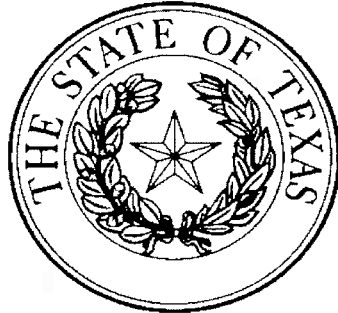


TEXAS DEPARTMENT OF INSURANCE COMPTROLLER OF PUBLIC ACCOUNTS



TEXAS PROCUREMENT AND SUPPORT SERVICES DIVISION

REQUEST FOR PROPOSALS [961-M2]

Marketing Services: Including Advertising and Public Relations RFP No. 11-RBD-MARKETING

NIGP CLASS ITEMS

915	01
915	03
953	48
953	52
953	56
961	53
961	79

Posting Date: Thursday, November 18, 2010

Proposal Due Date and Time: Friday, January 7, 2011, Central Time, Austin, Texas

A non-mandatory Pre-Proposal Conference will be held on Thursday, December 2, 2010, from 10 a.m. to 12 p.m. Central Time, Austin, Texas, in Conference Room 225, Tower 2, Hobby Building, 333 Guadalupe, Austin, Texas. See Exhibit 1, Section 1.1 of this Request for Proposals

****NOTE**** This RFP is composed of two (2) parts and four (4) Exhibits: (1) Part A, Special Instructions, and (2) Part B, General Instructions and Contract Terms and Conditions. In the event an instruction or term in Part A or Exhibit 3 (TDI Contractual Terms and Conditions) conflicts with an instruction or term in Part B, the instruction or term in Part A shall prevail.

The Definitions in Part B, Section B.1.2 apply to Part A.

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A.1 DEFINITIONS

When capitalized, the following terms and acronyms have the meaning set forth below. All other terms have the meaning set forth in Webster's II New College Dictionary.

TERM	DEFINITION
Air Time	The time a program will presented on the airwaves to broadcast a message.
Buys	The purchase of time or space in an advertising medium, such as radio, television, or print space. The "buy" decision is based upon the amount of money available, the number of exposures desired, the target market the advertiser wants to reach, the frequency of exposure desired, the number of people each medium will reach, and the impact each medium will have on the message.
Campaign	A series of related advertising and communications or promotional pieces scheduled for a given period of time and/or visual themes and common objectives. Ideally, each succeeding element in the campaign adds to the cumulative impact.
Contract	Any contract(s) resulting from this solicitation. <i>Note: There is no guarantee that any contract will result from this solicitation.</i>
Contractor	The Respondent(s) awarded a Contract as a result of the RFP.
CPA	The Comptroller of Public Accounts, the state agency issuing this solicitation.
Creative	This term refers to any materials, imagery, or collateral prescriptively produced through creativity and the creative process for marketing and advertising campaigns.
Customer	Those state and local entities that are required and permitted by law to purchase goods and services under contracts established by the CPA.
ESBD	The Electronic State Business Daily, which is available online at http://esbd.cpa.state.tx.us/ .
Flight	A term used in media scheduling that indicates the length of the advertising period. Typically, an advertising campaign funds for a specified number of weeks, followed by a period of inactivity and then is resumed. Each activity period is known as a flight.
Gov't Code	The Texas Government Code.
Intellectual Property Rights	The worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal

	rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
Party / Parties	Either the CPA and Respondent separately or collectively.
Proposal	The response submitted by a vendor to the CPA as a result of this solicitation.
Respondent	Any person or vendor who submits a Proposal in response to this solicitation.
Respondent's Personnel	Any and/or all of the following, without limitation: employees, leased employees, agents, officers, directors, staff, independent Respondents, Respondents, or sub-Respondents, or any individuals furnished, referred, or provided by the Respondent for the purposes arising out of or related to this RFP, the Respondent's Proposal, and the Contract, if any, that results from the award made by TDI to the Selected Respondent.
RFP	Request for Proposals, which is the type of solicitation embodied in this document. The document so titled and Exhibits and Attachments thereto which are attached and incorporated by reference as if set out in this RFP.
Selected Respondent	The individual(s) and/or entity or entities chosen by TDI pursuant to the process specified in this RFP.
TAC	The Texas Administrative Code, which is the publication for administrative rules.
Target Audience	The audience to whom the advertising is directed. The target audience is defined in terms of demographic (and sometimes psychographic) characteristics, such as age, sex, education, income, buying habits, and the like.

A.2 DESCRIPTION AND SPECIFICATIONS

A.2.1 Description of Services Required

The Texas Procurement and Support Services (TPASS), a division of the Texas Comptroller of Public Accounts (CPA) is seeking sealed proposals to establish a contract for marketing, advertising and public relations services as described below.

The customers for the CPA term contracts are State of Texas Agencies; Higher Education and Cooperative Purchasing Members.

Information about the Cooperative Purchasing program and the member list can be accessed at: <http://www.window.state.tx.us/procurement/prog/coop/>

A major customer for the requested services is the Texas Department of Insurance (TDI). The CPA also expects other customers across the state may order under the Contract.

A.2.2 PiggyBack Option

The contract resulting from this solicitation will be available for use by all state agencies; higher education and cooperative members, providing there is no conflict with any applicable statutes, rules, policies, or procedures. State agencies and eligible entities as described in B.1.1 (Authority to Contract) will have the option to use the pricing as agreed to within the resulting contract. Provided that other state agencies or eligible entities are interested in ordering from the resulting contract, and other delivery locations are requested than originally agreed upon, CPA and the awarded contractor will seek a mutual agreement for pricing and shipment to other locations.

A.2.3 Pricing Structure and Adjustments

Firm Price: Pricing/discounts proposed are firm for the period specified in the solicitation and all renewal terms. Price decreases are allowed at any time.

Firm Price with Escalation:

Pricing must remain firm during the initial term of the Contract with escalation based upon a maximum annual percentage increase. See Exhibit 1, Section 1.14, and Exhibit 4, Section 4.22.3.

The Respondent may offer price decreases in excess of the allowable percent change.

Discount-From-List: As applicable, proposed pricing must remain firm during the initial of the Contract and may be increased thereafter during any active term based upon changes in an approved manufacturer's price list.

Requests for price increases must be documented with a new and dated manufacturer's price and/or cost list which are in the same format as originally submitted. The Respondent shall calculate the maximum allowable increase as determined by the following formula:

Original Awarded Price ÷ Original Mfg. Price X New Mfg. Price = Max. Allowable Contract Price

Failure by the Respondent to calculate this formula and provide any supporting documentation will not be considered a properly submitted price increase request.

Price Decreases/Discount Increases

Contractors are required to immediately implement any price decrease or discount increase that may become available. The CPA must be notified in writing for updating the contract.

Price Adjustment Requests

Price adjustment requests must be submitted to CPA, TPASS Contract Management Office (TCMO) in writing with a signed cover letter detailing the changes at least thirty (30) days

prior to each period. Respondent must also provide supporting documentation as justification for the request to include the formulas for the pricing structure as indicated.

Upon receipt of such request, the CPA reserves the right to either: accept the escalation as competitive with the general market price at the time, effective 30 calendar days from receipt of an acceptable request; or negotiate with the Respondent.

The TCMO will accept or reject increases within 15 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the TCMO written notice. Cancellation will not go into effect for 15 calendar days after receipt of the written request. Pre-price increase prices must be honored on orders dated up to the official date of CPA approval and/or cancellation.

The request can be sent by e-mail to: tpass_cmo@cpa.state.tx.us

Or mail to:

Texas Comptroller of Public Accounts

Attn: TPASS Contract Management Office (TCMO)

PO Box 13186

Austin, TX 78711-3186

The CPA reserves the right to accept, reject, or negotiate the proposed price changes.

A.2.4 Term of the Contract

The Contract shall commence upon the issuance of a Notice of Award by the CPA and shall automatically expire on August 31, 2012 with options for renewal for four (4) one-year periods. At the sole option of the CPA, the Contract may be extended as needed, not to exceed a total of six (6) months.

Renewal Periods:

1st Renewal – September 1, 2012 through August 31, 2013

2nd Renewal – September 1, 2013 through August 31, 2014

3rd Renewal - September 1, 2014 through August 31, 2015

4th Renewal - September 1, 2015 through August 31, 2016

A.2.5 Specifications/Requirements

Detailed specifications and/or requirements of the products/services required can be found in Exhibit 2.

Referenced Brand/Example: Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Proposals on brands of like nature and quality will be considered unless advertised as proprietary under Section 2155.067, Texas Government Code. If proposing other than the referenced brands/model number, Respondent must show manufacturer, brand or trade name, product number and provide complete descriptive information of product offered and include with response. Failure to take

exception to specifications or reference data will require Respondent to furnish specified brand names, numbers, etc.

Condition of Products: Proposed products shall be new, unused, of current production, and in first class condition, including containers suitable for shipment and storage, unless otherwise specified in the solicitation.

A.2.6 Warranty Requirements

Warranty requirements are contained in Exhibit 3, Section 3.22.

A.2.7 Shipping Information

All shipping shall be F.O.B. destination. Prices must include all shipping and handling fees unless stated otherwise.

Customer Specific Delivery Requirements

Customers will include specific delivery requirements on the purchase order(s) based upon their internal and security policies.

Identification of Shipments: In addition to the complete destination address, each delivery must be clearly marked with the purchase order number. Each shipment must be accompanied by a packing slip.

Packaging and Labeling: All items shipped must be properly labeled, with weather resistant labeling, showing the brand name, package quantity, lot number (if applicable) and any other necessary identifying information.

Hours for Delivery: Delivery shall be made during the hours of 8:00 am to 4:00 pm (CT) of the Customer unless prior approval for after-hours delivery has been obtained from the Customer. In the event of any approval by the Customer for after-hours delivery, Respondent may not invoice any additional charges for that delivery. Respondent is encouraged to obtain Customer's hours of operation at time of order.

Delivery Schedule: Respondent's shall furnish, in the space indicated on the Attachment D, Mandatory Price Sheet, a delivery schedule for each line item as to time required for delivery after receipt of order (ARO) under normal conditions.

Delivery Days means calendar days, unless otherwise specified. Failure to state delivery time may disqualify Respondent. CPA, at its sole option, may choose to negotiate delivery times.

Providing products or materials which do not meet all specification requirements does not constitute delivery. Delivery does not occur until the Respondent delivers products or materials in full compliance with the specifications to Customer's F.O.B. destination, unless delivery is specifically accepted, in whole or in part, by the Customer. Customer reserves the right to require new delivery or a refund in the event that materials or products not meeting specifications are discovered after payment has been made.

If delay is foreseen, Contractor shall give written notice to the Customer and must keep Customer advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the Customer to purchase goods and services of this RFP elsewhere and charge any increased costs for the goods and services, including the cost of re-soliciting, to the Contractor . Failure to pay a damage assessment is cause for Contract cancellation and/or debarment or removal of the Respondent from the State's Centralized Master Bidders List (CMBL).

Restocking Fee:

The Customer may request that a Contractor accept return of merchandise already delivered or that a Contractor cancel an order prior to delivery. If the return is required through no fault of the Contractor, the Contractor may request a reasonable restocking charge. The Customer may pay a restocking charge if the CPA or Customer determines that the charge is justifiable. As a guideline, such charges shall not exceed 10%. There shall be no fees charged for cancellation of an order prior to shipment by the Contractor.

A.2.8 Reporting Requirements

Sales reports shall be provided in accordance with Part B.4.9 of the General Instructions and Terms and Conditions of the RFP and on the form to be prescribed by the CPA.

The sales report template can be found at the CPA's TxSmartBuy website page/Information for Vendors/TxSmartBuy Contractors:

http://www.window.state.tx.us/txsmartbuy/vendor_info.html

A.2.9 Quantities

CPA does not guarantee a specific volume to be purchased throughout the term of the Contract. No minimum compensation to the Contractor is guaranteed. Quantities indicated for each item in the Mandatory Price Sheet are estimates only and are based upon previous usage for a one-year period. These shall not be construed as a minimum or a maximum quantity that Customers may order.

A.3 FINANCIAL MATTERS

A.3.1 Award Notice and Purchase Orders

A notice of award will be issued by CPA to the successful contractor(s) in response to this RFP.

Customers will issue internal purchase orders and only purchase orders issued referencing the number for the CPA Managed Contract are eligible for Contract pricing.

The Contractor agrees not to ship any materials until issuance of a Purchase Order by the authorized ordering entity (State Agency, Higher Education, or Cooperative members).

A.3.2 Conversion to Statewide Term Contract and Online Ordering

At the sole option of CPA, based on requests received from CPA customers, this contract may be converted to a statewide term contract. In the event this contract is converted to a statewide term contract, eligible entities as described in B.1.1. (Authority to Contract) shall be eligible to use this contract and state agencies subject to the provisions of Government Code Chapter 2155 shall be required to use this contract.

Provided this provision is exercised, the following procedures shall apply.

The CPA has implemented the TxSmartBuy online ordering system to permit Customers to order from the contract. In the event that this contract is converted to a statewide term contract, the Respondent will be charged a 1.5% administrative fee on all sales under the Contract, whether or not the sales are made through the online ordering system in order to cover the costs of the system. Additionally, should this contract be converted to a statewide term contract, the Respondent will be allowed to pass through this administrative fee by amending their prices upwards in an amount not to exceed 1.5%.

Online ordering will also require the ability to identify and track the commodities/services purchased. Currently, the CPA uses the National Institute of Governmental Purchasing, Inc. (NIGP) Commodity/Services Codes. Respondent shall include a statement with its completed Mandatory Pricing Sheet stating its ability to identify and include NIGP Codes and/or United Nations Standard Products and Services Codes (UNSPSC) with the commodities/services it offers to the CPA. In addition, the Respondent may offer an alternative to NIGP/UNSPSC Codes and explain how the alternative meets the needs of the state.

You can find more information about TxSmartBuy at the following link:
<http://www.window.state.tx.us/txsmartbuy/>

A.3.3 Adding New Commodities and/or Services to the Contract after Award

Following the Contract award, additional commodities and/or services of the same general category that could have been encompassed in the award of this contract, and that are not already on the contract, may be added. A formal written request may be sent to successful Contractor (s) to provide a proposal on the additional commodities and/or services and shall submit proposals to the CPA as instructed. All prices are subject to negotiation with a Best and Final Offer (“BAFO”). CPA may accept or reject any or all proposals, and may issue a separate RFP or IFB for the products after rejecting some or all of the proposals. The commodities and/or services covered under this provision shall conform to the specifications and requirements as outlined in the request.

A.4 PROPOSAL REQUIREMENTS

A.4.1 Due Date for Proposals

Respondents shall submit Proposals to the CPA in time for the CPA to verify and confirm that each Proposal is received and documented with a date and time no later than Friday, January 7, 2011, Central Time in Austin, Texas. See also Exhibit 1

A.4.2 Calendar of Events

The solicitation process for this RFP will proceed according to the Schedule of Events contained in Exhibit 1, Section 1.3. The CPA reserves the right to revise this schedule or any portion of this RFP by published Addendum.

Any amendment to this solicitation will be posted as an addendum on the ESD. It is the responsibility of interested parties to periodically check the ESD for updates to the RFP prior to submitting a Proposal. The Respondent's failure to periodically check the ESD will in no way release the selected Contractor(s) from the requirements of "addenda or additional information" nor will any resulting additional costs to meet the requirements be allowed after award(s).

A.4.3 Points of Contact

A.4.3.1 Point of Contact Prior to Award

Respondents shall direct all inquiries and communications concerning this RFP to the Point of Contact listed below.

Note: This e-mail address is NOT to be used for submission of a response. Follow the instructions outlined in Exhibit 1, Section 1.5 for proper submission.

CPA Purchaser:

Elton D. Brock, CTPM, CTPM, CPM

(512) 463-6546

Elton.Brock@cpa.state.tx.us

Respondents shall make no contact with other CPA personnel regarding this RFP, except as permitted by the CPA Purchaser as listed above.

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

A.4.3.2 Point of Contact After Award

After award of this RFP's subsequent contract, all requests for Contract changes and all communications relating to the contract, are to be forwarded to the Contract Manager:

To Be Determined

A.4.4 Pre-Proposal Conference

The Pre-Proposal Conference is scheduled for the date and time listed the Schedule of Events Exhibit 1, Section 1.3. The location of the conference is: Hobby Building, 333 Guadalupe, Austin, Texas 78701, Room 225.

The pre-proposal conference allows Respondents opportunities to ask CPA questions and/or clarify provisions of this RFP. Respondents are encouraged to notify the point of contact regarding attendance of the Pre-Proposal Conference by no later than Monday, November 29, 2010.

A.4.5 HUB Subcontracting Plan – Reference Part B; Section B.2.5

Probable subcontracting opportunities: See Exhibit 3, Section 3.7

The CPA has instructional videos online to assist vendors with completing the HSP. The videos may be viewed at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>.

A.4.6 Evaluation and Award of Contract

See Exhibit 1, Section 1.6.

The CPA 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 CPA makes absolutely no guarantee that there will be any opportunity to negotiate or provide alternative pricing at any point during the RFP process.

Comptroller shall award a Contract(s) to the Respondent(s) whose proposal is considered to be the best value to the state, as defined in §2155.074, Gov't Code.

The State of Texas may consider, at its option, alternative products/services for award which may not meet the full specifications, however, represent a value to the State of Texas within the listed commodity or service classification.

Each member evaluating proposals shall execute a confidentiality agreement for this RFP.

Proposals will be evaluated by CPA employees and by other non-CPA employees who may be invited to assist as evaluators.

Each evaluated proposal will be reviewed and scored according to the table set forth in Exhibit 1, Section 1.5.

In determining the best value, CPA shall consider the following best value factors:

- (1) Price of the item, to include total cost of ownership, such as installation costs, life cycle costs, and warranty provisions.
- (2) Compliance with the stated specification(s), coupled with the quality and reliability of the goods and services, such as fitness for use that meets or exceeds customers expectations, and the characteristics of the product or service that bear on its ability to meet the stated/implied needs.
- (3) Delivery timeframe from receipt of purchase order (ARO).
- (4) Indicators of probable performance under the contract to include: past vendor performance, financial resources and ability to perform, experience or demonstrated capability and responsibility, references, and the vendor's ability to provide reliable maintenance agreements and support.
- (5) Other relevant factors, such as the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment, the effect of a purchase on agency productivity, and the cost of any employee training associated with the purchase.

CPA reserves the right to conduct studies and other investigations as necessary to evaluate any proposal. CPA reserves the right to waive any minor or immaterial response requirements noted in the submission process. Submission of proposals confers no legal rights upon any Respondent. The CPA will determine whether negotiations or Best and Final Offers are necessary and may invite selected respondents to provide oral presentations of their proposals. Pursuant to Government Code §2155.087, the Chief Clerk of the CPA, in a public meeting, may consider award recommendations for contracts related to this solicitation.

As CPA is awarding Contract(s) to Respondent(s) pursuant to Competitive Sealed Proposals as authorized by Government Code §2156.121, CPA may evaluate Respondent's Proposals on a variety of factors in addition to price. As such, CPA is **not authorized** to conduct bid/proposal openings or bid/proposal tabulations prior to award of Contract(s). Respondent(s) should be aware that such information cannot and will not be provided prior to award of Contract(s).

Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:

- A score of less than 90% in the Vendor Performance System,
- Currently under a Corrective Action Plan through the CPA,
- Having repeated negative Vendor Performance Reports for the same reason,
- Having a record of repeated non-responsiveness to Vendor Performance issues
- 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 web site at:

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

CPA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), CPA 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. Such sources of vendor performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, CPA may initiate such examinations of vendor performance based upon media reports. Any such investigations shall be at the sole discretion of CPA, and any negative findings, as determined by CPA, may result in non-award to the Respondent.

A.4.7 Multiple Awards

The CPA anticipates multiple term contracts may be awarded from this solicitation. The Respondent(s) providing the best value to the State for each NIGP group description may be chosen as the State's primary or "best value vendor" for that group. Additional Respondents may be awarded contracts as secondary vendors at the sole discretion of CPA in order to provide product variety.

A.4.8 Organization of the Proposal for Submission

See Exhibit 4 Section 4.2, Proposal Format.

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B.1 INTRODUCTION

B.1.1 Authority to Contract

Pursuant to the authority and responsibility provided in §§2155.061, 2156.061, and 2156.121, Government Code, the Comptroller's office is authorized to procure statewide contracts using the sealed proposal method.

Pursuant to §§ 2155.202 – 2155.204, Government Code, statewide contracts procured by the Comptroller's office may additionally be used by community mental health and mental retardation centers, the Texas Legislature and related legislative agencies, and local government entities pursuant to Subchapter D, Chapter 271, Local Government Code. Local government is defined by §271.081 of the Local Government Code to include a county, municipality, special district, school district, junior college district, a local workforce development board created under Section 2308.253, Government Code, or other legally constituted political subdivision of the state.

B.1.2 Definitions

When capitalized, the following terms and acronyms have the meaning set forth below. All other terms have the meaning set forth in Webster's II New College Dictionary.

TERM	DEFINITION
Contract	Any contract(s) resulting from this solicitation. <i>Note: There is no guarantee that any contract will result from this solicitation.</i>
Contractor	The Respondent(s) awarded a Contract as a result of the RFP.
CPA	The Comptroller of Public Accounts, the state agency issuing this solicitation.
Customer	Those state and local entities that are required and permitted by law to purchase goods and services under contracts established by the CPA.
ESBD	The Electronic State Business Daily, which is available online at http://esbd.cpa.state.tx.us/ .
Gov't Code	The Texas Government Code.
Party / Parties	Either the CPA and Respondent separately or collectively.
Proposal	The response submitted by a vendor to the CPA as a result of this solicitation.
Respondent	Any person or vendor who submits a Proposal in response to this solicitation.
RFP	Request for Proposals, which is the type of solicitation embodied in this document.
TAC	The Texas Administrative Code, which is the publication for administrative rules.

B.1.3 Conflicts of Interest

B.1.3.1 Actual and Perceived Conflicts

By submitting a Proposal, the Respondent represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in entering a Contract with the CPA. The Respondent also represents and warrants that entering a Contract with the CPA will not create the appearance of impropriety. In its Proposal, the Respondent shall disclose any existing or potential conflict of interest that it might have in contracting with the CPA. The CPA will decide, in its sole discretion, whether an actual or perceived conflict should result in Proposal disqualification or Contract termination.

B.1.3.2 Current and Former CPA Employees

In addition to the disclosures required above, the Respondent shall also disclose any of its personnel who are current or former officers or employees of the CPA or who are related, within the third degree by consanguinity (as defined by §573.023, Gov't Code) or within the second degree by affinity (as defined by §573.025, Gov't Code), to any current or former officers or employees of the CPA.

B.1.4 Construction of this RFP and the Contract

B.1.4.1 Global Drafting Conventions

The terms "include," "includes," and "including" are terms of inclusion and, where used in this Contract, are deemed to be followed by the words "without limitation."

Unless explicitly stated otherwise, any references to "Sections," "Articles," "Exhibits," or "Attachments" are deemed to be references to the Sections, Articles, Exhibits, and Attachments to this RFP and the Contract.

B.1.4.2 Headings

The Article and Section headings in this RFP and the Contract are for reference and convenience only and may not be considered in the interpretation of this RFP or the Contract.

B.2 THE RFP PROCESS

B.2.1 Submitting Questions about the RFP

The Respondent will have until the Deadline for Submitting Questions, identified in Part A, to submit in writing all questions regarding this RFP. Questions may only be sent to the Point of Contact. All questions shall, to the highest degree possible, cite the specific RFP section to which the question refers. The CPA will, at its discretion, answer the questions in a Question and Answer Document posted on the ESBD.

Only answers provided in writing by the CPA shall be considered official. Information in any form other than the materials constituting this RFP, the Question and Answer Document, and any RFP addendum shall not be binding on the CPA.

All questions submitted to the CPA must include the identity of the sender, the sender's title, company name, mailing address, telephone number, and facsimile number or e-mail address, as applicable.

NOTE: Minor questions for which the answer will not affect the interpretation of the RFP or change the contents of a Proposal (for example, a question regarding delivery of the sealed Proposal) may be answered orally or by e-mail by the CPA.

B.2.2 Addenda to the RFP

Should an addition or correction to this RFP become necessary, an addendum relating the necessary information will be posted on the ESBD. The Respondent is responsible for periodically checking the ESBD for addenda or additional information relating to this RFP. The Respondent is required to acknowledge each addendum by returning a signed copy of the addendum with its Proposal.

B.2.3 Testing and Inspection

The CPA and Customers may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFP and the Contract. The CPA may also test and inspect goods and services before they are purchased under the Contract.

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

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

B.2.4 Accuracy of the Proposal

The Respondent's Proposal shall be true and correct and shall contain no cause for claim of omission or error. Proposals may be withdrawn in writing at any time prior to the submittal deadline.

B.2.5 HUB Subcontracting Plan Requirements

It is the policy of the CPA to promote and encourage contracting and subcontracting opportunities for State of Texas certified Historically Underutilized Businesses (HUBs) in all contracts in compliance with Chapter 2161, Gov't Code. Eligible Respondents are encouraged to become HUB certified. State of Texas HUB applications may be found at:

<http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>

Definitions for State of Texas HUB certifiable businesses can be found in 34 TAC Chapter 20, Subchapter B, which is available at:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=B&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=B&rl=Y)

A HUB Subcontracting Plan Form must be filled out and returned with the Proposal to be considered responsive. If the Proposal does not include a HUB Subcontracting Plan, it shall be rejected as a material failure to comply with advertised specifications.

Any probable subcontracting opportunities are identified in Part A. This list should not 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 HUB Subcontracting Plan for further instructions which require vendors to identify the specific areas intended for subcontracting.

Search the State of Texas HUB Database for HUB vendors by the NIGP class and item at: <http://www2.cpa.state.tx.us/cmbl/hubonly.html>

Additional minority and women owned business association resources are available for subcontracting notices at: <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>

Questions about the HUB Subcontracting Form, finding HUB vendors, or the State of Texas HUB Program, should be directed to the HUB Coordinator identified in Part A.

Additional information and training regarding how to complete a HUB Sub-Contracting Plan can be found on the CPA Website at the following link: <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

B.2.6 Cost of Submitting the Proposal

The CPA 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.

B.2.7 Public Information Act Disclosures

The CPA is a government agency subject to the Texas Public Information Act (PIA), Chapter 552, Gov't Code. The Proposal and other information submitted to the CPA by the Respondent are subject to release as public information. The Proposal and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the specific exception to disclosure in the PIA. Merely making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable, and shall make the entire Proposal subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA.

If Respondent's proposal contains any information, which Respondent claims is confidential and not subject to release under the PIA, Respondent must prepare and deliver to CPA four CDs containing the following information:

1. Two CDs containing complete copies of all of Respondent's submissions pursuant to this RFO. These shall be marked "Complete Offer Documents, [Offeror's Name], CPA RFO _____ . CONTAINS CONFIDENTIAL INFORMATION."
2. Two CDs, each containing copies of all of Respondent's submissions with all information claimed as confidential excised, blacked out or otherwise redacted. Each of these CDs shall also contain an Appendix which contains clear references to all redacted information including a general description of the redacted information. These CDs shall be marked "For Public Release: Redacted Version of [Offeror's Name], CPA RFO _____."

The Respondent, by submitting a Proposal, shall thereby be irrevocably deemed to have fully indemnified and agreed to defend the CPA from any claim of infringement in the intellectual rights of Respondent or any third party for any materials appearing in the Proposal.

B.2.8 Irrevocability of the Proposal

The Proposal is irrevocable for one hundred twenty (120) calendar days following the Proposal Opening Date and Time identified in Part A. This period may be extended at the CPA's request with the Respondent's written agreement.

B.3 CONTRACT INFORMATION

B.3.1 Amending the Contract

Any alterations, additions, or deletions in the terms and conditions of the Contract shall be by written amendment executed by both Parties and put into effect with a Contract Amendment issued by the CPA. The Respondent shall not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

B.3.2 Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed Contract (or Notice of Award), Attachments to the Contract (or Notice of Award), Request for Proposals, and Respondent's Response to Request for Proposals.

B.3.3 Terminating the Contract

B.3.3.1 Convenience of the State of Texas

The CPA reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if the CPA determines that such termination is in the best interest of the state. In the event of such a termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Customers shall be liable for payments for any goods or services ordered from the Respondent before the termination date.

B.3.3.2 Cause/Default

If the Respondent fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, the CPA may, upon written notice of default to the Respondent, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

The CPA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless the CPA notifies the Respondent in writing prior to the exercise of such remedy. The Respondent shall remain liable for all covenants and indemnities under the Contract. The Respondent shall be liable for all costs and expenses, including court costs, incurred by the CPA with respect to the enforcement of any of the remedies listed herein.

B.3.3.3 Change in Federal or State Requirements

If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either the CPA or the Respondent cannot reasonably fulfill the Contract and if the Parties can not agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under the Contract.

B.3.3.4 TCPPD Purchasing Preference

Pursuant to Texas Human Resources Code Chapter 122, state agencies shall purchase products and services meeting the agency's specifications offered by a Community Rehabilitation Program (CRP) certified by the Texas Council on Purchasing from People with Disabilities (TCPPD), or its Central Nonprofit Agency, Texas Industries for the Blind and Handicapped (TIBH). Should any item(s) awarded under any contract pursuant to this RFP become available from a CRP through TIBH or TCPPD during the term of the contract, the state may cease all use of the awarded contract immediately upon the availability of such product or service, and may terminate the contract for some or all of such products or services awarded.

B.3.3.5 Rights upon Termination or Expiration of Contract

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

B.3.3.6 Survival of Terms

Termination of the Contract for any reason shall not release the Respondent from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

B.3.4 Contract Documentation

The Contract will consist of the Notice of Award, Listing of Awarded Items, and any Contract Amendments thereto issued by the CPA; this RFP, together with any modifications made through Addenda thereto; and the successful Proposal, together with any clarifications thereto that are submitted at the request of the CPA. In the event of any conflict or contradiction between or among these documents, the Notice of Award, as modified by any Contract Amendments, shall control over the RFP and the Proposal. The RFP, as modified by any Addenda, shall control over the Proposal.

B.4 CONTRACT MANAGEMENT

B.4.1 Contract Managers

B.4.1.1 The CPA Contract Manager

The CPA Contract Manager has the authority to:

- sign Controlled Correspondence
- serve as the day-to-day point of contact
- coordinate quality control reviews
- approve invoices
- coordinate meetings with the Respondent
- investigate complaints
- receive requests for substitutions or changes in goods or services awarded under the Contract

The CPA Contract Manager shall have no authority to agree to any:

- Contract amendment
- pricing change

B.4.1.2 The Respondent's Contract Manager

The Respondent shall identify its Contract Manager to the CPA in writing within 10 days of the issuance of the Purchase Order. Changes to the Respondent's Contract Manager shall hereafter be documented by the Respondent through Controlled Correspondence. The Respondent's Contract Manager has the authority to:

- make decisions regarding the deliverables required by the Contract
- sign Controlled Correspondence
- serve as the day-to-day point of contact
- coordinate quality control reviews
- coordinate meetings with the CPA
- investigate complaints

B.4.2 Controlled Correspondence

In order to track and document requests for decisions and/or information pertaining to the Contract, and the subsequent response to those requests, the CPA and the Respondent shall use Controlled Correspondence. The CPA shall manage the Controlled Correspondence for the Contract. For each Controlled Correspondence document, the CPA shall assign a tracking number and the document shall be signed by the appropriate Party's Contract Manager.

Controlled Correspondence shall not be used to change pricing or alter the terms of the Contract. Controlled Correspondence shall not be the basis of a claim for equitable adjustment of pricing. Any changes that involve the pricing or the terms of the Contract must be by a properly executed Contract amendment. However, the Controlled Correspondence process may be used to document refinements and interpretations of the provisions of the Contract, to document the cost impacts of proposed changes, and to document CPA-approved changes to the Respondent's HUB subcontracting plan.

Controlled Correspondence documents shall be maintained by both Parties in on-going logs and shall become part of the normal status reporting process. Any communication not generated in accordance with such process shall not be binding upon the Parties and shall be of no effect.

B.4.3 Notices and Liaisons

B.4.3.1 Delivery of Written Notices

Any notice required or permitted to be given under the Contract by one Party to the other Party shall be in writing and shall be addressed to the receiving Party at the address hereinafter specified. The notice shall be deemed to have been given immediately if delivered in person to the recipient's address hereinafter specified. It shall be deemed to have been given on the date of certified receipt, if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving Party at the address hereinafter specified.

B.4.3.2 Notice to the Respondent

Within 10 days of the issuance of the Purchase Order, the Respondent shall identify in writing to the CPA the address and contact person for all notices. If there is any change to this information during the term of the contract, the Respondent shall notify the CPA by Controlled Correspondence.

B.4.3.3 Notice to the CPA

The CPA's address for all purposes under this Contract and for all notices hereunder shall be:

Director, TPASS Division
Comptroller of Public Accounts
P. O. Box 13186 (physical address: 1711 San Jacinto Blvd)
Austin, Texas 78711-3186 (physical: 78701)

With copies to (registered or certified mail with return receipt is not required for copies):

Deputy General Counsel for TPASS
Comptroller of Public Accounts
P. O. Box 13186 (physical address: 1711 San Jacinto Blvd)
Austin, Texas 78711-3186 (physical: 78701)

B.4.4 Subcontracting Approval

The Respondent shall perform the Contract with its own resources and those subcontractors identified in the Respondent's HUB Subcontracting Plan. In the event that the Respondent should determine that it is necessary or expedient to execute additional or alternative subcontracts for any of the performances under the Contract, the Respondent shall submit a revised HUB Subcontracting Plan for

prior approval before executing any subcontracts. The Respondent shall also transmit to the CPA for review and prior CPA approval a true copy of the subcontract it proposes to execute with a subcontractor.

The Respondent, in subcontracting for any performances specified herein, expressly understands and acknowledges that in entering into such subcontract(s), the CPA is in no manner liable to any subcontractor(s) of the Respondent. In no event shall this provision relieve the Respondent of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this RFP and Contract.

B.4.5 No Implied Authority

Any authority delegated to the Respondent by the CPA is limited to the terms of the Contract. The Respondent shall not rely upon implied authority and specifically is not delegated authority under the Contract to: (1) make public policy; (2) promulgate, amend, or disregard CPA program policy; or (3) unilaterally communicate or negotiate, on behalf of the CPA, with any member of the U.S. Congress or any member of their staff, any member of the Texas Legislature or any member of their staff, or any federal or state agency.

B.4.6 Cooperation with the CPA

The Respondent must ensure that it cooperates with the CPA and other state or federal administrative agencies, at no charge to the CPA, for purposes relating to the administration of the Contract. The Respondent agrees to reasonably cooperate with and work with the CPA's contractors, subcontractors, and third party representatives as requested by the CPA.

B.4.7 Dispute Resolution

Chapter 2260 of the Texas Government Code prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, the CPA has adopted rules, codified at 34 TAC §§1.360-1.387. The Respondent shall comply with such rules, as revised from time to time.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve any claim for breach of contract asserted by the Respondent under the Contract. If the Respondent'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, the Respondent 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 the Respondent 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 the Respondent's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the CPA 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 CPA nor any other conduct of any representative of the CPA 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 CPA and the Respondent 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 CPA and the Respondent within fifteen (15) days after written notice by one of them demanding mediation under this Section. The Respondent shall pay all costs of the mediation unless the CPA, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the CPA and the Respondent may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the CPA and the Respondent shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The CPA's 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 CPA of (1) any rights, privileges, defenses, remedies or immunities available to the CPA as an agency of the State of Texas or otherwise available to the CPA; (2) the CPA's 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 CPA, the Respondent 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, the Respondent may suspend performance during the pendency of such claim or dispute if the Respondent has complied with all provisions of §2251.051, Gov't Code, and such suspension of performance is expressly applicable and authorized under that law.

B.4.8 Fraud, Waste, and Abuse

By submitting a Proposal to the RFP, the Respondent represents and warrants that it has read and understood and shall comply with CPA's Anti-Fraud Policy, found at: <http://www.window.state.tx.us/ssv/ethics.html>, as such Policy currently reads and as it is amended throughout the term of the Contract.

B.4.9 Reporting Sales

By the 10th day of every calendar month, the Respondent shall report to the CPA the past month's dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales of goods and services to Customers under the Contract. The dollar value of the sale shall be the price paid by the Customer for the goods and services under the Contract.

If no sales occur, the Respondent shall report "NO" sales. The report shall be submitted within 30 calendar days following the completion of the quarterly reporting period.

The Respondent shall also submit a final closeout report within ninety (90) calendar days after the expiration or termination of the Contract. The closeout report shall include all sales not shown in the final or most recent quarterly report and shall reconcile all errors and credits. If the Respondent reported all Contract sales and reconciled all errors and credits on the final quarterly report, then the Respondent shall report "zero" sales in the closeout report.

The Monthly Sales Report shall be submitted electronically to the CPA Contract Manager in the format prescribed by the CPA (MS Excel, Access, or similar format). If the Respondent fails to submit sales reports, falsifies sales reports, or fails to submit sales reports in a timely manner, the CPA may terminate or cancel the Contract in accordance with Section B.3.3.

B.4.10 Renegotiation of Price

The CPA shall monitor market prices and prices paid by other states for substantially similar goods and services during the term of the Contract. If the CPA determines that substantially similar goods and services are selling for meaningfully lower prices than the prices established in the Contract, the CPA may initiate price renegotiations with the Respondent and amend the Contract to reflect a new, lower price, if agreed to by the Parties.

B.4.11 Name Changes and Sales

If the Respondent changes its name or is sold to another entity, it must notify the CPA through Controlled Correspondence. The Respondent, in its notice, shall describe the circumstances of the name change or sale, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for the Respondent, the Respondent shall identify the new personnel and provide resumes to the CPA, if resumes were originally required by the RFP. The CPA may request other information about the change and its impact on the Contract and the Respondent shall supply the requested information within five (5) working days of receipt of the request.

The CPA may terminate the Contract due to a sale of or change to the Respondent that materially alters the Respondent's ability to perform under the Contract. The CPA has the sole discretion to determine if termination is appropriate.

B.4.12 News Releases

The CPA does not endorse any vendor, commodity, or service. News releases pertaining to this transaction and/or advertisements, publications, declarations and any other pronouncements by the Respondent using any means or media mentioning the State of Texas or the CPA must be approved in writing by the CPA prior to public dissemination.

B.5 FINANCIAL INFORMATION

B.5.1 Appropriations

All obligations of the CPA and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to the Contract. The Respondent acknowledges that the ability of the CPA and the Customers to make payments under the Contract is contingent upon the continued availability of funds. The Respondent further acknowledges that funds may not be specifically appropriated for the Contract and the CPA's or Customers' continual ability to make payments under the Contract is contingent upon the funding levels appropriated for each particular appropriation period. The CPA and the Customers will use all reasonable efforts to ensure that such funds are available. The Respondent agrees that if future levels of funding for the CPA or a Customer are not sufficient to continue operations without any operational

reductions, the CPA or the Customer, in its discretion, may terminate the Contract or a pending order under the Contract, either in whole or in part. In the event of such termination, the CPA or the Customer will not be considered to be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. The CPA and the Customer shall make best efforts to provide reasonable written advance notice to the Respondent of any such Contract or order termination. In the event of such a termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on that particular order if an order is being terminated, or the Contract, if the Contract is being terminated. The CPA or the Customer shall be liable for payments limited only to the portion of work the CPA or the Customer authorized in writing and which the Respondent has completed, delivered to the CPA or Customer, and which has been accepted by the CPA or Customer. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

B.5.2 Audit Requirements

Pursuant to §2262.003, Gov't Code, the State Auditor's Office, or successor agency, may conduct an audit or investigation of the Respondent or any other entity or person receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds by the Respondent or any other entity or person directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. The Contract may be amended unilaterally by the CPA to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of §2262.003. **The Respondent shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Respondent and the requirement to cooperate is included in any subcontract it awards.**

Customers who order under the Contract using federal or grant funds may have additional audit requirements that are required by law or regulation. Those additional requirements will be included on the purchase order for that particular order.

B.5.3 Invoicing and Payment Requirements

In order to receive payment under the Contract, the Respondent must submit an original invoice to the Customer placing the order, which will be designated in the purchase order as the "Bill To" address. To be a proper invoice that may be accepted and paid, the invoice must include the following information and/or attachments:

- (1) Name and address of the Respondent.
- (2) The Respondent's Texas Identification Number (TIN).
- (3) The Respondent's invoice remittance address.
- (4) The purchase order number authorizing the delivery of products or services.

- (5) A description of what the Respondent delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Respondent must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Respondent's information.

If an invoice does not meet this Section's requirements, the state will send the Respondent written notice with the improper invoice within 21 calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information the Respondent needs to correct the invoice.

NOTE: For purposes of this Section and Sections B.5.4 and B.5.5, the CPA shall only be receiving and paying invoices when the CPA has placed an order with the Respondent for CPA needs. Otherwise, the orders will be for the Customers, as defined in Section B.1.2.

B.5.4 Disputed Invoices

As stated above, the Respondent will receive notice of an error in an invoice submitted for payment by not later than the 21st day after the date the invoice was received by the state. If an invoice dispute is resolved in favor of the Respondent, the Respondent is entitled to receive interest on the unpaid balance of the invoice, beginning on the date the invoice became overdue, pursuant to §2251.021, Gov't Code. If a dispute is resolved in favor of the CPA or a Customer, the Respondent shall submit a corrected invoice that must be paid in accordance with §2251.021. The unpaid balance accrues interest if the corrected invoice is not paid by the appropriate date.

B.5.5 Time and Manner of Payment

Pursuant to Texas Government Code Chapter 2251, Payment by the CPA or a state entity Customer is overdue on the 31st day after the later of: (1) the date the CPA or Customer receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the CPA or Customer receives the invoice for the goods or service.

Payment by a political subdivision Customer whose governing body meets only once a month or less frequently is overdue on the 46th day after the later event of: (1) the date the Customer receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Customer receives the invoice for the goods or service.

B.5.6 Antitrust and Assignment of Claims

Pursuant to Texas Government Code §2155.005, the Respondent affirms that the Respondent and any person, firm, corporation, partnership, or institution represented by the Respondent, and any person or entity representing the Respondent (1) have not violated the antitrust laws of Texas (Tex.Bus. & Com.Code §15.01, *et seq.*) or the United States (15 U.S.C. §1 *et seq.*); and (2) have not, directly or indirectly, communicated Respondent's Proposal for the Contract to any competitor or any other person engaged in such line of business.

The Respondent hereby assigns to the State of Texas all of Respondent's rights, title and interest in and to all claims and causes of action Respondent may have under the antitrust laws of Texas or the United States for overcharges associated with the Contract.

B.5.7 Debts and Delinquencies

As required by §2252.903, Gov't Code, the Respondent agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

B.5.8 Liability for and Payment of Taxes

The CPA and certain Customers are exempt from State Sales tax and Federal Excise tax. Customers will furnish Tax Exemption Certificate(s) to the Respondent upon request. The Respondent shall pay all taxes resulting from the RFP and Contract including but not limited to any federal, state or local income, sales, excise or property taxes. The CPA and the Customers shall not be liable to reimburse the Respondent for the payment of such taxes incurred by the Respondent in acquiring any goods or services as a part of any work called for in this RFP and the Respondent's invoice shall not include any amount for such taxes, as long as the Customer has provided the requested Tax Exemption Certificates.

B.5.9 Method of Purchase and Vesting Ownership

All goods or services purchased pursuant to the Contract shall be purchased using an outright purchase. Upon installation, acceptance, and payment, the Customer shall receive title to any personal property delivered pursuant to the purchase, except as otherwise agreed to in the Contract.

B.5.10 No Debt Against the State

The Contract shall not be construed as creating any debt by or on behalf of the State of Texas.

B.5.11 Refunds

If the CPA determines that it or a Customer has overpaid the Respondent under the Contract, the Respondent shall refund that amount to the CPA or Customer, depending on the entity that overpaid. The CPA or Customer may offset and deduct the amount of the overpayment from any amount owing, as a reimbursement, but unpaid to the Respondent. The Respondent shall refund any overpayment within 30 calendar days of receipt of the notice of the overpayment.

If any reimbursement, or a portion of a reimbursement, is disallowed as a result of an audit finding that the Respondent failed to follow the requirements for the Contract, then the Respondent agrees that the CPA or Customer may recoup the disallowed amount from funds payable under the Contract, to the extent the disallowed amount was incurred by the CPA or Customer. If an audit identifies a disallowed amount after the expiration date of the Contract, the CPA or Customer shall send the Respondent notice of the audit results and specifically identify the amount that must be refunded by the Respondent. The Respondent shall refund the disallowed amount within 30 calendar days of receipt of the notice.

B.5.12 Travel

Any travel or per diem required by the Respondent to perform its obligations under the Contract will be at the Respondent's expense. All travel and per diem that the state requests in addition to what the Contract requires the Respondent to provide at the Respondent's expense will be paid in accordance with State of Texas Travel Allowance Guide.

B.5.13 Direct Deposit

The Texas Comptroller of Public Accounts encourages vendors to receive payment by direct deposit. To receive future payments by direct deposit, vendors should download and fill out the New Setup Direct Deposit/Advance Payment Notification, Form 74-207 available at www.txdirectdeposit.org.

Vendors may request Advance Payment Notification by fax or e-mail. This feature includes notification one business day before the deposit posts to the vendor's bank account. It also provides the amount of the deposit and which agency it came from. Vendors may also receive remittance information with the notification.

B.6 CONFIDENTIALITY AND SECURITY

The Respondent should not receive any sensitive or confidential information under the Contract. Any information the Respondent compiles or creates as a result of the Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. The Respondent shall establish a method to secure the confidentiality of records and other information relating to clients in accordance with applicable federal and state laws, rules, and regulations.

The obligations of the Contractor under this Security and Confidentiality Article shall survive this Contract and shall be included in all subcontracts.

B.7 TERMS AND CONDITIONS

B.7.1 Affirmations

Submitting a Proposal with a false statement is a material breach of contract and shall void the Proposal or the Contract, and the Respondent shall be removed from all bid lists. By signature thereon affixed, the Respondent thereby certifies that:

B.7.1.1 The Respondent has not given, offered to give, and does not 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 submitted response. Violation of this requirement may result in the termination of the Contract at the discretion of the CPA.

B.7.1.2 The CPA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to the CPA under this Contract constituting a record under the Act is received by the CPA, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. The Respondent authorizes the CPA to submit any information contained in the Contract, provided under the

Contract, or otherwise requested to be disclosed, including information Respondent has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be excepted from public disclosure under the Act. If the CPA does not have a good faith belief that information may be subject to an exception to disclosure, the CPA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of the Respondent to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. The Respondent waives any claim against and releases from liability the CPA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Respondent and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

B.7.1.3 The Respondent shall promptly notify the CPA in the event that any representations and warranties provided in this Contract are no longer true and correct. The Respondent acknowledges that all of its representations and warranties contained in any part of its Proposal and this Contract are material and have been relied upon by the CPA in selecting the Respondent for the award of the Contract. Further, the Respondent warrants and represents that all of its statements and representations made to the CPA prior to being awarded the Contract, and those made during the negotiation of this Contract, are material, true and correct.

B.7.2 Civil Rights

The Respondent agrees that no person shall, on the ground 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."

B.7.3 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 Excluded Parties List System (ELLS), <http://www.epls.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 <http://www.epls.gov>.

B.7.4 Records Retention

The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

B.7.5 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 (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

B.7.6 Prohibition on Lobbying

The Respondent shall comply with the provisions of a federal law known generally as the Lobbying Disclosure Act, 2 U.S.C. §1601 *et seq.* By submitting a Proposal, the Respondent certifies that it shall not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. §1352. It also certifies that the Respondent shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL.

B.7.7 Copyrights and Publications

The Respondent understands and agrees that, where activities supported by the Contract produce original books, manuals, films, or other original material (hereinafter referred to as "the works"), the Respondent may copyright the works subject to the reservation by the CPA and affected Customers of a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state and/or political subdivision purposes:

- the copyright in the works developed under the Contract, and
- any rights of copyright to which the Respondent purchases ownership with funding from the Contract.

The Respondent may publish, at its expense, the results of Contract performance with prior CPA review and approval of that publication. Any publication (written, visual, or sound) shall include acknowledgment of the support received from the CPA and Customers. One (1) copy of any such publication must be provided to the CPA. The CPA reserves the right to require additional copies before or after the initial review. All copies shall be provided free of charge to the CPA.

B.7.8 Certifications

B.7.8.1 Child Support Obligations

Under §231.006, Texas Family Code, (relating to child support) the Respondent, by submitting its Proposal, certifies that it is not ineligible to receive a payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

B.7.8.2 Texas Corporate Franchise Tax Certification

The Respondent, by submitting its Proposal, certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

B.7.8.3 Certification Concerning Dealings with Public Servants

The Respondent, by submitting its Proposal, certifies that it has not given and does not 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 this transaction.

B.7.8.4 Certification Concerning Financial Participation

Pursuant to §2155.004, Gov't 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 if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

B.7.8.5 Certification Concerning Hurricane Relief

Sections 2155.006 and 2261.053, Government Code, prohibit the CPA 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 §418.004, Gov't Code, occurring after September 24, 2005. Under §2155.006, Gov't 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 if this certification is inaccurate.

B.7.9 Independent Contractor

The Contract shall not render the Respondent an employee, officer, or agent of the CPA for any purpose. The Respondent is and shall remain an independent contractor in relationship to the CPA. The CPA shall not be responsible for withholding taxes from payments made under the Contract. The Respondent shall have no claim against the CPA for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

B.7.10 No Assignment by Contractor

The Respondent shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the CPA.

B.7.11 Indemnification and Liability

The Respondent shall defend, indemnify, and hold harmless the State of Texas, its officers, and employees, and the CPA, its officers, and employees and contractors, from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, including without limitation attorneys' fees and court costs, arising out of, connected with, or resulting from any acts or omissions of the Respondent or any agent, employee, subcontractor, or supplier of the Respondent in the execution or performance of the Contract. The Respondent shall coordinate its defense with the Texas Attorney General as requested by the CPA.

This section is not intended to and shall not be construed to require the Respondent to indemnify or hold harmless the State of Texas or the CPA for any claims or liabilities resulting from the negligent acts or omissions of the CPA or its employees.

B.7.12 Respondent 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 the Contract. The Respondent shall notify the CPA Contract Manager in writing of any such damage within one (1) calendar day.

B.7.13 Force Majeure

The CPA, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the CPA.

In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the CPA Contract Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

B.7.14 Buy Texas

In accordance with §2155.4441, Gov't Code, the Respondent shall, in performing any services under the Contract, purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside Texas.

B.7.15 Miscellaneous Terms and Conditions

B.7.15.1 Permits

The Respondent shall be responsible, at the Respondent's expense, for obtaining any and all permits or licenses required by city, county, state, or federal rules, regulations, law, or codes that pertain to the Contract.

B.7.15.2 Electrical Items

All electrical items provided by the Respondent to the CPA or a Customer under the Contract must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.

B.7.15.3 Executive Head

Pursuant to §669.003, Gov't Code, the CPA 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.

B.7.15.4 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 each and provide an explanation for the termination.

B.7.16 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 succeeding breach.

B.7.17 No Waiver of Sovereign Immunity

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

B.7.18 Severability

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

B.7.19 Applicable Law and Venue

The Respondent agrees that the Contract in all respects shall be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. The Respondent also agrees that the exclusive venue and jurisdiction of any legal action or suit concerning the CPA under this Contract is, and that any such legal action or suit shall be brought, in a court of competent jurisdiction in Travis County, Texas.

B.7.20 Compliance with Laws; Dealing with Public Servants

The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; (iii) §2155.003, Gov't Code, which prohibits the chief clerk or any other employee of the CPA from having an interest in, or in any manner be 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 the Contract. Except where otherwise expressly required by applicable laws and regulations, CPA shall not be responsible for monitoring Respondent's compliance with any laws or regulations. 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 therefrom.

B.7.21 Insurance and Other Security

The Respondent represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder. The Respondent shall insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same. Such insurance shall comply with Texas statutory requirements and also cover any cargo being delivered to Customers.

The Respondent represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from Best, and are authorized to provide the coverage. The Respondent shall furnish proof of insurance upon request of a Customer or the CPA.

B.7.22 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 Tex. Bus. & Com. Code, Chapter 17, 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.

B.7.23 Immigration

The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 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 the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.

B.7.24 Change Management

The Respondent agrees that the key personnel assigned to the Contract 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 or unless the CPA agrees to a change in the key personnel.

B.7.25 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, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Respondent shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. 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.

B.7.26 No Liability Upon Termination

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

B.7.27 Felony Criminal Convictions

Respondent represents and warrants that Respondent has not 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 CPA as to the facts and circumstances surrounding the conviction.

B.7.28 Drug Free Workplace

The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

B.7.29 Vendor Performance

In accordance with Texas Government Code, 2155.074 and 2155.75, vendor performance may be used as a factor in the award.

B.7.30 Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institutions of Higher Education Purchases Only)

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

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

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