDHCA expects inspectors to be professional at all times. All complaints against inspectors will be reviewed by the Department. In the event an inspector has four (4) complaints against them, TDHCA reserves the right to discontinue utilizing specific inspectors

for TDHCA WAP inspections. Egregious complaints will result in notification from the Department with opportunity to cure, with termination if not resolved.

- D. Failure to perform the described activities will result in notification from the Department with opportunity to cure, with termination if not resolved. The Vendor will be held to the performance standards under this Section. There will be a ten (10) day notice to cure for any failures before termination.

VIII. DELIVERABLES AND ACCEPTANCE

- A. Upon referral of a needed inspection, delivery of an acceptable schedule and timeline for providing the inspection and associated timeline for delivery of the inspection report shall be accomplished via email to the Department by the contractor in the form of a .pdf document of a size no larger than 1 megabyte. Submission of the schedule and timeline(s) in portions not to exceed the 1 megabyte limit is acceptable. Further activity regarding the inspection must not be undertaken until the Department has approved and accepted the schedule and timeline(s) and any specifications and clarifications needed for the specific referral, and agreed to in writing via email from the Manager of Compliance or other designated contact.
- B. Delivery to the Department of an inspection report which will include a full description of the inspection, any conclusions and/or findings of deficiency, recommendations, and suggested action to be taken shall be accomplished by upload through the Department File Transfer Protocol (FTP) system as assigned.
- C. If applicable, serve as an expert witness on behalf of TDHCA for any adjudicative proceedings, including but not limited to contested case hearings and litigation, related to contractor inspected DOE WAP units reported as a “completed unit” ensuring that all work meets the minimum specifications outlined in the SWS in accordance with 10 CFR 440 and NREL Job Task Analysis: Single-Family Quality Control Inspector and/or Multifamily Quality Control Inspector.

IX. RESPONSE FORMAT

- A. Each item in Section X. Proposal Content must be addressed in the order listed below.
- B. Identify the item to be addressed in the introduction to each response.
- C. Please limit your response to 15 pages of text with additional information such as sample work, audited financial statement, additional resumes and references submitted in appendix form.
- D. All submitted Proposals become the property of TDHCA after the RFP submittal deadline/opening date. Proposals submitted shall constitute an offer for a period of ninety (90) days or until selection is made by TDHCA, whichever occurs earlier.

X. PROPOSAL CONTENT

The Proposer shall provide an Executive Summary of three (3) pages or less, which gives in brief and concise terms, a summation of the proposal. The proposal itself shall be organized in the following format and informational sequences:

Part I – Required Forms: Signed RFP Form (Page 1 & Page 2 of the RFP), *Exhibit B* Execution of Proposal, must be included in this section of the response. Any items missing from this section will be determined to be non-responsive and not considered for award.

Part II - Business Organization: State full name and address of your organization and identify parent company if the entity is a subsidiary. Specify the branch office or other subordinate element that will perform, or assist in performing, work herein. Indicate whether the entity operates as a partnership,

corporation, or individual. Include the State in which the individual or entity is incorporated or licensed to operate. If the entity is a State of Texas certified HUB, supply the HUB certification.

- 1) Service Area: Areas of Texas the organization is willing to serve; specify either statewide or list specific areas/counties. Designation is mandatory and must be listed otherwise response will be considered non-responsive and not considered for award.

Part III - Program: Describe the technical plan or standard operating procedures for accomplishing required work. Include such time-related displays, graphs, and charts as necessary to show tasks, sub-tasks, milestones, and decision points related to the Statement of Work and the plan for accomplishment. Specifically indicate:

- 1) A description of the inspection work and inspection methodology. For example, detail the steps to be performed in proceeding from assignment of the inspection by TDHCA to completion and submission of reports.
- 2) The technical factors that will be considered in section III. Scope of Work above and the depth to which each will be treated.
- 3) The degree of definition provided in each technical element of the plan.
- 4) The ability to conduct inspections throughout the State on a timely basis.
- 5) A statement of the entity's compliance with all applicable rules and regulations of Federal, State and Local governing entities. Proposer must state the Proposer's intent to comply with the terms of this Request for Proposals.

Part IV - Project Management Structure: Provide a general explanation and an organizational chart which specifies project leadership and reporting responsibilities. Identify personnel who would be working with TDHCA staff. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.

Part V - Prior Experience: Describe only relevant corporate experience and individual experience for personnel who will be actively engaged in the project. Do not include corporate experience unless personnel assigned to this project actively participated. Supply the project title, year, and reference name, as well as title, present address, and phone number of principal person for whom prior projects were accomplished.

Part VI - Personnel: Include names, qualifications, including specific training and education, and pertinent certifications and licenses of all professional personnel who will be assigned to this project. State the primary work assigned to this person and the percentage of time each person will devote to this work. Identify key persons by name and title. Provide resumes for all key persons identified. Specifically identify the number of inspectors, either direct employees or contractors, to be assigned to perform inspections and the percentage of time performing TDHCA inspections.

Part VII - Authorized Negotiator: Include name, address, email address, and telephone number of person in the organization authorized to negotiate contract terms and render binding decisions on contract matters.

Part VIII – Conflict of Interest: Contractor must disclose and provide an affidavit of any potential conflicts with any TDHCA's affiliated WAP Subrecipients. **Inspectors cannot perform an inspection or consult for any entity awarded Federal Weatherization Assistance Program Funding such as DOE or LIHEAP that may be inspected under this contract.**

Part IX - Price Proposal: The proposed price will be fixed per unit. The bid amount must include all costs associated with the inspection (i.e. travel arrangements, lodging, meals etc.).

The following information is required from each bidder:

- 1) A rate per unit inspection, including the Compliance Report and all required associated materials.

\$_____ per Unit Inspection.

- 2) A rate per unit re-inspection, including the Compliance Report and all required associated materials.
\$ _____ per Unit Re-inspection.
- 3) An hourly rate for serving as an expert witness on behalf of TDHCA.
\$ _____ per Hour.

XI. SELECTION PROCEDURE

Proposals will be referred to a panel of Department staff for evaluation and scoring. Staff will review proposals for compliance with the proposal content requirements and the potential for fulfillment of the scope of work criteria described herein. To assist in the preparation of the proposal, established criteria for review are provided below (weighted values in parentheses). The total number of possible points to receive is 100. The minimum score in order to be selected as one of the contractors is 75. More than one contractor may be selected.

1. Demonstrated Applicable Experience - The number of years of applicable inspection experience for the individual or the organization's key personnel who will be actively engaged in the project (20 points)
2. The number of QCI inspections performed by the individual or organization over the last three (3) years (20 points)
3. System Concept and Solutions Proposed - Respond with documentation and/or narrative describing Vendor's proposed inspection process and detail how the process will be implemented. Include the proposed inspection procedure from initial notification from the Department of the property or properties to be inspected, the inspection standard proposed, planning involved, conduct of the inspection, and the process for producing reports and transmitting reports to the Department. Include any Quality Assurance measures to be used. (20 points)
4. The ability to conduct inspections throughout the State on a timely basis—detail the number of inspectors to be assigned to perform inspections and describe proposed procedures to schedule inspections for timely completion. If the proposal does not include inspections in all regions of the State, specify the proposed areas of coverage. (20 points)
5. Total Price - The combined price of the individual components in the Price Bid in Part XIII (rate per unit inspection, rate per project for re-inspection, hourly rate for serving as an expert witness). (20 points)

XI. WORK MADE FOR HIRE

All work performed pursuant to this agreement specifically including all deliverables developed or prepared for Department is the exclusive property of the State of Texas. All right, title and interest in and to said property shall vest in the State of Texas and shall be deemed to be a work made for hire and made in the course of the services rendered pursuant to this agreement. To the extent that title to any work may not, by operation of law, vest in the State of Texas or such work that may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the State of Texas.

The Department and/or the State of Texas shall have the right to obtain and to hold in its own name, copyrights, registrations, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor agrees to give Department and/or the State of Texas and any person designated by the Department and/or the State of Texas, reasonable assistance required to assert the rights defined in this paragraph.

XIII. LICENSE AGREEMENT

The Department shall grant to the awarded contractor a non-exclusive, irrevocable, world-wide, royalty-free, license to use, reproduce, distribute and display the materials created pursuant to this agreement, subject to the following terms and conditions.

Each copy of the materials that the contractor distributes shall indicate on the cover that the creation of the material was funded by the Texas Department of Housing and Community Affairs. The contractor agrees that it will not charge a fee for the distribution of the materials, except to recover actual duplication and mailing costs. Contractor shall not create derivatives of or modify the content of the materials except with the express written consent of the Department.

Failure to comply with the terms of this license may result in immediate termination of the license agreement by the Department. Upon termination of this license agreement, contractor shall return the remaining materials to the Department, or shall destroy or distribute them, in accordance with the instructions of the Department.

XIV. OPEN RECORDS/E-VERIFY SYSTEM

A. Open Records

Information submitted to the Department is public information and is available upon request in accordance with the Texas Public Information Act, chapter 552 of the Government Code (the "Act"). A contractor submitting any information it considers confidential (such as trade secrets or commercial or financial information) which it desires not to be disclosed, must clearly identify all such information in its proposal. If information so identified by an applicant is requested from the Department, the contractor has an opportunity, pursuant to the Act, to present its arguments to the Texas Attorney General, who shall make the final determination as to whether such information is accepted from disclosure under the Act. Information not clearly identified as confidential will be deemed to be non-confidential and will be made available by the Department upon request.

Contractor is required to make any information created or exchanged with TDHCA pursuant to this contract, and not otherwise accepted from disclosure under the Texas Public Information Act (TPIA), available in a format that is accessible by the public at no additional charge to TDHCA. The following are the format requirements of this contract:

1. Information created or exchanged with TDHCA on paper will be made available either on paper or scanned Portable Document Format (PDF) files.
2. Information created or exchanged with TDHCA through email, email attachments, or other form of electronic file transfer will be made available in the same format in which it was originally created or exchanged, with the following exception. If the requestor is unable to read the original format with software that they already own or is available at no cost, the vendor will either print the requested information, convert it to PDF, or after obtaining approval from TDHCA, convert it to another file format that can be read with software that is available at no cost.

3. Information created or exchanged with TDHCA through software applications and stored in databases will be made available through an export to comma-separated values (CSV) format or, after the vendor obtains approval from TDHCA, another format that can be read with software that is available at no cost.

An information request received by the contractor directly from the public will be communicated to TDHCA by the close of the business day after the day the request is received. After gathering all information that is responsive to the request, but in no event later than 5 business days after receiving the information request, the contractor will transfer the information to TDHCA for review so that TDHCA can redact information that TDHCA is specifically authorized to redact, and determine whether any of the information should be otherwise withheld. The contractor shall not provide any requested information directly to the public.

If contractor cannot gather and transfer all responsive information to TDHCA within the 5 business day time limit, contractor shall contact Jeff Pender, TDHCA Legal Services at (512) 475-4752, as soon as it determines it cannot make the 5 business day deadline, but, in no event any later than 3 business days after receiving the request for information.

XV. DISCLOSURE

If Vendor is selected, then upon notification that Vendor has been selected, Vendor shall submit to the Department a copy of the Certificate of Interested Parties that Vendor has filed with the Texas Ethics Commission pursuant to 1 TAC Chapter 46. If this procurement notice indicates that the contract will be composed of this procurement notice, the Vendor's signed response, and any additional terms agreed to in writing, the contract will be effective only upon the receipt by the Department of a copy of the properly executed and filed Certificate of Interested Parties, and the execution and issuance by the Department of the purchase order for these services. If this procurement notice indicates that the contract will be composed of a single written agreement, the contract will be final only upon the receipt by the Department of a copy of the properly executed and filed Certificate of Interested Parties, and the execution of the contract by both parties.

Exhibit A

Texas Department of Housing and Community Affairs

Terms and Conditions

Alphabetical Order

1. Abandonment or Default

If the Respondent defaults on the contract, TDHCA reserves the right to cancel the contract without notice and either re-solicit or re-award the contract to the next best responsive and responsible respondent. The defaulting Respondent will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the TDHCA based on the seriousness of the default. *In the event of abandonment or default, Respondent will be responsible for paying damages to TDHCA including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TDHCA resulting from the Respondent's non-performance.*

2. Additional Categories

Additional categories of goods or services may be added to the contract at offer rates for equivalent categories and under the same terms and conditions of the existing contract. Categories are to be prorated according to period of coverage. The cap, or limit that can be added to the contract for categories is dependent upon agreement of both parties.

3. Amendments

Except as provided in this Contract, this Contract may be amended only upon written agreement between TDHCA and Respondent; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.

4. Americans With Disabilities Act

Respondent represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations,, as each may be amended.

5. Antitrust

Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent or the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws; or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as the Respondent.

6. Applicable Law; Venue

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting agency.

7. Assignment

Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the TDHCA. Any attempted assignment in violation of this Section is void and without effect.

8. Binding Effect

The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.

9. Buy Texas

In accordance with Texas Government Code, Section 2155.4441 of the Texas Government Code, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

10. Change in Law and Compliance with Laws

Respondent must comply with all laws, regulations, requirements and guidelines applicable to a Respondent providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TDHCA reserves the right, in its sole discretion, to

unilaterally amend this Contract prior to award and throughout the term of the contract to incorporate any modifications necessary for TDHCA's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements, and guidelines.

11. Computer Equipment Recycling Program

If Respondent is submitting a response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

12. Confidentiality and Open Records

Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). Respondents are encouraged to minimize the amount of information submitted that reveals any privacy or proprietary interests, as defined in the Public Information Act. If Respondent includes such information in its response, Respondent shall also include a prominent notice that the response contains information that Respondent claims reveals privacy or proprietary interests. If Respondent's response is the subject of a public information request, TDHCA will make a good faith attempt to notify Respondent at its address of record, and seek a decision from the Attorney General as to whether the information should be released. Respondent will have an opportunity to provide arguments to the OAG, in writing, in support of its claim to withhold the information before any information is released.

In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with TDHCA pursuant to this contract available in a format that is accessible by the public at no additional charge to TDHCA.

The following are the format requirements of this contract:

1. Information created or exchanged with TDHCA on paper will be made available either on paper or scanned Portable Document Format (PDF) files.
2. Information created or exchanged with TDHCA through email, email attachments, or other form of electronic file transfer will be made available in the same format in which it was originally created or exchanged, with the following exception. If the requestor is unable to read the original format with software that they already own or is available at no cost, the Respondent will either print the requested information, convert it to PDF, or after obtaining approval from TDHCA, convert it to another file format that can be read with software that is available at no cost.
3. Information created or exchanged with TDHCA through software applications and stored in databases will be made available through an export to comma-separated values (CSV) format or, after the Respondent obtains approval from TDHCA, another format that can be read with software that is available at no cost.

An information request received by the Respondent directly from the public will be communicated to TDHCA by the close of the business day after the day the request is received. After gathering all information that is responsive to the request, but in no event later than 5 business days after receiving the information request, the Respondent will transfer the information to TDHCA for review so that TDHCA can redact information that TDHCA is specifically authorized to redact, and determine whether any of the information should be otherwise withheld. The Respondent shall not provide any requested information directly to the public.

If Respondent cannot gather and transfer all responsive information to TDHCA within the 5 business day time limit, Respondent shall contact Jeff Pender, TDHCA Legal Services at (512) 475-4752, as soon as it determines it may not make the 5 business day deadline.

13. Damage to Government Property

In the event of loss, destruction or damage to any TDHCA or State of Texas property by Respondent or Respondent's employees, agents, subcontractors, and suppliers, Respondent shall be liable to TDHCA and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property. Respondent will reimburse TDHCA and the State of Texas for such property damage within ten (10) calendar days after Respondent's receipt of TDHCA's notice of amount due.

14. Debts or Delinquencies to State

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

Respondent agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

15. Deceptive Trade Practices; Unfair Business Practices

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

16. Default

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

17. Disclosure of Interested Parties

Respondent represents and warrants that if selected for award of a contract as a result of the Solicitation, Respondent will submit to TDHCA a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.

18. Discounts

If Respondent at any time during the term of the contract provided a discount on the final contract costs, Respondent will notify TDHCA in writing ten (10) calendar days prior to the effective date of the discount. TDHCA will generate a Purchase Order Change Notice /Amendment and send a revised Purchase Order or fully executed Amendment (containing both party signatures) to Respondent.

19. Dispute Resolution

The dispute resolution process provided for in, Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract.

20. Drug Free Workplace

The Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. §701 *et seq.*) and maintain a drug-free work environment.

21. Electrical Items

All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

22. Electronic and Information Resources Accessibility Standards, As Required by Texas Administrative Code (TAC), Title 1, Part 10, §213 (Applicable to State Agency and Institution of Higher Education Purchases Only).

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

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

23. Eligibility

Under the Texas Government Code, § 2155.004 (relating to certain taxes), Respondent represents and warrants that Respondent is not ineligible to receive this Contract and acknowledges that this Contract may be terminated

and payment withheld if this representation and warranty is inaccurate. Respondent represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas. Also, Texas Government Code, § 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

24. Equal Employment Opportunity and Contract Work Housing and Safety Standards Act

Respondent represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities. Respondent also represents and warrants its compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

25. E-Verify System

Respondent certifies that it utilized and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of: 1) all persons employed to perform duties within Texas during the term of the contract; and 2) all persons, including subcontractors, assigned by the Respondent to perform work pursuant to the Contract within the United States of America.

26. Family Code

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

27. False Statements

Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.

28. Federal Occupational Safety and Health Law

Respondent represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

29. Federal, State, and Local Requirements

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

30. Felony Criminal Convictions

Respondent represents neither Respondent nor its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Respondent has fully advised *TDHCA* in writing of the facts and circumstances surrounding the conviction.

31. Financial Interests; Gifts

Respondent represents and warrants that neither Respondent nor any person or entity that will participate financially in this Contract has received compensation from *TDHCA* or any agency of the State of Texas for participation in preparation of specifications for this Contract. Respondent represents and warrants that it 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 any public servant or employee in connection with the submitted Response.

32. Force Majeure

Neither Respondent nor TDHCA shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

33. Funding/Excess Obligations Prohibited/Non-Appropriation

The contract is subject to termination or cancellation, without penalty to TDHCA, either in whole or in part, subject to the availability of state funds. TDHCA is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TDHCA becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either TDHCA's or Respondent's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of termination or cancellation under this Section, TDHCA will not be liable to Respondent for any damages, that are caused or associated with such termination, or cancellation, and TDHCA will not be required to give prior notice.

36. HUBs

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

35. Immigration

Respondent represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. §1101 *et seq.*) and all subsequent immigration laws and amendments..

36. INDEMNIFICATION

RESPONDENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TDHCA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF RESPONDENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND THE AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Intellectual Property

RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS TDHCA AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1)THE PERFORMANCE OR ACTIONS OF RESPONDENT PURSUANT TO THIS CONTRACT; (2)ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER: AND/OR (3)TDHCA'S AND/OR RESPONDENT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TDHCA BY RESPONDENT OR OTHERWISE TO WHICH TDHCA HAS ACCESS AS A RESULT OF RESPONDENTS PERFORMANCE UNDER THE CONTRACT. RESPONDENT AND TDHCA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, RESPONDENT WILL REIMBURSE TDHCA AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES

OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF TDHCA DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF RESPONDENT OR IF TDHCA IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TDHCA WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND RESPONDENT WILL PAY ALL REASONABLE COSTS OF TDHCA'S COUNSEL.

37. Independent Contractor

Respondent and Respondent's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Respondent nor TDHCA is an agent of the other and neither may make any commitments on the other party's behalf. Should Respondent subcontract any of the services required in the contract, Respondent expressly understands and acknowledges that in entering into such subcontract(s), *TDHCA* is in no manner liable to any subcontractor(s) of Respondent. In no event shall this provision relieve Respondent of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Respondent shall have no claim against TDHCA for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between Respondent and TDHCA.

38. Insurance

Respondent represents and warrants that it will, within five (5) business days of executing this agreement, provide TDHCA with current certificates of insurance or other proof acceptable to TDHCA of the following insurance coverage:

Standard Workers Compensation Insurance covering all personnel who will provide services under this Contract, does not apply to Sole Proprietors;

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

Respondent represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with "A" rating from A.M. Best, and authorized to provide the corresponding coverage. Respondent also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to TDHCA. Respondent represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide TDHCA with an executed copy of the policies immediately upon request.

39. Legal and Regulatory Actions

Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to the TDHCA's consideration of the Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or service, or otherwise be relevant to TDHCA's consideration of the Response. In addition, Respondent represents and warrants that it shall notify TDHCA in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.

40. License Grant

Respondent hereby grants to TDHCA a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restricts and without accounting to Respondent; and (b) to sublicense any or all such rights to third parties.

41. Limitation on Authority

Respondent shall have no authority to act for or on behalf of *TDHCA* or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligations, expense or liability of any kind on behalf of TDHCA or the State of Texas.

42. Lobbying Prohibition

Respondent represents and warrants that TDHCA's payments to Respondent and Respondent's receipt of appropriated or other funds under the contract are not prohibited by Sections §556.005 or §556.0055 of the Texas Government Code. Respondent certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Respondent also must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

43. Media Releases

Respondent shall not use TDHCA's name, logo, or other likeness in any press release, marketing material, or other announcement without TDHCA's prior written approval. TDHCA does not endorse any Respondent, commodity, or service. Respondent is not authorized to make or participate in any media releases or public announcement pertaining to this procurement, the Response or the services to which they relate without TDHCA's prior written consent, and then only in accordance with explicit written instructions from TDHCA.

44. Merger

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

45. No Conflicts of Interest

Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

46. No Implied Waiver

No provision of the contract shall be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to TDHCA as an agency of the State of Texas or otherwise available to TDHCA. The failure to enforce or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to TDHCA by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

47. No Liability Upon Termination

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

48. No Quantity Guarantees

TDHCA makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract.

49. No Third-Party Beneficiaries

The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third- party beneficiary or otherwise.

50. Notices

Any written notices required under this Contract will be by either hand delivery to Respondent's office address specified on Page 1 of this Contract or by overnight carrier, to Texas Department of Housing and Community Affairs, PO Box 13941, Austin, TX 78711-3911. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this section by written notification to the other party.

51. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed PO Contract, Attachments, Procurement Document, Response to the Procurement Document, Negotiated Items signed by both parties.

52. Partially Completed Work

No later than the first calendar day after the termination of this Contract, or at *TDHCA* request, Respondent shall deliver to *TDHCA* all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of this Contract. Respondent shall not make or

retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the *TDHCA*.

53. Patent, Trademark, Copyright, and Other Infringement Claims

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

54. Payments/Prompt Payment

Prior to authorizing payment to Respondent, *TDHCA* shall evaluate Respondent's performance using the performance standards set forth in all documents constituting the contract. Respondent shall provide invoices to *TDHCA* for Commodities/Services provided/performed. Invoices must be submitted not later than the 15th day of the month after the Services are completed. No payment whatsoever shall be made under this contract without the prior submission of detailed, correct invoices. Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

55. Payments-Refund

Respondent will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by *TDHCA* which are not expressly authorized under the contract.

56. Personnel

Respondent shall assign only qualified personnel to this Contract. Respondent, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required. Respondent shall provide to *TDHCA* prior written notice and obtain prior approval from the Department of any proposed change in key personnel involved in providing services under this Contract.

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

- (1) Respondents planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.
- (2) Subcontracting shall be solely at Respondent's expense.
- (3) *TDHCA* retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors.
- (4) A subcontract award (see 2 CFR §180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (5) Respondent shall be the sole contact for *TDHCA*. Respondent shall list a designated point of contact for all *TDHCA* inquiries.

57. Procurement of Recovered Materials

Respondent agrees to follow, as applicable, the requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during

the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

58. Property Rights/Work Made for Hire

For purposes of the contract, the term “Work Product” is defined as all work papers, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property and/or results of the services that are developed, produced, generated or provided to TDHCA in connection with, or as a result of, the services provided under the contract. TDHCA and Respondent intend this agreement to be a contract for the services and each considers and expressly intends and agrees that the Work Product to be rendered by Respondent shall be a work-made-for-hire. Respondent and Respondent’s employees will have no rights in or ownership of the Work Product or any other property of TDHCA. Respondent acknowledges and agrees that the Work Product (and all rights therein, including without limitation all intellectual property rights) belongs to and shall be the sole and exclusive property of TDHCA. If for any reason the Work Product would not be considered a work-made-for-hire under applicable law, Respondent does hereby irrevocably sell, assign, and transfer to TDHCA, its successors and assigns, the entire right, title and interest in and to the Work Product and any and all intellectual property rights embedded therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Respondent agrees to execute all papers and to perform such other property rights, as TDHCA may deem necessary to secure for TDHCA or its designee the rights herein assigned. In the event that Respondent has any rights in and to the Work Product that cannot be assigned to TDHCA, Respondent hereby grants to TDHCA an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon TDHCA’s request, Respondent shall deliver to TDHCA all completed, or partially completed, Work Product and any and all versions thereof. Failure to timely deliver such Work Product will be considered a material breach of the contract. Respondent will not make or retain any copies of the Work Product or any and all documentation or other products and results of the services without the prior written consent of TDHCA.

59. PROPRIETARY INFORMATION:

If Respondent asserts that any information in its response implicates its privacy or property interests (“Proprietary Information”), as more fully defined in Tex. Gov’t Code §552.305, Respondent must clearly identify such information in its response by placing the words, “Proprietary Information” in bolded, size 12 or greater font, at the top of each page that Respondent claims contains any Proprietary Information. If such information is later requested under the Texas Public Information Act, Respondent will be notified by TDHCA and given an opportunity to present arguments in writing to the OAG why the information should not be released. Respondent hereby agrees that any pages of its response not properly labeled “Proprietary Information” as described above, may be released to the public upon request.

60. Secure Erasure of Hard Disk Capability

All equipment provided to TDHCA by Respondent that is equipped with hard disk drives (*i.e.*, computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment’s useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.

61. Security Policy

Respondent shall comply with TDHCA policies regarding building access and physical security as appropriate. Respondent shall comply with TDHCA’s Computer Services Security Policies as appropriate. The selected Respondent shall be provided with such policies after the award has been made. The selected Respondent will conform to the State of Texas Security policies and procedures for handling data. Respondent acknowledges that no personally identifiable or private information collected will be used, sold or shared by the Respondent for any purpose other than the intended purpose. In the event of a security breach where names, mailing addresses, birthdates, social=0security numbers, credit card information and drivers license data is disclosed, Respondent will be responsible for notifying anyone affected by such a security breach. Failure to comply with security

standards may lead to the suspension or termination of this contract. If a security breach occurs on the agency's side, the selected Respondent will not be liable if the agency is at fault.

62. Service Adjustment/Contingency Requirements

The State envisions the necessity from time to time to incur additional changes against this contract to be considered "Service Adjustments/Contingency Requirements" (SACR). This is to include any service recognized to be needed to accommodate unforeseen occurrences. This SACR shall not exceed agreed upon percentage by both parties of the total estimated cost by the awarded Respondent.

63. Severability Clause

If any provision of the contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

64. Signatories

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

65. Smoking

TDHCA has a policy of being a smoke-free agency. The policy reflects our commitment to providing a healthy environment for all our employees and visitors. This policy prohibits smoking within any state building or on the grounds. Respondent, by acceptance of this contract, agrees to abide by this policy when on the property of TDHCA.

66. Strict Compliance

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

67. Substitutions

Substitutions are not permitted without written approval from TDHCA.

68. Records Retention

Respondent shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Respondent for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

69. Sovereign Immunity

The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the TDHCA or the State of Texas of any immunities from suit or from liability that the TDHCA or the State of Texas may have by operation of law.

70. Subcontractors

Respondent may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the TDHCA. Subcontracts, if any, entered into by the Respondent shall be in writing and be subject to the requirements of the contract. Should Respondent subcontract any of the services required in the contract, Respondent expressly understands and acknowledges that in entering into such subcontract(s), TDHCA is in no manner liable to any subcontractor(s) of Respondent. In no event shall this provision relieve Respondent of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.

71. Survival of Terms

Expiration or termination of the contract for any reason does not release Respondent from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

72. Taxes

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. TDHCA will furnish Tax Exemption Certificates upon request. Respondent represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Respondent or its employees. TDHCA shall not be liable for any taxes resulting from the contract.

73. TDHCA's Right to Audit

Respondent will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Respondent pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by TDHCA and the State of Texas.

74. Television Equipment Recycling Program

If Respondent is submitting a response for the purchase or lease of covered television equipment, then Respondent certifies that it is in compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

75. Terms and Conditions Attached to Response

Any terms and conditions attached to the response will not be considered unless specifically referred to in the response.

765. Term and Termination

This Contract shall become effective on the date signed by the appropriate Procurement official of *TDHCA* and shall terminate approximately twelve months later, unless otherwise sooner terminated as provided in this contract. Additionally, this contract may be renewed with consent of both parties, for three (3) additional 12-month periods. Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Contract. *TDHCA* may, in its sole discretion for convenience or due to failure to perform, terminate this Contract upon thirty (30) days' written notice to Respondent. Such notice may be provided by facsimile, email, or overnight mail, and is effective upon Respondent's receipt.

(a) Convenience

TDHCA reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if TDHCA determines that such termination is in the best interest of the state. In the event of such a termination, Respondent must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TDHCA shall be liable for payments limited only to the portion of work TDHCA authorized in writing and which Respondent has completed, delivered to TDHCA, and which has been accepted by TDHCA. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TDHCA shall have no other liability, including no liability for any costs associated with the termination.

(b) Cause/Default/Remedy

If the Respondent fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract, TDHCA may, upon written notice of default to the Respondent, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract. TDHCA has the option to notify Respondent of any failure and request resolution within ten (10) working days of notification. TDHCA may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TDHCA notifies the Respondent in writing prior to the exercise of such remedy. The Respondent shall be liable for all costs and expenses, including court costs, incurred by TDHCA with respect to the enforcement of any of the remedies listed herein.

(c) Rights upon Termination or Expiration

In the event that the Contract is terminated for any reason, or upon its expiration, TDHCA shall retain ownership of all associated work products and documentation obtained from the Respondent under the Contract.

77. Testing and Inspection

TDHCA may test and inspect goods and services purchased under the Contract to ensure compliance with the specification of this Procurement and the Contract. *TDHCA* may also test and inspect goods and services before they are purchased under the Contract.

Authorized *TDHCA* personnel shall have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, *TDHCA* inspections will not disrupt the Respondent's daily operations. Tests shall be performed on samples submitted with the Response or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Respondent. In the event the goods tested fail to meet or exceed all conditions and requirements of the RFP and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Respondent or held for disposition at the Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state.

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

78. Trademark License

TDHCA hereby grants to Respondent, for the term of the contract, a limited non-exclusive, royalty-free, non-assignable, non-transferable license to reproduce TDHCA's trademarks (as depicted in Exhibit) on published materials in the United States related to the performance of the contract, provided that such license is expressly conditional upon, and subject to, the following:

- (1) Respondent is in compliance with all provisions of the contract;
- (2) Respondent's use of the trademarks is strictly in accordance with the quality standards and in conformance with the reproduction requirements set forth in Exhibit or as otherwise communicated by TDHCA;
- (3) Respondent takes no action to damage the goodwill associated with the trademarks, and refrains from any attempt to contest, attack, dispute, challenge, cancel and/or oppose TDHCA's right, title and interest in the trademarks or their validity;
- (4) Respondent makes no attempt to sublicense any rights under this trademark license; and
- (5) Respondent complies with any marking requests TDHCA may make in relation to the trademarks, including without limitation to use the phrase "Registered Trademark", the symbol "™", the registered trademark symbol "®" and/or any equivalent thereof.

79. Trademark Ownership

Respondent hereby acknowledges and agrees that the trademarks remain the exclusive property of TDHCA, that all right, title and interest in and to the trademarks is exclusively held by TDHCA, and all goodwill associated with such trademarks inures solely to TDHCA.

80. Unfair Business Practices

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

81. Use of State Property

Respondent is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, TDHCA's office space, identification badges, TDHCA information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TDHCA-issued software, and the TDHCA Virtual Private Network (VPN client)), and any other resources of TDHCA. Respondent shall not remove State Property from the continental United States. In addition, Respondent may not use any computing device to access TDHCA's network or e-mail while outside of the continental United States. Respondent shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of Respondent, Respondent shall be responsible for (i) all repair and replacement charges incurred by TDHCA that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Respondent's use of State Property that exceeds the contract scope. Respondent shall fully reimburse such charges to TDHCA within ten (10) calendar days of Respondent's receipt of TDHCA's notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to TDHCA under contract, at law, or in equity.

82. Waiver of Consequential Damages

NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, ANTICIPATED OR OTHERWISE, OR LOSS OF REVENUES IN CONNECTION WITH OR ARISING OUT OF, OR IN CONNECTION WITH, THE SUBJECT MATTER OF THIS CONTRACT.

83. Vendor Past Performance

The State Procurement Division (SPD), a division of the Comptroller of Public Accounts (CPA), administers a vendor performance program for use by all customers per Texas Government Code (TGC), §2262.055, and 34 Texas Administrative Code (TAC), §20.108. The Vendor Performance relies on the customer's participation in gathering information on vendor performance. State agencies shall report vendor performance on purchases over \$25,000 from contracts administered by CPA, or any other purchase over \$25,000 made through delegated authority granted by CPA (TAC 20.108), or purchases exempt from CPA procurement rules and procedures. State agencies are additionally encouraged to report vendor performance on purchases under \$25,000.

Vendor Performance shall be reported through the CPA Vendor Performance Tracking System –

<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking>

The purpose of the Vendor Performance Tracking System is to:

- *Identify vendors that have exceptional performance
- *Aid purchasers in making a best value determination based upon vendor past performance
- *Protect the state from vendors with unethical business practices
- *Provide performance scores in four measurable categories for the CMBL vendors
- *Track vendor performance for delegated and exempt purchases

(Updated 20220120)

EXHIBIT B

EXECUTION OF PROPOSAL AFFIRMATION CLAUSES RFP #332-RFP23-1001

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

By signature hereon, Respondent certifies that:

- A. All statements and information prepared and submitted in the response to this RFP are current, complete, and accurate.
- B. Respondent 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 response.
- C. Neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent or anyone acting for such firm, corporation, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated the contents of this Proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for this RFP.
- D. A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been convicted of any offense related to the direct support or promotion of human trafficking. Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- E. Respondent represents and warrants that it is not an abortion provider or an affiliate of an abortion provider as those terms are defined in Texas Government Code, Chapter 2272, Prohibited Transactions.
- F. Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, Respondent qualifies as a Texas Resident Bidder as defined in Section 2155.444(c) of the Texas Government Code.
- G. Pursuant to Section §2155.004(a) of the Texas Government Code, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from TDHCA to participate in the preparation of the specifications or solicitation on which this Response or contract is based. Under Section §2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity names in the Response or contract is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- H. In accordance with Section §669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of the Agency, (2) a person who at any time during the four years before the date of the contract was the executive head of the Agency, or (3) a person who employs a current or former executive head of the Agency.
- I. In accordance with Section 2252.901 of the Texas Government Code, Respondent represents and warrants that for professional services contracts as described by Chapter 2254 of the Texas Government Code, if a former employee of the TDHCA was employed by Respondent within one year of the employee's leaving the TDHCA, then such employee will not perform services on projects with Respondent that the employee worked on while employed by the TDHCA.
- J. Under Texas Government Code §669.003 (relating to contracting with an executive of a state agency), by signature hereon, Respondent certifies that it:
 - (A) (1) is not the executive head of the agency contracting herein; (2) was not at any time during the past four years the executive head of the agency contracting herein; (3) does not employ a current or former executive head of a state agency; or
 - (B) Respondent and the agency contracting herein have complied with the requirements of the above referenced statute concerning board approval and notice to the Legislative Budget Board.Respondent acknowledges that this Contract may be terminated at any time, and payments withheld, if this certification is false.

EXHIBIT B**EXECUTION OF PROPOSAL
AFFIRMATION CLAUSES
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- K. Respondent agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
- L. Pursuant to Section 572.069 of the Texas Government Code, Respondent certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for TDHCA involving Respondent within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
- M. Respondent agrees that any payments due under this contract will be applied towards any debt or delinquency that is owed to the State of Texas.
- N. In accordance with 13 TAC §6.94(a) (9), Respondent shall provide to TDHCA the descriptions of its business continuity and disaster recovery plans.
- O. If Respondent is required to make a certification pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that Respondent does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Respondent does not make that certification, Respondent must indicate that in its Response and state why the certification is not required.
- P. Respondent certifies that it is not listed in the prohibited Respondents list authorized by Executive Order 13224 “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism”, published by the United States Department of the Treasury, Office of Foreign Assets Control.
- Q. If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of any contract resulting from this RFP. If Respondent does not make that verification, Respondent must so indicate in its Proposal and state why the verification is not required.
- R. If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of any contract resulting from this RFP against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its Proposal and state why the verification is not required.
- S. Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- T. Respondent certifies that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.
- U. Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a Response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under §2155.006 and 2261.053 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- V. Pursuant to §2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the Respondent or any other entity or person directly under this contract or indirectly through a

EXHIBIT B

**EXECUTION OF PROPOSAL
AFFIRMATION CLAUSES
RFP #332-RFP23-1001**

subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Respondent shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.

- W. By submitting the Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of Respondent and to bind Respondent under any contract that may result from the submission of this Response.

RESPONDENT (COMPANY): _____

SIGNATURE (INK): _____

NAME (TYPED/PRINTED) _____

TITLE: _____ **DATE:** _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE AND FACSIMILE NUMBERS: _____

TEXAS IDENTIFICATION NUMBER (TIN): _____



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 <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	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 #: _____

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
(mm/dd/yyyy)

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.

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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>

Item Number: Description:

[illegible]

Page 1 of 1
(Attachment A)

HSP Good Faith Effort - Method B (Attachment B)

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

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/tpasscmbldsearch/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 (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	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 (mm/dd/yyyy)	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: _____
Point-of-Contact: _____
E-mail Address: _____

State of Texas VID #: _____
Phone #: _____
Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____
Point-of-Contact: _____
Requisition #: _____

Phone #: _____
Bid Open Date: _____
(mm/dd/yyyy)

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 _____
Central Time Date (mm/dd/yyyy)

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).

(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.)

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