



OFFICE OF THE GOVERNOR

FINANCIAL SERVICES DIVISION

REQUEST FOR PROPOSALS

**Tourism Public Relations and Trade Relations Representation Services
Japan and Republic of Korean Markets Region**

Office of the Governor (OOG)

RFP No. 300-4-1032

NIGP CLASS ITEMS

918-07	918-26	918-76	961-28
961-53			

Posting Date: August 12, 2014

Proposal Opening Date and Time:, September 10, 2014 no later than 5:00 pm CST

PART A: SPECIAL INSTRUCTIONS

TABLE OF CONTENTS

A.1	DESCRIPTION AND REQUIREMENTS	3
A.1.1	Description of Services Required	3
A.1.2	Term of the Contract	3
A.1.3	Renewal and Extension Options	3
A.1.4	Termination	4
A.1.5	Amendments and Changes	5
A.1.6	Definitions	5
A.1.7	Overview	9
A.2	STATEMENT OF WORK – SERVICE REQUIREMENTS	11
A.3	FINANCIAL MATTERS	17
A.3.1	Contract Total	17
A.3.2	Continued Appropriations	17
A.3.3	No Debt Against the State	17
A.3.4	Purchase of Services	17
A.3.5	Contract	17
A.3.6	Delivery	17
A.3.7	Acceptance of Work Performed	18
A.3.8	Invoicing and Payment	18
A.3.9	Accounting Systems	19
A.3.10	Inspections	19
A.3.11	Audit, Access to Records	19
A.4	ADDITIONAL GENERAL TERMS AND CONDITIONS	20
A.4.1	Governing Law, Remedies, Venue	20
A.4.2	Licenses, Permits and Laws	21
A.4.3	Political Activity	21
A.4.4	Sectarian Activity	21
A.4.5	Americans with Disabilities Act	21
A.4.6	Proprietary Right/Copyright	21
A.4.7	Patent, Trademark, Copyright and Other Infringement Claims	21
A.4.8	Ownership of Documents	22
A.4.9	Intellectual Property	22
A.4.10	Data, Publicity, Public Information	23
A.4.11	Change of Name	23
A.4.12	Bankruptcy	24
A.4.13	Contractor Affirmations	24
A.4.14	Force Majeure	27
A.4.15	Civil Rights	27
A.4.16	Indemnification	27
A.4.17	Liability for Damage to Government Property	28
A.4.18	Non-Waiver of Rights	29
A.4.19	No Waiver of Sovereign Immunity	29
A.4.20	Severability	29
A.4.21	Compliance with Laws; Dealing with Public Servants	29
A.4.22	Federal, State, and Local Requirements	29
A.4.23	Drug Free Workplace	30

A.4.24	Insurance and Other Security	30
A.4.25	Assignment.....	30
A.4.26	Dispute Resolution.....	31
A.4.27	Order of Precedence.....	31
A.5	PROPOSAL REQUIREMENTS.....	32
A.5.1	Due Date of Proposals.....	32
A.5.2	Costs.....	32
A.5.3	Calendar of Events	32
A.5.4	Point of Contact	32
A.5.5	HUB Subcontracting Opportunities – Reference PACKAGE 2: Part B; Section B.2.5.....	32
A.5.6	Attachments Included with this RFP	33
A.5.7	Proposal Content	33
A.5.8	Organization of the Proposal.....	35
A.5.9	Compensation and Fees – Package 2 – Part B; Attachment D	36
A.5.10	References.....	36
A.5.11	Evaluation and Award of Contract.....	37
A.5.12	Submitting the Proposal	38

A.1 DESCRIPTION AND REQUIREMENTS

A.1.1 Description of Services Required

Respondents are invited to submit written proposals for a comprehensive and strategic Travel and Tourism public relations and marketing campaign that fully integrates consumer, media, travel trade, and meetings market activities in the primary and secondary target markets of the Japan and Republic of Korea Markets Service Region. The campaign shall create a responsible, accurate, and positive image of Texas, while effectively marketing and promoting the state as a premier travel destination in the primary target markets and secondary markets in the Japan and Republic of Korea Markets Service Region, as designated by OOG. The successful respondent will be expected to implement, oversee, and measure all activities within the primary and secondary target markets of the Japan and Republic of Korea Markets Service Region.

A.1.2 Term of the Contract

The Contract shall be from date of award and the services performed for a period beginning October 1, 2014 through August 2015, subject to the renewal and extension provisions below.

A.1.3 Renewal and Extension Options

- a. **Contract Renewals** – The Contract may be renewed for two (2) additional twelve (12) month periods, provided both parties agree in writing to do so, prior to the expiration date.
 1. Subject to the availability of funds, OOG and the Contractor may mutually agree to renew the performance period of the contract by extending the expiration date for a maximum renewal of two (2) additional twelve (12) month periods. OOG will exercise its option to renew the performance period by providing the Contractor with a written advance notice of intent to renew the performance period of the contract. In the written advance notice of intent, OOG will state the proposed total performance period of the contract. OOG will follow the written advance notice of intent with a written contract amendment which, when agreed upon in

writing by both parties, will extend the expiration date of the performance period. The written contract amendment will be executed no later than the last day of the current contract performance period.

2. Optional performance period will be limited to that specified above, and shall include the same services, including any amendments, as required in the previous performance period. Unit prices for services provided during any optional performance period shall not exceed those quoted for the optional performance periods by the Contractor in their original proposal.

b. **Contract Extensions** - Subject to availability of funds, OOG may exercise its right to extend the performance period of the contract by means of a written notice of intent to the Contractor, followed by a contract amendment. An extension may be used: 1) after the expiration of all available contract renewal periods; 2) in the event that OOG and the Contractor have decided not to renew the contract; or 3) in the event that circumstances require a temporary, short-term extension of performance under the contract. OOG will provide the Contractor with a sixty (60) day written advance notice of intent to extend the performance period of the contract. In this written notice to the Contractor, OOG will state the anticipated number of days or months in the extension period and the proposed total performance period of the contract. The contract amendment will be issued no later than the last day of the current contract performance period. OOG reserves the right to extend the performance period of the contract, on a month-to-month basis, for a maximum of twelve (12) additional months. All services provided during any extended performance period shall be subject to the same proposal prices, performance requirements and terms and conditions, including any amendments, as required in the previous performance period.

A.1.4 Termination

This contract shall terminate upon full performance of all requirements contained in this contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.

- a. **Termination for Convenience.** OOG and Contractor reserve the right to terminate the contract at any time for convenience, in whole or in part, by providing sixty (60) calendar days advance written notice (delivered by certified mail, return receipt requested) of intent to terminate. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. OOG shall be liable for payments limited only to the portion of work authorized by OOG in writing and completed prior to the effective date of cancellation, provided that OOG shall not be liable for any work performed that is not acceptable to OOG and/or does not meet contract requirements. All work products produced by the Contractor and paid for by OOG shall become the property of OOG and shall be tendered upon request.
- b. **Termination for Default.** OOG may, by written notice of default to the Contractor, terminate this contract, in whole or in part, for cause if the Contractor fails to perform in full compliance with the contract requirements, through no fault of OOG. OOG will provide a thirty (30) day written notice of termination to the Contractor (delivered by certified mail, return receipt requested) of intent to terminate, and OOG will provide the Contractor with an opportunity for consultation with OOG prior to termination.

1. Upon receipt of written notice to terminate, the Contractor shall promptly discontinue all services affected (unless the notice directs otherwise) and shall deliver or otherwise make available to OOG, all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing this Contract, whether completed or in process.
 2. Upon termination, OOG may take over the work and pursue the same to completion by contract with another party or otherwise.
 3. The Contractor will be required to reimburse OOG for any additional costs incurred as a result of the default.
- c. **No Liability Upon Termination.** If the Contract is terminated for any reason, the OOG and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Government Code, Chapter 2260.

A.1.5 Amendments and Changes

Any amendment or change to the contract performance requirements whether by modification or supplement, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representatives of the Contractor and OOG. Neither party to this Contract will be bound by any oral statements, contracts, or representations contrary to the written contract requirements and terms and conditions.

A.1.6 Definitions

- A. **Acceptable Quality Level:** The level of performance of requested services below which the contract will not be paid or damages may be assessed.
- B. **Addendum:** A modification of the specifications issued by OOG and distributed to prospective respondents prior to the opening of responses.
- C. **Advertising Equivalency Value:** Cost to the Contractor to make paid media placements of key messages on actual per-line cost for the publicity generated or other method per medium as agreed upon by the OOG.
- D. **Buyer FAM (Familiarization) Tour:** A complimentary or reduced rate travel program for qualified travel trade representatives (e.g. tour operators, travel agents, receptive tour operators, meetings and incentive planners, or other buyers) that includes some or all of the following: complimentary or reduced rate transportations, accommodation, attractions, admissions, and meals. A buyer tour is designed to acquaint participants with specific Texas travel destinations or suppliers to increase the participants' knowledge of the Texas tourism product and to encourage them to develop and/or expand travel packages to Texas. Buyer FAM Tours usually last between four (4) and seven (7) calendar days and usually include multiple Texas cities. Buyer FAM Tours may be individual or group tours.
- E. **Contract:** The contract awarded as a result of this RFP and all exhibits thereto, this RFP, any addendum issued in conjunction with this RFP, the successful respondent's proposal, any BAFO, and subsequent submission by respondent, shall all be fully incorporated therein as exhibits.

- F. **Contractor:** Respondent to Request for Proposal.
- G. **Convention and Visitors Bureau (CVB):** A local organization supported by hotel/motel occupancy taxes, government budget allocations, private memberships or a combination of any of these funding mechanisms. A CVB encourages groups to hold meetings, conventions, and trade shows in its city, offers assistance for these meetings, and promotes tourism to its city. In some communities these activities may be accomplished by a Chamber of Commerce.
- H. **Cooperative Marketing:** Marketing and/or promotional activity in which OOG and at least one (1) other partner pool their resources to provide effective and attractive marketing and promotional opportunities.
- I. **Destination Marketing Organization (DMO):** A category of membership of various travel trade associations which includes state or provincial tourism offices, convention and visitor bureaus, and chambers of commerce, etc., which promote a city, region, or state as a travel destination.
- J. **Editorial Calls:** Telephone calls or personal visits conducted to encourage media coverage of Texas.
- K. **Feature Brief:** A release distributed to the media that is typically more detailed than a news release and describes and promotes an aspect(s) of Texas travel. Feature briefs are designed to generate placements of feature stories.
- L. **Fulfillment Materials:** Pamphlets, brochures, travel guides, press kits, and any such materials that may be requested by individuals, travel trade, or media.
- M. **Historically Underutilized Businesses (HUBs):** Business that is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman, and/or Service Disabled Veteran, who reside in Texas and actively participate in the control, operations, and management of the entity's affairs. Texas Government Code, Title 10, Subtitle D, Chapter 2161. <http://www.window.state.tx.us/procurement/prog/hub/>.
- N. **Media:** Includes, but is not limited to, consumer and trade broadcast (e.g. radio, television, etc.), print (newspapers, magazines, etc.), and interactive computer/mobile device media (Internet, World Wide Web, Social Media, etc.).
- O. **Media FAM (Familiarization) Tour:** A complimentary or reduced rate travel program to Texas for qualified members of the most effective trade and consumer media in order to promote travel to Texas. Media FAM Tours may include complimentary or reduced rate transportation, accommodations, attractions admissions, and meals. A Media FAM Tour is designed to acquaint media with specific Texas destinations and/or travel experiences to encourage and generate positive media coverage about travel to Texas. Media FAM Tours can last up to seven (7) calendar days and usually, but not always, include travel to multiple Texas cities.
- P. **Media Measure:** Term used to describe the dollar value (U.S.) of non-paid media coverage of Texas.
- Q. **Media Mission:** A concentrated Public Relations effort consisting of one-on-one editorial

appointments for Contractor account team members and/or OOG representatives and/or Texas travel industry partners with key representatives of targeted media for the purpose of generating positive media coverage about Texas and travel to Texas. A media mission may include other promotional or special events and is usually conducted within a specific geographic market during a brief period of time and can include multiple destinations.

- R. **Monthly Service Fee:** The firm, fixed monthly fee OOG will pay the Contractor to fully compensate the Contractor for the costs of all of the Contractor's in-house services and expenses required to complete work under this Contract. Such expenses include: all labor (e.g., all agency account service time; project and account management, direction, supervision, and coordination; writing and editing of newsletters, speeches, news releases feature briefs, print and electronic clippings services, press kits, social media, etc.; strategic counsel; crisis management; accounting and billing; administrative support; legal services and fees, etc.; plans and reports; facilities; equipment, etc., as required to meet the contract performance requirements). The monthly service fee also includes all incidental and normal business operating expenses, such as local and long distance phone (landline and mobile) calls; facsimile; local travel; postage; local courier service; internal copying; supplies; materials, parking and other ongoing services performed. The monthly service fee does not include Reimbursables (A.1.6(Z)).
- S. **Motor Coach:** An over-the-road passenger coach or mini-bus with driver that transports buyer and media group FAM tour participants and their luggage within the state.
- T. **News Releases:** A one or two page printed or electronic document (with or without photographs and captions) or a video describing an aspect(s) of the Texas travel product sent to the media and designed to generate a hard news story placement. News releases may be distributed via a variety of means including, but not limited to: mail, fax, Internet (World Wide Web), satellite broadcast, etc. News releases may also be referred to as press releases.
- U. **Print, Digital, and Broadcast Publicity:** Publicity generated in a printed publication, online, digital, social media or broadcast (TV or radio) format.
- V. **Pro-Active Contact:** Contacts (telephone call, email or personal meeting) with key representatives of targeted media and/or travel trade pro-actively conducted by the Contractor to encourage media coverage (media contact) and/or development of travel packages featuring Texas travel product (trade contact).
- W. **Product Educational Seminar:** An independent destination marketing seminar for pre-qualified travel trade in target markets that is designed to inform and educate travel trade sales staff about Texas tourism products and services. A product educational seminar may be held in conjunction with other special events such as a trade show, sales mission, product launch, marketing or promotional event, meal function, reception, etc. Product educational seminars may be conducted in conjunction with Texas tourism partners or in-market travel industry partners.
- X. **Product Launch:** An event or series of events designed to present Texas suppliers' new and/or expanded tourism products to retail travel agents, tour operators, group leaders, meeting planners, media, etc. in target markets. A product launch may include special events, such as a trade show, product seminar, press event, promotional function, meal function, reception, etc.
- Y. **Promotions:** Media, travel trade, tie-in, and/or consumer direct marketing ventures (e.g., sweepstakes, reader holidays, trip giveaways, contests, etc.) that maximizes the awareness of

travel to Texas and/or the Texas travel product by reaching a mass audience through a variety of media, trade outlets or consumer direct tactics.

- Z. **Reimbursables:** Purchases made and external expenses incurred by the Contractor, on behalf of the OOG for services, work products, and local travel associated with coordinating and/or representing Texas Tourism at travel trade shows or missions and out-of-town travel, not included in the Contractor's monthly service fee. All reimbursables must be pre-approved, in writing, by OOG.
- AA. **Respondent:** An entity submitting a proposal in response to a solicitation.
- BB. **Sales Mission:** A concentrated marketing effort consisting of one-on-one sales contacts and other promotional activities and special events between the Contractor's account team and/or OOG representatives and/or Texas travel industry partners, and key travel trade for the purpose of encouraging tour operators, travel agents, meetings market professionals or other buyers to develop and sell travel to Texas. A sales mission may include other promotional or special events and is usually conducted within a specific geographic market during a brief period of time and can include multiple destinations.
- CC. **State of Texas Business Day:** Monday through Friday, 8:00 a.m. through 5:00 p.m., except for scheduled State of Texas and national holidays.
- DD. **State of Texas Fiscal Year:** The period beginning September 1 and ending August 31.
- EE. **Suppliers:** Attractions, accommodations, CVBs, and other businesses and organizations which supply tourism products.
- FF. **Target Markets:**
1. Primary: Japan and Republic of Korea Markets Service Region Target Markets (in order of importance) include: Japan
 2. Secondary: Japan and Republic of Korea Markets Service Region Markets include: Republic of Korea (South Korea).
- GG. **Texas Partners:** OOG, EDT, and any Texas tourism industry representatives or suppliers participating in a given marketing and/or promotional activity.
- HH. **Texas Tourism:** A program within the OOG that is responsible for promoting travel to and enhancing tourism development in Texas.
- II. **Travel Trade:** Retail travel agents, tour operators, group leaders, wholesalers, receptive operators, meetings market travel professionals and planners, corporate travel divisions, and other buyers and/or packagers of tourism products.
- JJ. **Wholesalers:** Individuals or companies that accumulate tour packages for sale to the travel industry (i.e. tour guides, and travel agents).

A.1.7 Overview

- a. **Economic Impact of Tourism.** Tourism benefits Texans. Total direct travel spending in Texas in 2013 was \$67 billion. Travel expenditures generated \$4.7 billion in state and local taxes. Travel and tourism continues to be one of the largest industries in the state. Travel and tourism directly supported 599,000 Texan jobs in 2013.
- b. **Mission.** It is the mission of the OOG Texas Tourism program to enhance and extend local economic development efforts by marketing Texas as a premier travel destination in domestic, out-of-state, and international markets, generating non-Texan travel to the state creating revenues and jobs.
- c. **Program Organization.** The OOG Texas Tourism is organized into three interrelated functional areas: Travel Research, Advertising, and Public Relations. Each area plays a critical role in the overall mission to market Texas as a premier travel destination. Collectively, these areas provide an integrated and synergistic marketing effort that supports the mission to generate non-Texan travel to the state.
 1. Travel Research provides data and information that identifies key consumer travel patterns and trends that drive OOG's tourism marketing activities, determining overall marketing strategies and key messages, advertising content and placement, selection of markets, and the development and evaluation of advertising and marketing programs. The Travel Research section also directs important tourism development outreach services, providing Texas communities with information and tools needed to develop tourist attractions and to effectively use tourism as an economic development tool.
 2. Advertising is the OOG's primary tourism marketing tool. Advertising efforts are outsourced using a full-service, contracted advertising agency. Most advertising is conducted outside the state. Advertising efforts include, but are not limited to: national and international advertising in consumer print publications; national cable television; direct mail; interactive media; domestic regional print and broadcast; and travel trade publications. In the domestic market, OOG uses the highly successful, nationally recognized, and award winning *Texas. It's Like a Whole Other Country* campaign. OOG also uses the Texas "patch" logo trademark in both the domestic and international markets (outside of Mexico) to effectively market Texas and all of its travel experiences throughout the world under the umbrella of a single, readily recognizable "Texas" travel product.

The Advertising section also manages OOG's brand and use of its Texas "patch" logo in ancillary marketing programs as well as coordinating with an in-market contractor to provide translation and other services as needed.

3. The Public Relations and Marketing area conducts tourism public relations activities, both domestically and internationally, to increase travel to the state by marketing and promoting Texas as a premier travel destination to consumers, the media, and the travel trade (including meetings market). Traditionally, strategies and tactics pursued have included, but have not been limited to the following consumer, media, and travel trade (including meetings market) activities: consumer promotions; representing Texas in domestic and international travel trade and consumer shows; conducting travel trade and media missions and educational seminars; conducting media and trade FAM tours within Texas to acquaint the travel trade and media with the Texas travel product. Primary and secondary target markets for state services

contract include those in Section A.1.6(FF) and any other areas that may be identified by OOG's travel research throughout the contract period.

Because research shows that domestic travel decisions are primarily consumer driven, Public Relations efforts have focused on the media and consumer-direct marketing and promotion activities. However, because the travel trade remains a highly influential factor in international travelers' travel planning and trip decision process, marketing to the travel trade in international markets remains a component of the overall public relations effort.

While Public Relations efforts are primarily targeted outside the state, in-state activities are also conducted as needed to create awareness among the Texas public, the Texas media, and Texas travel industry partners about the importance of tourism as a means of economic development in the state (e.g., Texas Tourism Week which is usually held the first part of May of each year and coincides with National Tourism Week), and to encourage in-state travel by Texans to the state's scenic, historical, cultural, natural, agricultural, educational, recreational, and other attractions.

The Public Relations program includes cooperative marketing opportunities that enable the state's travel industry suppliers to jointly market their destinations and products with the state in OOG's tourism marketing and promotional activities. Cooperative marketing programs must offer suppliers cost savings, while extending awareness, reach and exposure of the Texas travel and tourism message and product. Fees generated from cooperative marketing programs are used to help offset some of OOG's costs for conducting these activities.

- d. **Positioning.** Research indicates that many domestic and international travelers have a stereotypical and one-dimensional image of Texas, recognizing the state for its rich cowboy image and western heritage, but also perceiving the state to be a hot, flat, dry and dusty place with limited variety of travel experiences and geography. Domestically, the *Texas. It's like a Whole Other Country* campaign stresses the "experiential value" of a Texas vacation. Research indicates that travelers make their travel decisions based upon the activities they wish to participate in while on vacation. Therefore, OOG uses the *Texas. It's Like a Whole Other Country* slogan and the Texas "patch" logo to leverage the state's positive cowboy image while communicating to consumers the "experiential value" that a Texas vacation offers by focusing on the state's many diverse travel activities and experiences. This branding effort has successfully linked and integrated the campaign slogan and the Texas "patch" logo with Texas tourism and has produced valuable brand recognition and recall among key audiences. In Mexico, a similar positioning effort is made using the slogan *Texas. De Todo un Poco. Y Mas.* which loosely translated means "Texas. A little of everything. And more." The Texas "patch" logo is the branding mechanism used in all other international markets. These items are non-negotiable.
- e. **Current Marketing Plan.** A copy of OOG's current tourism marketing plan can be obtained at www.travel.state.tx.us. The plan includes briefings on each of the primary target markets and identifies key target audiences.
- f. **Travel Research Information.** OOG's travel research reports and information can also be obtained at www.travel.state.tx.us.

A.2 STATEMENT OF WORK – SERVICE REQUIREMENTS

A.2.1 Marketing and Public Relations Requirements

OOG strives to use the most innovative and cost-effective marketing programs to raise awareness of Texas as a premier travel destination. This is accomplished by aggressively marketing and promoting the state to consumers, the media, and the travel trade industry (including the meetings market). With this in mind, the Contractor shall have the following goals while providing public relations and trade relations services for OOG to raise awareness on a state, national, and international level of Texas as a premier travel destination:

- a. Generate maximum positive press coverage;
- b. Manage all Texas Tourism marketing efforts as directed;
- c. Manage Texas Tourism social media promotion in Target Markets as needed and directed;
- d. Conduct high profile consumer, media, and travel trade promotions;
- e. Promote and market Texas as a travel destination to generate qualified travel trade and media leads for Texas travel industry partners, generate Texas travel packages, and ultimately travel to Texas;
- f. Create effective cooperative marketing programs that provide for maximum partner participation.
- g. Generate measurable results from public relations and marketing efforts including: advertising equivalency value of positive media coverage generated, exposure of the Texas travel product to targeted consumers, and tour product development.

Contractor shall propose target measures to use in evaluating work in reaching the goals. Measures will include, but are not limited to:

- a. Dollar value in advertising equivalency of positive media generated by the Contractor;
- b. Number of Consumers reached through promotional activities generated by the Contractor;
- c. Number of leads generated by the Contractor;
- d. Number of Texas Travel packages generated, as appropriate per market, by the Contractor.

A.2.2 Creative Services

The Contractor shall be responsible for coordinating the production of presentation, promotional and collateral materials, including but not limited to: press releases, collateral, print and digital invitations, photographs, mats, filming, editing, equipment rentals, display materials, brochures, as required to meet the contract performance requirements.

A.2.3 Key Messages

The Contractor shall propose a public relations campaign that:

- a. Uses communications strategies and messages that are at all times commensurate with the dignity of the OOG and the State of Texas.
- b. Incorporates the nonnegotiable items discussed in A.1.7 above.

A.2.4 Marketing and Public Relations Initiatives

To meet OOG's tourism mission (A.1.7(b)) and to fulfill the Marketing and Public Relations Requirements detailed in (A.2.1), OOG is seeking an agency that is capable of providing the

following services needed to provide tourism public relations:

a. **Consumer Promotions.** Conduct aggressive and attractive consumer promotions (A.1.6(Y)) to maximize awareness of the Texas travel product by reaching a mass audience through a variety of media, trade outlets, or consumer direct tactics.

b. **Media Relations.**

1. Conduct media relations activities with key consumer and travel trade media in target markets to generate media placements of key messages that result in maximum positive publicity of Texas as a premier travel destination.
2. Concentrate media relations activities during key travel planning seasons in target markets that provide the greatest potential to enhance the effectiveness and extend the reach of OOG's planned advertising activities.
3. Media relations activities may include, but are not limited to: proactive media contacts; press releases; feature briefs; respond to and fulfill leads; production, storage and fulfillment of collateral and promotional materials; press kits; press conferences; video; b-roll tapes; presentations; brochures; promotional items; newsletters; mat releases; photographs; editorials; translation of materials; editorial visits; interviews; media missions; FAM tours; product launches; promotions; events; clipping services; rental of venues.
4. Develop and regularly update an editorial calendar that supports OOG's planned advertising and marketing activities, key tourism seasons, prominent destinations and activities, regional and historical attractions, niche markets, and new tourism products. The calendar shall track and respond to media placement opportunities throughout the year for Texas in key regional, national, and international consumer and trade media.

A.2.5 Travel Trade Relations

- a. Promote Texas Tourism with the assistance of key travel trade industry representatives by conducting travel trade relations activities and marketing initiatives to the most effective travel trade businesses in each market to contribute to the development of the Texas tour product.
- b. Travel trade activities may include, but are not necessarily limited to: proactive trade contacts to market the Texas travel product; respond to and fulfill leads; production, storage, and fulfillment of collateral and promotional materials; marketing DVDs; presentations; brochures; promotional items; newsletters; photographs; slides; translation of materials; FAM tours; sales missions; trade shows; educational seminars; product launches; promotions; events; etc.

A.2.6 Response Tracking

The Contractor shall track and maintain records of all publicity of all Contractor-assisted placements promoting Texas tourism within each market. The Contractor shall use a standard method, approved by OOG, to calculate and report the Advertising Equivalency Value for all publicity generated. The Contractor shall report on the types and amount of media placements generated as specified in A.2.4.

A.2.7 Plan of Action

On or before June 1st of each year, the Contractor shall be responsible for development and submission of an annual Plan of Action for the services the Contractor proposes to undertake in all markets during the upcoming fiscal year. The Plan of Action shall include the Contractor's evaluations and recommendations for all proposed activities and projects, to be undertaken in each market, that will most effectively position Texas as a premier travel destination and create market awareness of and stimulate interest in travel to Texas among consumers, the media, and the domestic and international travel trade. Appropriate market research and planning should be conducted and provided in order to determine the most effective and cost efficient public relations effort. The Plan of Action must include a detailed budget for all proposed projects, activities, services to be performed as well as recommendations of specific goals and measurements which demonstrate the success of the Plan of Action in meeting the objectives outlined in Section A.2.1. The Plan of Action must be approved by OOG prior to implementation. Any changes made to the Plan of Action throughout the year must be approved by OOG in writing.

A.2.8 Marketing Plan

Upon OOG approval, the Plan of Action will be adopted and serve as the Public Relations and Marketing Plan. Contractor shall operate in accordance with an approved, detailed, written marketing plan, including budget allocation for using public relations and marketing activities (consumer, media and trade relations) to market and promote Texas as a premier travel destination in primary target markets and, when necessary, activities in secondary target markets. The Marketing Plan must meet or exceed the goals and objectives identified in A.2.1.

A.2.9 Measurement

OOG holds the following expectations for execution of work and how it will be performed:

- a. **Research and Planning.** Appropriate market research and planning should be conducted in order to determine the most effective and cost-efficient public relations effort. Activities should reinforce creative messages and appeal to the targeted audiences. The Contractor shall instigate long term planning, yet also be responsive to immediate opportunities that arise suddenly to ensure the most effective and cost-efficient marketing is utilized. The Contractor shall become familiar with and use travel research data and information made available by OOG and shall incorporate such research into campaign strategies. OOG's travel research reports are available at www.travel.state.tx.us.
- b. **Timelines.** OOG and the Contractor shall determine projected timelines at the onset of individual projects. Every effort should be made to produce public relations materials well ahead of the determined deadlines. Proofs of collateral and other promotional materials shall be submitted to OOG in a timely manner so that editing is implemented, approval given, and deadlines met.
- c. **Reports.** The Contractor's account team, in coordination with OOG's designated representative, shall compile and maintain an ongoing project sheet, containing project information such as name, anticipated date of completion, and date received, along with pertinent deadlines and contact information. Monthly, quarterly, and annual status reports shall be provided to OOG.
 1. **Monthly Report.** This report shall be delivered to OOG no later than the fifteenth (15) business day of each month and shall include the following:

- a. **Response Tracking Report** - includes a log sheet which records all monthly media placements generated during the prior month's period, including but not limited to, number of media value generated with explanations of media calculation, circulation, title of publication/program, title of article, media type, publication date, and description of activity that generated article/program. Copies of all clips listed on the log sheet shall be included in the monthly report;
 - b. **On Going and Completed Projects Update** - a description and evaluation of all on-going projects and activities completed by the Contractor (including all necessary back-up) during the prior month's period, including but not limited to, all services and work products (e.g., materials production/distribution, industry events, research, media relations, trade relations, special events, promotions, cooperative marketing ventures, etc.). An original copy of all materials produced shall be included with the report; and
 - c. **Accounting Report** - a monthly accounting of the prior month's expenditures, including the monthly service fee and all reimbursables by project, projected future expenditures, a cumulative total of expenditures for the fiscal year and contract period, and available budget balances for the remainder of the contract period and fiscal year.
2. **Quarterly Report.** Within thirty (30) days following the close of each quarter, the Contractor shall submit to OOG a written quarterly report of the Contractor's work and activities. The quarterly report shall include:
- a. **Log of Pro-Active Trade Contacts** - a log of all quarterly and annual pro-active trade contacts made during the prior quarter;
 - b. **Log of Pro-Active Media Contacts** - a log of all quarterly and annual pro-active media contacts made during the prior quarter;
 - c. **Mini-Texas Resource Center** - a log of all quarterly consumer, media, and travel trade inquiries received and fulfilled during the prior quarter, including the nature of the inquiries and all other pertinent information, and an inventory report of OOG materials on hand to fulfill inquiries;
 - d. **Response Tracking Report** - includes a log sheet which records all quarterly and annual media placements generated during the prior quarter, including all required media clips;
 - e. **Subcontracting Report** - a quarterly report of all subcontracts awarded during the month, including a listing of each subcontract made with HUBs (including certification number) and non-HUBs, the amount of each subcontract, subcontractor names and addresses, and the total dollar value of all subcontracts issued to HUBs and the total dollar value of all subcontracts issued to non-HUBs;
 - f. **Media List** - an electronic copy, in a Microsoft Office compatible format of the media data base the Contractor has used for media relations activities under this contract;
 - g. **Travel Trade List** - an electronic copy, in a Microsoft Office compatible format of the travel trade data base the Contractor has used for travel trade relations activities under this contract;
 - h. **Performance Update** - a report, including all relevant figures, on the Contractor's progress during the previous quarter toward meeting key contract performance standards and Contractor's evaluations and recommendations for meeting the annual performance standards targets. The report shall include quarterly totals for:
 1. progress toward achieving tour product development goal, including the number of packages to Texas destinations maintained and developed by travel trade businesses;
 2. amount of media value generated;
 3. number of consumers reached via Contractor generated promotions;
 4. number of pro-active media contacts; and

5. number of pro-active trade contacts.
- i. **Texas State Library Filings Report** - a report and listing of all work product (e.g., brochures, films, recordings, reports, documents, etc.) produced under the contract that are subject to filing with the Texas State Library;
 - j. **Crisis Management** - a report on all crisis management situations that occurred during the previous quarter, including an assessment of the actions taken to address the situations and speed recovery, the Contractor's evaluations and recommendations for any necessary actions or changes to the public relations and marketing plan; and
 - k. **Contractor's Evaluations and Recommendations** - Contractor's evaluation on all services (including all work projects and work products) performed under the Contractor's Plan of Action during the previous quarter and any recommendations for improvements, including plan revisions and additional services proposed for future implementation.

A.2.10 Annual Report

On or before September 15th of each year of the contract, the Contractor shall submit to the Director of Tourism a written annual report that provides a comprehensive overview of the performance of the Contractor's representation services, including, but not limited to, a review of all campaign activities, major accomplishments, performance summaries (including all performance measures), and industry awards received.

A.2.11 Contracted Account Staff

The Contractor shall dedicate qualified professional staff who are experienced in consumer, media, travel trade, and meetings market relations to work on OOG's tourism account in the primary and secondary target markets. The Contractor must dedicate an account manager to oversee all activities in the Japan and Republic of Korea Markets Service Region including, but not limited to, coordinating public relations and marketing campaigns in each market, account management, accounting for the entire contract, billing, and reporting. The account manager will be OOG's primary day-to-day contact. The account manager must be located in the office of the lead Contractor in the Japanese Market office and who oversees the entire contract. The Contractor may fulfill public relations and marketing activities in the secondary markets through subcontract awards. Personnel must include key account team members within each market who must work from the offices described in paragraph A.2.12 below. Key account team members shall be responsible for day-to-day activities required to support and service OOG's tourism account in the primary and secondary markets. Key account team members located in each market must be proficient in the English language and experienced in working on public relations and travel trade relations accounts within the respective market. OOG reserves the right to approve and accept key personnel. The contracted agency must notify OOG in writing if key personnel cannot continue on the account, and OOG must approve replacement personnel. Unless otherwise agreed to by the OOG, all key personnel must be experienced in working on accounts similar in nature and budget size to OOG's account and should be experienced in providing public relations services for tourism, travel and/or destination marketing organizations.

A.2.12 Physical Offices

Within the first thirty (30) days following the award of the contract, the Contractor shall have established and shall maintain throughout the contract performance period, a fully operational physical office within greater Tokyo. In addition, Contractor shall maintain a fully representative

office in or around Seoul. The Contractor must provide oversight of the contract from the Japanese office. The offices shall be adequately staffed and equipped at all times to provide day-to-day operations from that office to support and service OOG's tourism account in each of the primary and secondary markets. Unless otherwise agreed to by the OOG, all key members of the Contractor's Tourism Account Team (A.2.12) for each market shall be located at, and provide day-to-day operations from, the Contractor's office within that market.

A.2.13 Reimbursable Expenses and Cost Estimates

- a. Prior to subcontracting for any reimbursable expense on behalf of OOG, the Contractor shall submit a cost estimate that includes a description of the work to be performed for advance, written approval by OOG. All purchases of reimbursable goods and services are subject to OOG's then current competitive procurement procedures. When soliciting competitive bids, the Contractor shall provide appropriate bid information or documentation if requested by OOG with a cost estimate, along with the Contractor's recommendation for OOG's approval.
- b. Upon OOG approval, the Contractor shall complete the project as stated and agreed upon in accordance with the approved cost estimate. No purchases or expenses incurred on behalf of OOG shall be marked up in any way.

A.2.14 Postage

OOG will reimburse the Contractor for the purchase of postage required for fulfillment or other operations conducted on behalf of OOG, except that postage required for the Contractor's normal business operations which shall be included in the monthly service fee.

A.2.15 Crisis Management

The Contractor shall provide ongoing crisis management services in the Target Markets as needed and directed by OOG.

A.2.16 Coordination of Efforts

When appropriate, and as required by OOG, the Contractor shall coordinate activities with other OOG contracted firms (e.g., advertising, research, etc.), other state agencies and local, regional, and state-wide tourism industry associations and organizations involved with or affected by services provided under this Contract.

A.2.17 Subcontractors

Subcontractors providing services under this Contract shall meet the same requirements and level of experience as required of Contractor. No subcontract under this Contract shall relieve Contractor of responsibility for ensuring the requested services are provided. The Contractor shall not assign its rights under this Contract or delegate the performance of its duties under this Contract without prior written approval from the OOG.

A.3 FINANCIAL MATTERS

A.3.1 Contract Total

Any increase(s) in the contract amount for any given performance period as a result of increases in funding shall require an amendment to the Contract pursuant to section A.1.5, which will specify the new line item amount and new contract total.

A.3.2 Continued Appropriations

This Contract is contingent upon the continued availability of appropriated state funds. This Contract shall terminate, without liability or penalty to OOG, in the event that appropriations are not available.

A.3.3 No Debt Against the State

The award of this Contract does not guarantee that any level of services or funding will be authorized during the term of the contract. This Contract shall not be construed as creating any debt by or on behalf of the State of Texas, and all obligations of the State of Texas, regarding this Contract, are subject to the continued availability of funds, per Section A.3.2.

A.3.4 Purchase of Services

Excluding the Contractor's monthly service fee, OOG cannot and does not guarantee the purchase of any services during the contract performance period (including any optional contract renewal or extension periods). All quantities of services and work products (excluding the Contractor's monthly services fee) shall be purchased upon OOG's request, in "as needed" quantities, on an "as needed" basis, as determined by OOG.

A.3.5 Contract

The State of Texas shall issue written notice (e.g., contract, contract renewal or extension notice, etc.) authorizing the purchase of services specified in the contract performance requirements. No authorization for the purchase of any services is provided until the Respondent/Contractor receives such written notice from the state.

Immediately upon receiving the contract, the Contractor shall identify the person authorized to receive direction from OOG, to manage the work being performed, and to act on behalf of the Contractor ("Authorized Representative"). The Contractor shall ensure that its Authorized Representative, or his or her designee, is available at all times for consultation with OOG.

A.3.6 Delivery

All deliveries shall be made in accordance with the contract requirements. If the Contractor foresees problems, delays or adverse conditions which may prevent the Contractor from meeting delivery requirements, the Contractor shall give written notice to OOG which explains the reason(s) for the delay and which provides an alternate delivery for OOG approval. OOG has the right to extend delivery date if reasons appear valid to OOG, at its sole discretion. The Contractor shall keep OOG advised at all times of delivery status. Default in promised delivery (without accepted reasons) authorizes OOG to purchase services elsewhere and charge full increase, if any, in costs and handling to the defaulting Contractor. No substitutions or cancellations shall be permitted without prior

written approval of OOG. Default in delivery may result in termination of the contract, for reason of default, in accordance with paragraph A.1.4(b).

A.3.7 Acceptance of Work Performed

All work performed by the Contractor shall be accepted in writing by OOG (or designee) before payment will be approved. Acceptance shall be based upon Contractor's compliance with all contract requirements. OOG will not pay for work which is of poor quality and/or fails to fully comply with the contract requirements. Should OOG determine the Contractor's work to be of poor quality and/or Contractor fails to perform services which comply with the contract requirements, OOG may require the Contractor to promptly re-perform the services in conformity with the contract requirements, at no cost to OOG, or OOG may refuse to pay for Contractor's work. OOG may further require new performance or a refund in the event that poor quality or unacceptable work is discovered after payment has been made. Failure to perform work in compliance with all contract requirements may result in termination of the contract for reason of default, in accordance with A.1.4(b).

A.3.8 Invoicing and Payment

- a. The Contractor shall submit itemized monthly invoices for all services completed, delivered to and accepted by OOG, per the contract requirements.
- b. Invoices shall be submitted once every thirty (30) days. Invoice amounts shall be in U.S. dollars. Each invoice shall reference the OOG RFP # 300-4-1032. All invoices shall be made payable to the Contractor at the address shown on the contract.
- c. Invoices and payment inquiries shall be submitted directed to:
Accounts.Payable@gov.texas.gov or by mail to:
Office of the Governor
Accounts Payable
P.O. Box 12878
Austin, Texas 78711-2878
- d. Each invoice is subject to review and approval by OOG before payment will be processed. Normal payment processing time for services which have been completed, delivered to, and approved by OOG is thirty (30) calendar days after receipt of a valid, uncontested invoice. OOG will incur no penalty for late payment if payment is made in thirty (30) or fewer days from receipt of goods or services and an uncontested invoice. Payments shall be made consistent with Chapter 2251, Texas Government Code.
- e. The Contractor shall bill and OOG will make payment to the Contractor for approved costs incurred in accordance with the following:
 1. **Monthly Services Fee.** OOG will pay the monthly service fee, as stated on the State of Texas contract. Invoices for partial month's services shall be pro-rated and paid based upon a 30-day work period (month).
 2. **Reimbursable.** All purchases made or expenses incurred by the Contractor, on OOG's behalf, including those made by the Contractor's subcontractors, shall be billed at net costs. OOG will make payment to the Contractor for such reimbursable costs for which OOG has

pre-approved in writing, a Contractor's estimate (including all supporting documentation) and for which the Contractor has incurred costs, provided such services have been approved, completed, and received by OOG during the performance period. The Contractor's invoices submitted to OOG for payment shall include the following information:

- a. Original approved project estimate (with the OOG's written approval) and documentation of any variation from estimate, including signed change order, if applicable,
 - b. Proper bid documentation, when applicable, and receipts for all purchases and expenditures.
- f. Any invoice that does not comply with the minimum requirements stated above may not be considered valid and may be subject to rejection and/or return to the Contractor.
- g. Upon satisfactory completion by the Contractor of all the tasks identified in the contract, acceptance of such tasks by OOG, and delivery of the release of claims, the Contractor will be paid the unpaid balance of any money due for such tasks in accordance with the payment terms outlined in the contract. The Contractor agrees that determination of satisfactory completion will be based entirely on the judgment of the staff of OOG. The Contractor further agrees to exempt OOG and its staff from damages or claims arising from the enforcement of this provision.

A.3.9 Accounting Systems

The Contractor shall have an accounting system that accounts for costs in accordance with generally accepted accounting principles and is compatible with the State of Texas Uniform Statewide Accounting System. The Contractor's accounting system must include an accurate and organized file/records system for accounting and financial purposes for providing backup materials for billings.

A.3.10 Inspections

Throughout the contract period, all services, including all work products, shall be subject to inspection and test by authorized OOG representatives. OOG reserves the right, at all reasonable times, to have access to and inspect all goods and services being provided by the Contractor and its subcontractors, including but not limited to, all facilities, equipment, supplies, and pertinent records or written material relating to the contract requirements. Failure of the Contractor and its subcontractors to provide reasonable access to authorized OOG representatives who desire to perform such inspections or tests, or failure of services to comply with the contract terms shall be deemed unacceptable. In the event inspected or tested services are deemed unacceptable by OOG for failure to meet or exceed all contracts requirements, the cost of the sample used and the cost of testing shall be borne by the Contractor.

A.3.11 Audit, Access to Records

- a. The Contractor shall maintain and make available for review, inspection and/or audit books, records, documents, and any other evidence pertinent to performance on all work under this contract, including negotiated changes or amendments thereto, in accordance with accepted professional practices. The Contractor shall also maintain and make available the financial information and data used by it in the preparation or support of any cost submission or cost, price or profit analysis required by the State of Texas under this contract or any negotiated subcontract or change order and a copy of the cost summary submitted to OOG. The State of Texas, through any of its duly authorized representatives shall have access to such books, records, documents,

and other evidence for the purpose of review, inspection, copying, and/or audit. All such information shall be handled by the parties in accordance with good business ethics. The Contractor shall provide proper facilities within the State of Texas for such access and inspection. The Contractor shall also follow procedures developed by OOG's audit staff.

- b. The Contractor agrees to include A.3.11 in all its contracts and all subcontracts there under and all change orders directly related to project performance.
- c. The Contractor agrees to the disclosure of all information and reports resulting from access to records pursuant to A.3.11 above to the State of Texas. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.
- d. Records under A.3.11 above shall be maintained and made available during the entire performance period of this contract and until four (4) years from date of final OOG payment for the services provided under this Contract. In addition, those records which relate to any dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until completion of such action and resolution of all issues which arise from it, or until the end of the aforementioned four (4) year period, whichever is later.
- e. Access to records is not limited to the required retention periods. The authorized representatives designated in A.3.11 shall have access to records at any reasonable time for as long as the records are maintained.
- f. The right of access applies to financial records pertaining to all subcontracts and all subcontract change orders and amendments. In addition, this right of access to all records pertains to all subcontracts, subcontract change orders and subcontract amendments, to the extent the records reasonably relate to subcontractor performance, if there is any indication that fraud, gross abuse, or corrupt practices may be involved; or if the subcontract is terminated for default or for convenience.
- g. OOG reserves the right to require the reimbursement of any over-payments determined as a result of any audit or inspection of records kept by the Contractor on work performed under this contract. Reimbursement must be made within thirty (30) business days after receipt of an itemized written request from OOG.
- h. The Contractor shall allow such access to the work product it has created for OOG hereunder as may be necessary to enable any new OOG Contractor of Tourism Public Relations and Trade Relations Representation Services Japan and Republic of Korean Markets Region to accomplish a smooth transition to the new Contractor.

A.4 ADDITIONAL GENERAL TERMS AND CONDITIONS

A.4.1 Governing Law, Remedies, Venue

The Contract shall be governed, construed, and interpreted under the laws of the State of Texas. Notwithstanding any other terms in this contract, or any exhibits or addenda hereto, or any other

documents included in this contract, all claims, counterclaims, disputes, and other matters in question between OOG and the Contractor arising out of or relating to the contract or the breach thereof, will be decided in a court of competent jurisdiction in the City of Austin, Travis County, Texas. The parties may agree to submit such claims, counterclaims, disputes, and other matters in question to arbitration or mediation, but only by mutual written contract.

OOG, without limiting any other rights or remedies it may have by law, equity or under the Contract, will have the right to impose and collect liquidated damages as provided herein; will have the right to institute an action for actual damages and/or injunctive relief and/or to terminate the Contract immediately. OOG's termination of this Contract shall not limit or waive any remedies Comptroller may have for breach by Contractor of its past, present or future duties and obligations created by this Contract or otherwise required by applicable law.

A.4.2 Licenses, Permits and Laws

The Contractor warrants and covenants that it has obtained all permits, approvals, and licenses, necessary for its lawful performance of its obligations under this contract, without costs to OOG. The Contractor shall maintain such licenses during the term of this contract without additional expense to OOG. The Contractor shall comply with any applicable federal, state, county, local and municipal laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations, in connection with the work required by this contract.

A.4.3 Political Activity

None of the activities or performances rendered hereunder by the Contractor shall involve lobbying or political activity, including but not limited to, any activity to further the election or defeat of any candidate for public office, or any activity undertaken to influence the passage, defeat, or final contents of legislation.

A.4.4 Sectarian Activity

None of the activities or performances rendered hereunder by the Contractor shall involve any sectarian or religious activity.

A.4.5 Americans with Disabilities Act

Contractor shall provide reasonable accessibility for persons with disabilities in compliance with the Americans with Disabilities Act, where applicable.

A.4.6 Proprietary Right/Copyright

Contractor shall not assert rights at common law or in equity or establish any claim to statutory copyright in any material or information developed in performance of the Contract. OOG shall have the right to use, copyright, reproduce, publish, or distribute any or all of such information and other materials without the necessity of obtaining any permission from Contractor and without expense or charge.

A.4.7 Patent, Trademark, Copyright and Other Infringement Claims

Contractor 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 Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify OOG of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without OOG prior written approval. Contractor 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. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsels, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

A.4.8 Ownership of Documents

All work performed under this Contract shall become the property of OOG. All property rights, including publication rights, to all products developed under this Contract shall be retained by OOG. The Contractor shall ensure duplication and duplication rights are secured to OOG from all contracts and subcontractors, prior to delivery of products to OOG. OOG reserves the right to authorize others to use, publish, or reproduce products developed hereunder. The Contractor agrees to hold OOG harmless for claims that may arise for infringement related to work under this contract. As this contract is terminating, the Contractor shall work cooperatively with OOG and any new contractor to which OOG may award a new contract in the future so that there is a smooth transition to the new contractor. Contractor's failure to secure all required duplication and duplication rights to OOG from all contracts and subcontracts, prior to delivery of products, shall be grounds for termination of the contract, for reason of default, in accordance with Section A.1.4(b).

A.4.9 Intellectual Property

- a. Intellectual property includes any discovery or invention for which patent rights may be acquired, any photographs, graphic designs, plans, drawings, specifications, computer programs, technical reports, operating manuals, or other copyrightable materials, and any other materials in which intellectual property rights may be obtained.
- b. OOG shall be the sole owner of intellectual property developed under this Contract. OOG hereby reserves the exclusive right to use, publish, or reproduce the intellectual property for sales or otherwise, and to authorize others to do so.
- c. Contractor shall take such steps as are necessary to perfect and to protect OOG's intellectual property rights and all products developed hereunder by the Contractor and its subcontractors. If the Contractor conceives of, puts into practice, discovers, invents, or produces any intellectual property during the course of its work under this Contract, it shall report that fact to OOG.
- d. In performing work under this Contract, the Contractor shall comply with all laws, rules, and regulations relating to intellectual property, and shall not infringe on any third-party's intellectual property rights. Contractor shall indemnify and hold OOG harmless for and against any claims for infringement related to its work under this Contract.
- e. The Contractor shall include provisions adequate to effectuate the purposes of this Article in all subcontracts under this Contract in the course of which intellectual property may be produced or

acquired. Such provisions shall make it clear that any intellectual property created under such subcontracts belongs solely to OOG.

A.4.10 Data, Publicity, Public Information

- a. Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any parties other than OOG and the State of Texas through its authorized agents except as otherwise provided by this Contract or after obtaining the prior written approval of OOG.
- b. The Contractor agrees to notify and obtain the written approval of OOG prior to releasing any information to the news media regarding the activities being conducted under this Contract.
- c. The OOG, the Texas Legislature, and any other State agency may, at the OOG's discretion, distribute any report prepared by the Contractor or post any report to an agency website or website of a standing committee of the legislature.
- d. Notwithstanding any provisions of this Contract to the contrary, Contractor understands OOG will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. OOG agrees to notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this contract. Contractor will cooperate with OOG in the production of documents responsive to the request. OOG will make a determination whether to submit a Public Information Act request to the Attorney General. Contractor will notify OOG within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. The Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.
- e. Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the OOG or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. Unless otherwise agreed, the information provided shall be in Microsoft Office Word 2007 or other format readable by Microsoft Office Word 2007.

A.4.11 Change of Name

Contractor shall promptly notify OOG of any change of name in which it holds this Contract. An Addendum to this Contract shall be required upon a change of name which shall specifically state that no other terms or conditions of this Contract are thereby changed. Contractor shall not assign this Contract pursuant to this Article.

A.4.12 Bankruptcy

Should the Contractor become insolvent, or if the proceedings in bankruptcy should be instituted by or against the Contractor, the remaining or unexpired portion of this Contract shall, at the election of OOG, be terminated.

A.4.13 Contractor Affirmations

Signing this bid with a false statement is a material breach of contract and shall void the submitted bid and any resulting contracts, and the Contractor shall be removed from all bid lists. By agreeing to and signing this Contract, the Contractor hereby makes the following certifications and warranties required by statute:

- a. **Delinquent Child Support Obligations:** Under Section 231.006 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- b. **Prohibited Bids and Contracts:** Under Section 2155.004 of the Texas Government Code (relating to prohibited bids and contracts), the Contractor certifies that the individual or business entity named in this 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.
- c. **Previous Employment with the Agency:** The Contractor acknowledges and understands that Section 2252.901 (as amended) of the Texas Government Code prohibits the Office of the Governor from using state appropriated funds to enter into any employment or consulting contract with any individual who has been previously employed, as an employee, by the Agency within the past twelve (12) months. If the Contractor is an individual, the Contractor certifies that Section 2252.901 (as amended) of the Texas Government Code does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
- d. **Buy Texas:** With respect to all services, if any, purchased pursuant to this Contract, the Contractor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials.
- e. **Gift to Public Servant:** The Contractor warrants that it has not given, nor does it intend 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 award of this Contract. Violation of this requirement may result in the termination of the Contract at the discretion of the OOG.
- f. **Corporate Franchise Tax:** The Contractor certifies that its Texas franchise tax payments are current, or that it is exempt from, or not subject to, such tax.
- g. **Debt to State:** The Contractor acknowledges and agrees that, to the extent the Contractor owes any debt or delinquent taxes to the State of Texas, any payments the Contractor is owed under this Contract may be applied by the Comptroller of Public Accounts toward any debt or

delinquent taxes the Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.

- h. **Antitrust:** Pursuant to 15 U.S.C. Section 1, et seq., and Chapter 15 of the Texas Business and Commerce Code, neither the Contractor nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- i. **Compensation, RFP Specifics:** Neither the Contractor nor any person or entity which will participate financially in any contract resulting from this RFP has received compensation for participation in the preparation of the specifications, preparation, or production of this RFP.
- j. **Conflicts of Interest:** Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to the OOG under this RFP and any resulting contract, if any, and that Contractor's provision of the requested items under this RFP and any resulting contract, if any, would not reasonably create an appearance of impropriety.
- k. **Independent Contractor:** The Contractor agrees and acknowledges that during the existence of this RFP process and resulting contract, if any, it acts in the capacity of an independent contractor and that the Contractor and its agents, if any, is not an employee of the OOG.
- l. **Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion:** CPA is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Respondent certifies that the responding 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 and the Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

- m. **Environmental Protection:** The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act and the Federal Water Pollution Control Act, as amended.
- n. **Hurricane Relief:** Texas law prohibits the OOG from awarding a contract to any 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 section 2155.006 of the Texas Government Code, the Respondent certifies that the individual or business entity named in its Proposal is not ineligible to receive the

Contract and acknowledges that the Contract may be terminated and payment withheld or rescinded if this certification is inaccurate or false.

- o. **Executive Head:** The OOG may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. By submitting a Proposal, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years. Bidder certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with executive head of a state agency. If Section 669.003 applies, bidder will complete the following information in order for the bid to be evaluated: Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position with Bidder; and Date of Employment with Bidder.
- p. **Terminated Contracts:** By submitting a Proposal, the Respondent certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If the Respondent does have such a terminated contract, the Respondent shall identify the contract and provide an explanation for the termination.
- q. **Deceptive Trade Practices; Unfair Business Practices:** The 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 the Respondent has not been found to be liable for such practices in such proceedings. The 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.
- r. **Immigration:** The Respondent represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Acts of 1986 and 1990 ("IRCA") regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this RFP or resulting Contract, if any, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") enacted on September 30, 1996).
- s. **Change of Management:** The Respondent agrees that the key personnel assigned to work under the resulting Contract, if any, shall remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by the Respondent unless the OOG agrees to a change in the key personnel.
- t. **Felony Criminal Convictions:** Respondent represents and warrants that Respondent and Respondent's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised OOG as to the facts and circumstances surrounding the conviction.
- u. **Resident Bidder:** By submitting a bid, Respondent certifies that if a Texas address is shown as the address of the Respondent, then Respondent qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

A.4.14 Force Majeure

Neither Contractor nor OOG shall be liable to the other for any delay in, or failure of performance, of any requirement included in this RFP or any resulting contract, if any, 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. Each party must inform the other in writing, with proof of receipt, with three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

A.4.15 Civil Rights

The Respondent agrees that no person shall, on the grounds of race, color, religion, sex, National origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Respondent shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

A.4.16 Indemnification

Acts or Omissions

CONTRACTOR shall indemnify and hold harmless the State of Texas and OOG, 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 Contractor 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 CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Infringements

- a) **CONTRACTOR shall indemnify and hold harmless the State of Texas and OOG, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE**

COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

- b) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by the Contractor pursuant to OOG's specific instructions, (iv) any intellectual property right owned by or licensed to OOG, or (v) any use of the product or service by OOG that is not in conformity with the terms of any applicable license agreement.
- c) If Contractor becomes aware of an actual or potential claim, or OOG provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against OOG, shall), at Contractor's sole option and expense; (i) procure for the OOG the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that OOG's use is non-infringing.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

- a) **CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE OOG AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF OOG.**
- b) **CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

A.4.17 Liability for Damage to Government Property

The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to this RFP or resulting Contract, if any. The Respondent shall notify the OOG Contract Manager in writing of any such damage within one (1) calendar day.

A.4.18 Non-Waiver of Rights

Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive, or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or successive breach.

A.4.19 No Waiver of Sovereign Immunity

The Parties expressly agree that no provision of this RFP or resulting Contract, if any, is in any way intended to constitute a waiver by the OOG or the State of Texas of any immunities from suit or from liability that the OOG or the State may have by operation of law.

A.4.20 Severability

If any provision of this RFP or resulting Contract, if any, 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 existing language as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

A.4.21 Compliance with Laws; Dealing with Public Servants

The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) Texas Penal Code section 36.02, which prohibits bribery; (ii) Texas Penal Code section 36.09, which prohibits the offering or conferring of benefits to public servants; and (iii) Texas Government Code section 2155.003, which prohibits the chief clerk or any other employee of the OOG from having an interest in, or in any manner being connected with, a contract or bid for a purchase of goods or services by an agency of the state, or accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of this RFP and the resulting Contract, if any. Except where otherwise expressly required by applicable laws and regulations, OOG shall not be responsible for monitoring Respondent's compliance. If Respondent performs any work knowing or having reason to know that it is contrary to laws or regulations, Respondent shall bear all claims, costs, losses, and damages caused by, arising out of, or resulting there from.

A.4.22 Federal, State, and Local Requirements

Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978. 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. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

A.4.23 Drug Free Workplace

Respondent shall comply with and implement the applicable provisions of the Drug-Free Work Place Act of 1988 and any amendments that may hereafter be issued.

A.4.24 Insurance and Other Security

a. Contractor will be required to obtain insurance coverage limits not less than the following insurance and bonding coverage outlined below in connection with the Contract:

1. Commercial General Liability Insurance

Bodily Injury and Property Damage	
Each occurrence limit:	\$1,000,000
Aggregate limit:	\$2,000,000
Medical Expense each person:	\$5,000
Personal Injury and Advertising Liability:	\$1,000,000
Products /Completed Operations Aggregate Limit:	\$2,000,000
Damage to Premises Rented to You:	\$50,000

2. Worker's Compensation Statutory and Employer Liability

Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

Employers Liability: Each Accident	\$1,000,000
Disease- Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

b. All employees furnished by the Contractor shall be considered employees of the Contractor and the Contractor shall be responsible for payments of all Worker's Compensation claims, unemployment compensation claims, unemployment disability claims or claims under similar laws. The Contractor is not required to cover the employees of subcontractors. However, the Contractor must require its subcontractors to maintain the required coverage.

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

A.4.25 Assignment

Contractor shall not assign or transfer any interest in the Contract without the prior written consent of OOG.

A.4.26 Dispute Resolution

The dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by OOG and Contractor to resolve any dispute arising under the Contract.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by Contractor under the Contract. If Contractor's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the OOG if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by the OOG nor any other conduct of any representative of the OOG relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the Contract, the OOG and Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the OOG and Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. Contractor shall pay all costs of the mediation unless the OOG in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the OOG and Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the OOG and Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The OOG participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the OOG of (1) any rights, privileges, defenses, remedies or immunities available to the OOG as an agency of the State of Texas or otherwise available to the OOG; (2) OOG termination rights; or (3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the OOG, Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

A.4.27 Order of Precedence

In the event of conflicts or inconsistencies between any contract arising from this RFP and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Executed Contract, Attachments to the Contract, this RFP, and Respondent's Proposal.

A.4.28 Public Disclosure

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

A.5 PROPOSAL REQUIREMENTS

A.5.1 Due Date of Proposals

Respondent shall submit a Proposal to the OOG in sufficient time for the OOG to accurately stamp it no later than 5:00 pm CST on September 10, 2014..

A.5.2 Costs

The OOG will not reimburse the Respondent for any cost related to its Proposal. The Respondent is responsible for any expense related to the preparation and submission of its Proposal.

A.5.3 Calendar of Events

The solicitation process for this RFP will proceed according to the schedule below. The OOG reserves the right to revise this schedule by published Addendum.

Event	Date
Deadline for Submitting Questions	August 18, 2014 no later than 5:00pm CST
Official Response to Questions Posted on the ESBD	August 20, 2014 no later than 5:00 pm CST
Proposal Due Date and Time	September 10, 2014 no later than 5:00 pm CST
Expected Award of Contract	September 26, 2014 no later than 5:00 pm CST

A.5.4 Point of Contact

Respondents shall direct all inquiries and communications concerning this RFP to the Point of Contact listed and shall make no contact with other OOG personnel regarding this RFP, except as permitted by the Point of Contact.

Liz Reid
Financial Services
Phone: 512-936-9503
E-mail: liz.reid@gov.texas.gov

A.5.5 HUB Subcontracting Opportunities – Reference PACKAGE 2: Part B; Section B.2.5

Failure to comply with the following requirements may result in disqualification of the Respondent's Proposal.

The following are the suggested areas of subcontracting possibilities, but in no way should it be considered a mandatory or an exhaustive list. Other areas of subcontracting may be more appropriate given the Respondent's business structure and internal resources. Please see the attached HSP for further instructions, which require Contractors to identify the specific areas intended for subcontracting.

Class	Item	Description
918	26	Communications: Public Relations Consulting
918	76	Marketing Consulting

A.5.6 Attachments Included with this RFP

This RFP also includes the following Attachments:

Attachments	
A	Execution of Proposal and Assurance (with Certification)
B	HUB Subcontracting Plan
C	Respondent Information Form
D	Compensation Schedule

A.5.7 Proposal Content

- a. **Purpose.** The purpose of the technical section of the proposal is to demonstrate the qualifications, competence, and capacity of the Contractor (and proposed staff) to undertake the engagement described herein. The technical section of the proposal should contain sufficient information to assure the OOG of its completeness.
- b. **Respondent Information.** Include the following information related to the responding business entity: formal name and all assumed names used by the business entity; structure of business entity; state and country in which business entity was formed or incorporated; physical address and mailing address; principal place of business; whether, and to what extent, Respondent has established a physical presence in the State of Texas including relevant timeframes; and name, title, address, telephone number, facsimile number, and email address of Respondent's primary contact.
- c. **Financial Responsibility.** The Respondent must provide evidence of financial responsibility and stability for performance of the requirements/services for which a proposal is submitted. In addition, the Respondent must disclose the source of any outside financial resources that will be utilized by the Respondent to enable it to perform any Contract awarded pursuant to the RFP.
- d. **Understanding of the Project.** Respondents shall provide an executive summary which thoroughly describes the firm's understanding of the RFP's goals and objectives, the firm's capacity to meet OOG's need for tourism public relations and trade relations representation services, and a short narrative that provides a synopsis of the firm's understanding of the scope of the project and its purpose.
- e. **Experience and Qualifications.** The Contractor is expected to assign staff at appropriate levels to provide tourism public relations and travel trade representation as required by this RFP. This section shall name each individual who will be assigned to this engagement throughout the duration of the contract, including the Account Executive and other personnel that would be assigned to this engagement, and provide a thorough description of the relevant experience and skills that qualify each individual to perform the required consulting services. The Contractor is expected to provide administrative, operational and management structure of organization, including resources (e.g., staff, facilities, labor, equipment systems, accounting systems, internal auditing procedures, management and administration, legal services, etc.). The location of all resources should be included. Any strategic partnerships must be specifically described, including the roles and extent of their respective participation. All participants of a strategic partnership, alliance or other joint venture proposal should be listed, including all personnel who

will be used to service OOG's account. However, a primary contractor must be identified.

- f. **Organizational Chart & Tourism Account Staff.** Provide an organizational chart showing the staffing and lines of authority for the specific personnel to be used on the Tourism account. The relationship of the Account Executive to management and to support personnel should be clearly illustrated.
1. Firms must include resumes for each member of the proposed account team (not including support staff).
 2. Provide three (3) references for the Account Executive and each key member of the proposed public relations and travel trade marketing team. The references should consist of clients that these individuals have provided services for that are similar to the activities required by this RFP. The references must include the name, organization, and telephone number of an individual who can comment on the ability of the individual to perform the services required under this contract.
 3. The Contractor must notify OOG in writing of any changes in personnel that are assigned to this contract. Any personnel changes must be approved by OOG.
 4. OOG reserves the right to request the Contractor to replace the staff provided in the event of unsatisfactory performance.
 5. The replacement personnel must have skills, experience, and expertise that is comparable to that of the persons they replace, and will be provided at no additional cost to the contract.
 6. Proposals should demonstrate a commitment to maintain staff competency throughout the term of the contract.
- g. **Proposed Work Plan.** Provide a detailed written outline of a plan of action for using public relations and marketing activities (consumer, meetings market, media and trade relations) to market and promote Texas as a premier travel destination in the primary and secondary markets that meets or exceeds the goals and objectives identified in A.2.1. Base the Plan of Action on a term of twelve (12) months, (September 1, 2014 through August 31, 2015) and a proposed budget of \$280,000. Include a budget allocation for Reimbursables necessary to achieve the Plan of Action. Do not include compensation and fees, such as Monthly Fees, in this section.
1. OOG must be assured that funds are spent efficiently and effectively, with reasonable attention and effort given to markets and requested activities.
 2. Respondents must also provide a proposal of specific goals for measurement, which demonstrate the success of Respondent's planning, implementation and results achieved from the proposed Plan of Action in meeting the objectives outlined in A.2.1.
 3. A successful Respondent will be expected to implement the proposed Plan of Action upon the awarding of the contract and discussions with OOG.
 4. A staffing plan that describes how the firm's personnel will be organized to perform the assignments, including the responsibilities of each individual proposed for the consulting team.
 5. This section should also include a timeline indicating when each aspect is expected to be completed. Respondents should use this section to describe whether or not they would be ready to commence work upon approval of the contract, and if not, what steps they will need to take before beginning.
- h. **Responsive Information.** Responsive information shall be presented in substantially the same order as it is set forth above. A Contractor will be selected based on demonstrated knowledge and experience, compatibility with the goals and objectives of the OOG, and reasonableness of

the proposed budget.

NOTE: No information beyond that specifically requested is required and firms are requested to keep their submission to the shortest length consistent with making a complete presentation of qualifications. Short and concise presentations will be looked upon favorably. Additional information, if any, should be submitted in a separate binder. This separation of information will facilitate OOG's review of the requested material.

NOTE: Any terms and conditions attached to the Proposal will not be considered unless specifically referred to in this RFP and may result in disqualification.

A.5.8 Organization of the Proposal

The Proposal shall include all information required in this RFP and shall be in the format described herein. The Respondent is solely responsible for thoroughly understanding the RFP and its attachments, exhibits, and forms. Any questions concerning this RFP should be directed to the Point of Contact by the Deadline for Submitting Questions identified in Part A. The Respondent is cautioned to pay particular attention to the clarity and completeness of its Proposal. The Respondent is solely responsible for its Proposal and all documentation submitted.

The Respondent shall be as precise, accurate, and succinct as possible. The Respondent shall provide detailed descriptions of how they will fulfill each requirement. The clarity and completeness of a Proposal may be considered by the OOG evaluators.

- a. **Tab 1 of the Proposal: The Transmittal Letter.** The Respondent shall provide a transmittal letter identifying the responding company and address. Additionally, the letter shall include:
1. The name, position, telephone number, and E-mail address of the person responsible for the development of the Proposal;
 2. The name, position, telephone number, and E-mail address of the person/official with the authority to negotiate and execute the Contract, if awarded; and,
 3. A statement that the Respondent's Proposal will remain in effect for 120 days after the Proposal opening date.

If any material in the Proposal is marked as proprietary information, include a separate sheet behind the transmittal letter that indicates the Proposal section(s) and page(s) so marked.

- b. **Tab 2 of the Proposal: Statement of Meeting Requirements.** The Respondent shall state how its Proposal meets or exceeds the requirements of the RFP.
- c. **Tab 3 of the Proposal: Compensation Schedule.** The Respondent shall completely fill in the Compensation Schedule, described in Part A and attached to this RFP.

NOTE: The OOG reserves the right to award the Contract without any vendor negotiations. **The Respondent is strongly encouraged to provide its best price in its Proposal** because the OOG makes absolutely no guarantee that there will be any opportunity to negotiate or provide alternative pricing at any point during the RFP process.

- d. **Tab 4 of the Proposal: Assumptions and Exceptions.** The Respondent shall clearly state any assumptions it made in its Proposal. The Respondent shall also clearly identify any exceptions it

takes to specific provisions of this RFP, noting the specific RFP section number. If there are no exceptions, the Respondent shall explicitly state that the Respondent takes no exception to any part of this RFP. Any exception may result in the Contract not being awarded to the Respondent.

NOTE: The OOG, as a state agency, is prevented by the Texas Constitution from indemnifying vendors. The Respondent is discouraged from including a term in its Proposal that requires the OOG to indemnify it. Such a term may result in the Proposal being deemed non-responsive.

The Respondent shall identify exceptions using the following format:

Section	Section Title	Exception	Proposed Language

- e. **Tab 5 of the Proposal: Respondent’s Background.** The Respondent shall provide a brief description of its history and accomplishments.
- f. **Tab 6 of the Proposal: The Conflict of Interest Disclosure.** The Respondent shall identify any and all relationships that might be a conflict of interest or cause an appearance of a conflict of interest. See Section A.4.13(j) for a description of conflicts of interest.
- g. **Tab 7 of the Proposal: HUB Subcontracting Plan.** The OOG’s determination of probable subcontracting opportunities is identified in Part A. If probable subcontracting opportunities have been identified in Part A, the Respondent shall fill out the HUB Subcontracting Form and submit it with the Proposal in order for the Proposal to be considered responsive.

A.5.9 Compensation and Fees – Package 2 – Part B; Attachment D

Provide a compensation schedule for services to be provided in response to this RFP (PACKAGE 2: Part B; Attachment D).

The OOG must be assured that funds are spent efficiently and effectively, with reasonable attention and effort given to requested projects. All agency costs, with exception of reimbursables, shall be based on a monthly fee and projected reimbursable costs. A detailed description of what is included in the Contractor’s monthly service fee is required in the Proposal. Failure to provide a detailed description may result in disqualification of the Proposal.

Among the selection criteria is the cost proposed for the services described in this RFP. The cost Proposal must include a not-to-exceed fixed fee which includes all staff assigned to the project and the estimated required hours to successfully complete the project. The fixed fee shall cover costs for completing all services identified in the scope of services. OOG will compensate the awarded Contractor firm following its submission of an approvable invoice.

A.5.10 References

References: Include a minimum of three (3) references from clients for whom similar services were performed or products were provided in the last five (5) years in each Target Market. Include project description, contact names, position, and company name and telephone number for each reference listed. OOG reserves the right to contact references. Any negative responses received may be grounds for disqualification.

Include all litigation that your company has been involved in within the last three (3) years.

A.5.11 Evaluation and Award of Contract

- a. The intent of the OOG is to award a contract to the Respondent whose proposal is considered to be the best value to the State. The OOG has the sole discretion and reserves the right to reject any or all proposals. The OOG also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.
- b. An evaluation committee will be established to evaluate the proposals. The committee will include employees of the OOG and may include other impartial individuals who are not OOG employees.
- c. The State of Texas will evaluate and score each proposal based on the following criteria:

Criteria	Weight
Company Information / Proposal Quality and Content	5%
Experience and Qualifications and References	15%
Proposal Quality and Responsiveness	10%
Compensation and Fees	45%
Methodology of Proposed Marketing Plan	25%
Total	100%

- d. The OOG will determine if discussions and/or Best and Final Offers are necessary. Award of a contract may be made without discussions or Best and Final Offers, if in the best interest of the State. The OOG may determine that discussions are necessary to clarify or verify a written proposal. The OOG may, at its discretion, elect to have respondents provide oral presentations of their proposals. A request for a Best and Final Offer is at the sole discretion of The State of Texas and will be requested in writing. The OOG will evaluate the finalists and make a recommendation for award.
- e. **Past Performance:** A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with the provisions of Texas Government Code, Title 10, Subtitle D, Section 2155.074, Section 2155.075, Section 2156.007, Section 2157.003 and Section 2157.125. Respondents may fail this selection criterion for any of the following conditions:
 1. A score of less than 90% in the Vendor Performance System;
 2. Currently under a Corrective Action Plan through the CPA;
 3. Having repeated negative Vendor Performance Reports for the same reason; or
 4. Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.).

Contractor performance information is located on the CPA website at:

http://www.cpa.state.tx.us/procurement/prog/vendor_performance/

OOG may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (VPTS) (as authorized by 34 Texas Administrative Code 20.108), OOG may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any

such investigations shall be at the sole discretion of OOG, and any negative findings, as determined by OOG, may result in non-award to the Respondent.

- f. **Oral Presentation:** The OOG will determine which respondent(s) OOG may request to make an oral presentation based on the proposal submission evaluation. The purpose of this presentation is for the selected respondent(s) to demonstrate their knowledge of the service requested which will aid in determining whether the respondent is the most qualified on the basis of creativity and expertise. The State of Texas will advise each selected respondent in writing of the location of the presentation and their scheduled presentation date and time. Respondents are responsible for all costs (i.e., travel and presentation related costs) needed to make the oral presentation of proposal. A minimum of one week notice will be given to all respondents who qualify for the oral presentation phase. Details of the presentation will be provided upon notification of the selected respondent(s). Presentations will be scored using the evaluation criteria stated in A.5.11
- g. **Award.** Award may be made to the respondent with the highest overall score based on information submitted with the proposal and who provides the best value to the State of Texas. The State of Texas will be the sole judge of best value.

A.5.12 Submitting the Proposal

The Proposal shall be entitled "Proposal Submitted for RFP No. 300-4-1032." and shall clearly state the Proposal Due Date and Time identified in the Calendar of Events, in A.5.3.

The Respondent must submit one (1) original signed hard copy submission and six (6) hard copies for the evaluation team. Both the original and copies must be received before the end of the Business Day on the due date for the proposal to be accepted.

The hard copy submissions must be bound in three-ring binders, in a 12 pt. or higher font, include a content page, organized and arranged to correspond directly with the numbered sections of this RFP, and all pages must be numbered.

Respondent may include video or other digital media on a USB drive. Please submit with the original copy.

The Proposal and accompanying documentation are the property of the Office of the Governor Financial Services and will not be returned.

The Proposal shall be sent to the Office of the Governor Financial Services at one of the following addresses (**USB DRIVE (EXCEPT SUPPLEMENTAL VIDEO OR OTHER DIGITAL MEDIA DESCRIBED ABOVE) OR CD-ROM SUBMISSIONS WILL NOT BE ACCEPTED**):

By U.S. Mail:

Office of the Governor
Financial Services
P.O. Box 12878
Austin, TX 78711-2878
Hours – 8:00 AM to 4:45 PM

By Hand Delivery:

Office of the Governor

Financial Services
1100 San Jacinto Blvd.
Austin, Texas 78701
Hours – 8:00 AM to 4:45 PM

By Overnight/Express Mail:
Office of the Governor
Financial Services
1100 San Jacinto Blvd.
Austin, Texas 78701
Hours – 8:00 AM to 4:45 PM

Odwyerpr.com