

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**Date: June 7, 2021**

**Type of Solicitation: Request for Proposals**

**Name of Solicitation: Take Care of Texas Marketing Plan**

**Solicitation Number: 582-22-30075**

**Class 915, Item 01**

**Pre-Proposal Conference:** No Pre-Proposal Conference is scheduled for this solicitation.

**Deadline for Submission of Questions:** June 14, 2021 at 5:00 P.M. (Central Time)

**Responses Due:** July 7, 2021 at 3:00 P.M. (Central Time)

**Description:** Take Care of Texas is a statewide campaign from the Texas Commission on Environmental Quality that encourages all Texans to help keep our air and water clean, conserve water and energy, and reduce waste. The contract will begin 09/01/2021 and end 08/31/2023 with three one-year renewal options.

## **Historically Underutilized Businesses (HUB ) Subcontracting Plans**

Submission of a HUB Subcontracting Plan (HSP) is required for all Responses to this Solicitation.

## **PURCHASING AUTHORITY:**

- Competitive Sealed Proposals (RFP) Gov't Code 2156, Subchapter C
- Scientific & Technical Environmental Services (RFP) Texas Water Code Section 5.2291, Gov't Code Chapter 2254.003
- Professional Services (RFP) Gov't Code 2254.003
- Purchase of Automated Information Systems (RFO) Gov't Code 2157
- Professional and Consulting Services (RFQ) Gov't Code 2254.004
- Authority to Award Grants (RFGA) Texas Water Code, Chapter 5, Section 5.124
- Biddable Goods and Services (IFB) Gov't Code 2155

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## TCEQ POINTS OF CONTACT FOR THIS SOLICITATION

### TCEQ Procurements and Contracts Representative

**Name:** Dorothy Maxson

**Telephone:** 512-239-0394

**Email:** [dorothy.maxson@tceq.texas.gov](mailto:dorothy.maxson@tceq.texas.gov)

Due to COVID-19 Coronavirus, hand deliveries, mail or carrier services deliveries of hard copy proposals are no longer accepted. Proposals for the Solicitation will only be accepted via email. One signed Adobe portable document format (PDF) searchable file must be submitted as an email attachment to the following address:

[Procurements&Contracts@tceq.texas.gov](mailto:Procurements&Contracts@tceq.texas.gov)

### TCEQ Historically Underutilized Business (HUB) Coordinator

**Name:** Claribel Diaz

**Telephone:** (512) 239-1273

**Email:** [claribel.diaz@tceq.texas.gov](mailto:claribel.diaz@tceq.texas.gov)

Assistant HUB Coordinator

**Name:** Wendy Cole

**Telephone:** (512) 239-1273

**Email:** [wendy.cole@tceq.texas.gov](mailto:wendy.cole@tceq.texas.gov)

The HUB requirements are found in Chapter 2161, Texas Government Code and 34 Texas Administrative Code, Chapter 20, Subchapter D. The HSP forms and additional information about the HUB program are found at: State of Texas HUB Subcontracting Plan

(<https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>).

## **RESPONDER GENERAL INSTRUCTIONS**

### **Pre-Proposal Conference**

If a Pre-Proposal Conference is scheduled for this Solicitation, the date, time and location are on the Cover Page. Any Pre-Proposal Conference scheduled after release of this Solicitation will be announced in an addendum posted on the Electronic State Business Daily (ESBD) link <http://www.txsmartbuy.com/esbd>.

### **Questions Regarding the Solicitation**

Deliver questions in writing by the due date on the Cover Page to the TCEQ Procurement and Contracts Representative by email only. The email address to use for submitting questions is: [dorothy.maxson@Tceq.Texas.Gov](mailto:dorothy.maxson@Tceq.Texas.Gov). Please include the following information in the subject line of the email: Solicitation Name, Solicitation Number, and the Due Date for Responses. TCEQ has sole discretion as to whether to respond to questions. For questions to which it chooses to respond, TCEQ endeavors to provide answers to questions within ten to fourteen (10-14) business days prior to the Due Date for Responses. TCEQ may extend the Due Date for Responses if answers to submitted questions cannot be provided in enough time for responders to make revisions.

### **Addenda**

Any changes to the Solicitation, deadline dates, and all responses to questions will be posted as addenda on the ESBD. All addenda are part of the Solicitation. No other explanations, interpretations, or changes will be considered official or binding. It is Responder's responsibility to ensure review all the addenda.

### **Changes to the Terms and Conditions**

Exceptions that are not advantageous to TCEQ may result in the deduction of points in the evaluation or disqualification of the Response.

### **Cost of Preparing the Response**

The Responder is responsible for all costs incurred in the preparation and submission of a Response.

### **Quantity and Nature of the Work**

Responders are required to inform themselves of all conditions which may affect the performance or the prices. By submitting a Response, Responder expressly waives any claims that there was a misunderstanding concerning the quantities or the nature of the Work.

### **Historically Underutilized Business (HUB) Subcontracting Plan (HSP)**

The Cover Page indicates whether an HSP is required. Failure to submit a HUB Subcontracting Plan, if required for the Solicitation, will result in rejection of the Response.

You are encouraged to seek assistance in completing the HSP from the TCEQ HUB Coordinator, Claribel Diaz, at (512) 239-1273 or at [claribel.diaz@tceq.texas.gov](mailto:claribel.diaz@tceq.texas.gov). TCEQ will respond to timely and relevant inquiries. The HSP must demonstrate you made a good faith effort to include HUBs in subcontract work. If there are any changes to the information in the HSP after it is submitted, you must obtain prior approval from TCEQ.

### **Preparation of Responses**

Responses become TCEQ records and cannot be returned. Responses should be in the format of one (1) electronic searchable PDF document of the entire proposal and shall not be locked.

In order for the proposal to be responsive, the electronic version **must** contain the entire proposal. In addition, the electronic version **must** contain a signed Responder's Signature and Information page. A scan of the signed document is acceptable. If these requirements are not met, then your Response may be disqualified.

Prepare the Response as follows:

- Include all information listed on the Response Contents page;
- Obtain any missing applicable forms from TCEQ with sufficient time to complete and submit them in the Response;
- Complete the applicable forms in this Solicitation;
- Create any other applicable documents;
- Insert all the applicable documents behind the specified tabbed sections. If you have no information to include behind a tab, include a sheet behind the tab stating "Not Applicable"; and
- Sign the Response on the Responder's Signature and Information page. Unsigned Responses will not be considered.

### **Submission of Responses**

- Responses may be divided into multiple files and submitted over multiple emails if the file size is over 32 megabytes. Include on the subject line the total number of being sent. For example 1 of 2, then 2 of 2.
- TCEQ will not accept proposals submitted via drop box links or File Transfer Protocol (FTP).

If the Response preparation or submission requirements are not met, the Response may be considered non-responsive and disqualified. TCEQ is not responsible for documents that cannot be read. Unreadable Responses may be, at TCEQ's discretion, rejected as non-compliant.

### **Due Date/Late Responses**

It is Responder's responsibility to ensure timely delivery of the Response to TCEQ by the date and time listed on the first page of this solicitation. Late Responses will not be considered under any circumstances. TCEQ will not be responsible for failure of internet service providers or any electronic delivery delays. Responses cannot be altered, amended, or withdrawn, after the Due Date and Time.

## **TCEQ's Acceptance of Responses**

TCEQ may reject Responses that do not comply with requirements in the Solicitation and state and federal laws. TCEQ may accept or reject all or any part of any response, waive procedures for submitting Responses, waive formalities and/or minor technicalities, and award by item or groups of items, whichever best serves the interests of TCEQ. TCEQ may also cancel this procurement and withdraw this Solicitation at any time before a contract is signed by TCEQ. TCEQ shall be the sole judge of the best interests of TCEQ.

## **Evaluation**

The pricing and all terms and conditions of Responses are fixed for 120 days from receipt by TCEQ. Best and Final Offers (BAFOs), if requested by TCEQ, are fixed for 60 days. To determine the most advantageous Response, in addition to price, TCEQ may consider other relevant criteria, which are described more fully in Section 2, Evaluation Criteria. TCEQ may use information regarding the Responder's performance on past TCEQ contracts in the evaluation of qualifications. In addition, TCEQ will use the information contained in the Texas Comptroller of Public Account's vendor performance tracking system in the evaluation of qualifications.

## **Selection**

Depending on the applicable procurement method and solicitation type, in order to secure the best value for the State, TCEQ may take one or more of the following actions in the selection process:

- Accept the highest scoring Response without changes.
- Request clarifications, assurances and corrections.
- Conduct discussions on Responses scoring within a competitive range and request Best and Final Offers (BAFOs). The BAFO must be in compliance with all requirements.
- Change the selection criteria and apply it to BAFOs.
- Select the highest scoring BAFO and accept it without changes or negotiate better terms.
- In the case of a tie which cannot be resolved by application of one or more statutory preferences, a selection may be made that is in the best interest of the State.
- The TCEQ may award one or more contracts based on the amount of work that TCEQ foresees needing performed.
- TCEQ may award contracts to other contractors at a later date under this solicitation or through another appropriate method, including another solicitation.

## Certification of Interested Parties

In 2015, the Texas Legislature adopted [House Bill 1295](#), which added section 2252.908 of the Government Code. The law states that a state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295) to the state agency at the time the business entity submits the signed contract to the state agency.

The Texas Ethics Commission has provided a list of [Frequently Asked Questions](#) and the certification form on their web site at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) for your review.

If you are a selected vendor for a contract that meets the requirements for Certification of Interested Parties, you will be given instructions on how to obtain this certification form at the time of award.

## Protest Procedures

An actual or prospective Responder or Contractor who is aggrieved in connection with the Solicitation, evaluation, or award of a contract by TCEQ may formally protest to the TCEQ Manager of Procurements and Contracts. TCEQ Protest Procedures can be found at [30 Texas Administrative Code Part 1, Chapter 11, Subchapter B, § 11.2](#).

## Public Information

***The Response is a public record.*** By signing and submitting a response, Responder hereby acknowledges:

- That the Response and subsequent documents submitted to TCEQ are subject to the Texas Public Information Act (PIA);
- That it is Responder's obligation to specifically identify information it contends to be confidential or proprietary and accepts that TCEQ may in its sole discretions deem a Response as non-compliant; and
- That Responder grants a royalty-free, non-revocable, world-wide, perpetual license to reproduce, any copyrighted portions of the Response and subsequent documents to comply with LBB reporting requirements, PIA disclosures, or any other reporting requirements mandated by law or statute.

## Conflict of Interest

Responder shall disclose apparent, potential or actual conflicts of interest known with the Response in **Tab 9**. Responder has a continuing obligation to disclose conflicts of interest during this Solicitation, and if awarded, during the Contract Period. TCEQ may refuse to contract with Responder or terminate any Contract due to an apparent, potential, or actual conflict of interest.

**SECTION 2:**

**SCOPE OF WORK AND EVALUATION CRITERIA**



## SCOPE OF WORK

### A. Background

The Texas Commission on Environmental Quality (TCEQ) through its Take Care of Texas (TCOT) program develops educational resources to increase public awareness among Texans of the personal steps they can take to conserve water and energy, keep the air and water clean, and reduce waste. The purpose of this project is to develop outreach and media campaigns. Copies of TCEQ current contracts for this project may be found at the TCEQ Central File Room Online at:

<https://www.tceq.texas.gov/agency/data> . Select "FA / Purchase Orders" as the Record Series, select "Primary ID" as the search criteria and enter "70032" as the search phase.

TCOT currently executes the following marketing initiatives:

- K-5 Art Contest
- 6-12 Video Contests
- Pledge to Take Care of Texas with mailed Pledge Kits
- Lesson Plans for educators
- Monthly newsletters for the environmentally minded Texan
- Quarterly Educator Newsletter
- Quarterly Proud Partner newsletter

Current quarterly marketing plan centers around the following environmental themes:

- Q1: October, November, and December: Waste & Recycling
- Q2: January, February, and March: Texas Love
- Q3: April, May, and June: Air Quality/Earth Day
- Q4: July, August, and September: Water Quality & Water Conservation

Past marketing work has included:

- Production of 30 Public Service Announcements (PSAs) using donated services from widely known Texans.
- Coordination and purchasing of a combination of radio and television ads (with a PSA Match Program) using the Take Care of Texas radio and TV PSAs completed in Objective 2; print advertising in Texas publications such as Texas Parks & Wildlife and Texas Highways using existing Take Care of Texas ads; and banner ads on Texas-based websites.
- Ads on Facebook, Instagram and YouTube.

### B. Tasks

Contractor shall assist TCEQ in developing a TCOT marketing plan and subsequent outreach and media promotions to increase public awareness among Texans of the personal steps they can take to conserve water and energy, keep the air and water clean, and reduce waste. TCEQ will enter into an umbrella contract with the Contractor to provide marketing initiatives. For each initiative, TCEQ will issue a Work Order specifying the services required. In response to the Work Order, Contractor shall provide a Work Plan detailing how it will perform the media or outreach initiative and a corresponding Work Order Budget. The Work Order process is defined in the Procedures for Work Orders Section.

Anticipated work order will request the following objectives:

1. Produce a marketing plan and subsequent outreach and media promotions to increase public awareness of TCOT among the specified target audiences. The

marketing plan may incorporate promotion or utilization of existing marketing initiatives, or new ideas. The marketing plan should include the production and editing of a Public Service Announcement (PSA) to air on digital media channels such as Facebook, Instagram and YouTube. Talent for the PSA will be searched for by both the Contractor and TCOT.

2. Develop an advertising plan to promote the PSA, focusing on social media and digital advertisements. Advertising plan should identify outlets and strategies that will most cost-effectively reach the largest Texan audience. Secure placement on Facebook, Instagram and YouTube and on Texas-based websites. Deliver a final report stating the flight plan and estimated exposures to the targeted audiences.

TCEQ does not guarantee a minimum number of work orders. TCEQ does not guarantee a minimum expenditure.

### **C. Additional Work**

TCEQ may request additional work related to the Scope of Work not listed in the Price Form, including creative work, editing, and other work related to the educational and media objectives of TCEQ. The price for additional work will be negotiated before costs incur and included on the approved Work Order Budget Form. Hourly rates listed on the Price Form will be used to determine the costs of the related work. TCEQ may also reimburse contractor for incidental expenses related to the additional work, however incidental expenses that should be included in a fully-loaded price will not be reimbursed. Incidental expenses must also be included on the approved Work Order Budget Form before costs are incurred.

### **D. Invoicing**

Upon TCEQ's acceptance of a deliverable, Contractor will invoice TCEQ. The Contractor will submit invoices no later than the 15th day of the month after the services were completed. Invoices must be supported by appropriate documentation.

## **Evaluation Criteria**

## EVALUATION CRITERIA

Proposals and Best and Final Offers will be scored on the basis of factors constituting the best value and best interest of the State using the following general categories for which total possible scores are shown. The maximum attainable score is one hundred (100).

Responses must include all requested information, or the Response may be disqualified.

Category	Total Possible Points Per Category
A. Qualifications of Company/Institution/Organization	5 Points
B. Statement of Qualifications - Personnel	20 Points
C. Past Performance - Client References/Past Contracts	10 Points
D. Technical Approach for the Sample Work Order	45 Points
E. Price	20 Points
<b>Total Possible Points to be Awarded</b>	<b>100 Points</b>

The TCEQ may, for the assignment of points for Qualifications and/or Past Performance, consider information regarding the Responder's past performance for TCEQ, other governmental entities, and businesses.

- A. Executive Summary -- Qualifications of Company / Institution / Company Organization (5 Points);**  
Place information behind TAB 2 of the Response. Describe the Company's organization, including at a minimum: type of business organization (e.g., corporation, partnership, sole proprietorship), date established, state of incorporation (if applicable), Texas authorization(s) to conduct business, location of company headquarters and/or relevant branch offices, equipment and other resources deemed necessary to fulfill the requirements of the Scope of Work.
- B. Statement of Qualifications - Personnel (20 points);**  
Place Information behind TAB 3 of the Response.  
Provide a description of the company's personnel's experience in performing work similar to that required by the Scope of Work. List years of experience proposed staff have in performing their designated tasks. Provide a general explanation and/or chart that specifies project leadership and reporting responsibilities and indicates which team members will interface with TCEQ management. Provide resumes for employees or contractors proposed for project leadership position demonstrating at least four years of experience in performing the work requested in the Statement of Work.
- C. Past Performance - Client References/Past Contracts (10 points);**  
Place information behind TAB 4 of the Response.

1. **Past Contracts:** Responders shall submit information on the three (3) most recently completed contracts or contracts currently in progress for similar work to that described in the Scope of Work. Three (3) examples should also be provided by each listed subcontractor. These example contracts may include contracts with Federal, State and local governments, as well for-profit and non-profit entities. Some additional consideration/weight may be given to examples of projects that are similar to this project in type and scale or level of effort. Provide examples of entities comparable in size to TCEQ that have locations across the state. Demonstrate at least four (4) years of experience in the type of work described in the SOW. Include the following information for each contract and subcontract:
  - a) Name of contracting activity.
  - b) Contract number, if applicable.
  - c) Contract title.
  - d) Brief description of contract or subcontract.
  - e) Total contract amount.
  - f) Period of performance.
  - g) Project or program manager and telephone.
  - h) List of major subcontractors (if applicable).
  - i) Description of the services and how they were delivered to participants

If the Responder has no relevant past performance history, the Responder must affirmatively state that it possesses no relevant directly related or similar past performance. If the Responder does not indicate whether past performance history exists, the Responder's proposal may be considered ineligible for award.

2. **Client References:** The Responder shall submit at least three (3) client references including names, contact addresses, email addresses and phone numbers for clients whom the Responder has performed work that is similar to that described in the Scope of Work. Responder may use contacts listed in Past Contracts (listed above) as client references. The Responder shall not submit the following as references:
  - a) References whose names may not be listed.
  - b) References whose names cannot be released under the Texas Public Information Act.
  - c) References that will not be willing to have their evaluations released under the Texas Public Information Act.

Note: It is Responder's obligation to ensure that listed references are willing to provide information on Responder's past performance to the TCEQ. If clients cannot be contacted because the information supplied is erroneous or incomplete or a reference does not respond to TCEQ's requests for information, points may be deducted from the Responder's score.

**D. Technical Approach to Performing the Scope of Work (45 points);**

Place information behind TAB 5 of the Response.

Responder shall demonstrate in their response their approach to perform the services described in the Scope of Work. Responder shall propose an example marketing plan, including subsequent outreach and media promotions to increase public awareness of TCOT among the specified target audiences. The Responder shall also provide a Work Order Budget for the proposed marketing plan. The marketing plan may incorporate promotion or utilization of existing marketing initiatives, or new ideas. The total budget for the marketing plan and objectives is \$300,000. The marketing plan consists of the following objectives, including:

**Task 1:** The marketing plan should include the production and editing of a Public Service Announcement (PSA) to air on digital media channels such as Facebook, Instagram and YouTube. Marketing plan should propose spokespeople that positively represent Texas and can be selected from any genre of music, acting, sports or other public service and activism. Initiatives should consider TCOT's quarterly themes. Content for PSA should promote different cultural genres than past marketing campaign.

**Task 2:** The marketing plan should include a coordinated advertising plan to promote the PSA, focusing on social media and digital advertisements.

**Task 3:** A minimum of three (3) marketing initiatives/flights should be included in the plan. Initiatives should consider TCOT's quarterly themes.

The marketing plan should Coordinate and purchase digital media ads promoting the Take Care of Texas program to obtain the following goals:

- Increase followers on Facebook and Instagram by 15%
- Increase traffic to Take Care of Texas website by 15%
- Increase awareness of and participation in the Kids Art Contest by 10%
- Increase awareness of and participation in the Video Contest by 10%
- Generate awareness of the Take Care of Texas program

**E. Price (20 points);**

Place information behind TAB 6 of the Response.

Propose your fully loaded, firm, fixed prices to perform the services listed in the Scope of Work. Price shall include all costs of performance, including materials, equipment, labor, communication, necessary subcontracts and planning to successfully complete all services. The submitted price shall be considered as a fully loaded rate, that is, the rate including an accounting of all expenses. No other cost may be charged to TCEQ or paid by TCEQ. The Price Form is located in the Response Contents.

Individual pay item prices may be weighted according to estimated contract usage during the evaluation process. The price score will be calculated per the formula below:

$$Price\ Score = \left[ 1 - \frac{(Responder's\ Price\ Total) - (Lowest\ Price\ Total\ of\ a\ Responder)}{Highest\ Price\ Total\ of\ a\ Responder} \right] * 20\ points$$

**SECTION 3:**  
**DRAFT CONTRACT DOCUMENTS**

## CONTRACT SIGNATURE PAGE

**TCEQ Contract 582-22-30075: Take Care of Texas Marketing Plan**

The Maximum TCEQ Obligation is

The Effective Date is **the latter of the date of the latest signature below or 09/01/2021.**

The Expiration Date is **August 31, 2023**

This Contract is funded with federal funds.

CFDA Number:

Federal Grant Number: **510522**

Parties to the Contract	Texas Commission on Environmental Quality (TCEQ)	(Contractor Name)
By (Authorized Signature)		Sample Contract Signature Page – Do Not Sign
Printed Name		
Title		
Date of Signature		
Vendor ID Number		
Procurement and Contracts Representative (Authorized Signature)		
Printed Name		
Public Purchasing Certification		
Date		



## **CONTRACT DOCUMENTS LIST**

The entire Contract between TCEQ and Contractor consists of the Contract Documents listed on this page.

- Contract Signature Page
- Contract Documents List
- Scope of Work
- Approved Price Form
- Federal Conditions and Forms (incorporated by reference when completed)
- Special Terms and Conditions
- General Terms and Conditions
- Insurance Section
- Procedures for Work Orders
- Work Orders and related documents created during the Contract (incorporated by reference):
  - Work Orders
  - Notices to Proceed
  - TCEQ-Approved Work Plans
- HUB Subcontracting Plan and HUB Progress Assessment Forms (incorporated by reference)
- Notices, Project Representatives, and Records Location
- Attachments (listed below)
  - Attachment A: Sample Release of Claims Form to be returned with final invoice
- Solicitation (incorporated by reference)
- Contractor's Response to Solicitation (incorporated by reference)

# **FEDERAL CONDITIONS AND FORMS**

# Federal Conditions and Forms

## **ARTICLE 1. FEDERAL REQUIREMENTS**

This Agreement is funded in whole or in part with federal grant money. All applicable requirements of TCEQ's federal grants; EPA grant policies and guidance; 2 Code of Federal Regulations (CFR) Part 200, including procurement standards; and any additional federal funding conditions that arise during the Agreement period, are incorporated herein by reference. TCEQ will provide copies of applicable federal grants or regulations upon request.

## **ARTICLE 2. FEDERAL INTELLECTUAL PROPERTY REQUIREMENTS**

In accordance with 2 CFR 200.315, EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this agreement for Federal purposes. EPA may authorize another grantee to use copyrighted works or other data developed with EPA funds provided under this agreement to perform another grant when such use promotes efficient and effective use of Federal grant funds.

## **ARTICLE 3. ACKNOWLEDGMENT OF FINANCIAL SUPPORT**

The Contractor shall acknowledge the financial support of the TCEQ and the U.S. EPA whenever Work funded, in whole or part, by this Agreement is publicized or reported in news media or publications. All reports and other documents completed as a part of this Agreement, other than documents prepared exclusively for internal use within the TCEQ, shall carry the following notation on the front cover or title page:

PREPARED IN COOPERATION WITH THE  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND  
U.S. ENVIRONMENTAL PROTECTION AGENCY

This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to Texas Commission on Environmental Quality. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document.

## **ARTICLE 4. RECYCLED MATERIALS**

1. When Contractor procures \$10,000 or more of a designated item in a fiscal year for this Contract or did so in the preceding fiscal year, Contractor will select the item containing the highest percentage of recycled materials practicable as required by 42 U.S.C. 6962 and 2 CFR 200.322. This requirement does not apply to incidental purchased that are not a direct result of this Contract. Designated items are listed by the EPA in the most recent Consolidated Recovered Materials Advisory Notice. If the item with the highest percentage of recycled materials does not meet performance standards or is not available in a reasonable time or at a reasonable price, or the purchase of the item would not allow a reasonable level of competition, Contractor may select a different item. With its invoice, Contractor will report any purchases to which this section applies to TCEQ and indicate the percentage of recycled materials in the items purchased. If Contractor does not select the item containing the highest percentage of recycled materials, it will also state the reason.
2. Paper for Reports to EPA. When directed to provide paper documents, the Contractor agrees to use recycled paper and double-sided printing for all reports which are

prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA.

**ARTICLE 5. ACCOUNTING SYSTEMS AND PROPERTY MANAGEMENT**

1. Contractor shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies with 2 CFR § 200.49. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects.
2. Contractor shall comply with the property management requirements of 2 CFR §§ 200.310 through 200.316.

**ARTICLE 6. RECORDS, ACCESS, AND AUDIT**

1. The Federal Government and its agencies will have the same rights of access to records as are granted to, assigned to, or reserved by the TCEQ under this Agreement. The Contractor shall maintain fiscal records and supporting documentation for all expenditures of funds pursuant to 2 CFR Part 200, Subparts D and F, as appropriate.
2. In accordance with 2 CFR 200.501(a), the Contractor shall obtain a single audit if it expends \$750,000 or more a year in federal awards.

**ARTICLE 7. SUSPENSION AND DEBARMENT**

1. Contractor shall fully comply with Subpart C of 2 CFR Part 180, entitled "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 CFR Part 1532. Contractor is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor acknowledges that failing to disclose the information required under 2 CFR § 180.335 may result in the delay or negation of this agreement or pursuance of legal remedies.
2. Contractor may access the System for Award Management by copying the following link: <https://www.sam.gov/SAM/> or typing "System for Award Management" in an internet search.

**ARTICLE 8. DISADVANTAGED BUSINESS ENTERPRISES (DBEs)**

1. The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or other legally available remedies.
2. Contractor agrees that qualified DBEs shall have the maximum practicable opportunity to participate in the performance of the Work required under this Contract through possible subcontracts to carry out portions of the Work or any goods or services procured to directly support the Work
3. The Contractor is required to make a good faith effort to include Historically Underutilized Businesses (HUBs) or DBEs on any procurement for subcontractors or suppliers/vendors for Work under this Contract.
4. TCEQ's established fair share goals are as follows:

	MBE GOAL (%)	WBE GOAL (%)
Construction	7.34	10.60

	MBE GOAL (%)	WBE GOAL (%)
Equipment	19.57	19.64
Services	12.98	23.70
Supplies	19.37	14.15

5. If this Contract requires a HUB Subcontracting Plan (HSP) and Progress Assessment Reports (PARs), then compliance with the HSP and PAR forms satisfy the DBE good faith efforts and EPA subcontractor reporting forms.
6. If this Contract does not require a HSP with the proposal, then the Contractor must submit the following completed Forms:
  - a. DBE Program Subcontractor Utilization Form
  - b. DBE Subcontractor Performance Form
7. If this Contract **does not** require PAR forms, then the Contractor must submit EPA Form 5700-52a with each invoice ([https://www.epa.gov/sites/production/files/2014-09/documents/epa\\_form\\_5700\\_52a.pdf](https://www.epa.gov/sites/production/files/2014-09/documents/epa_form_5700_52a.pdf)). At minimum, this form shall include the name of the HUB or DBE; a description of the work, services, or materials provided; the amount paid to the HUB or DBE; and the name and telephone number of a contact person for the HUB or DBE.
8. The Contractor shall retain all records documenting compliance with good faith efforts whether performing under a HSP or the EPA DBE program.
9. Before terminating a DBE for convenience, the Contractor must notify TCEQ in writing.
10. If a DBE subcontractor fails to complete work for any reason, and the Contractor plans to procure a replacement subcontractor, the Contractor must demonstrate the same good faith effort to procure the replacement subcontractor.
11. The Contractor must pay its subcontractors for satisfactory performance no more than 10 days from the Contractor's receipt of payment from TCEQ.

**ARTICLE 9. PROHIBITION ON USE OF FEDERAL FUNDS FOR LOBBYING AND LITIGATION**

1. The Contractor agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The Contractor agrees that none of the funds paid under this Contract will be used to engage in the lobbying of the Federal Government in connection with obtaining any federal contract, grant, or other award, or in litigation against the United States unless authorized under existing law.
2. The Contractor shall submit to the TCEQ the EPA Certification Regarding Lobbying form and if applicable, the Disclosure of Lobbying Activities form. The Contractor must file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed.
3. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

**ARTICLE 10. CIVIL RIGHTS OBLIGATIONS**

1. **Statutory Requirements**
  - a. In carrying out this agreement, the recipient must comply with:
    - i. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.

- ii. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
    - iii. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
  - b. If the recipient is conducting an education program under this agreement, it must also comply with:
    - i. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.
  - c. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
    - i. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.
- 2. **Regulatory Requirements**
  - a. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
    - i. For Title IX obligations, 40 CFR Part 5; and
    - ii. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part 7.
    - iii. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator and providing notices of non-discrimination.
- 3. **TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation**
  - a. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>.
- 4. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>.
- 5. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

**ARTICLE 11. QUALITY ASSURANCE & DEMONSTRATION OF COMPETENCY**

- 1. Quality Assurance Project Plan: If the Work involves environmentally-related measurements or data generation, unless TCEQ specifically provides otherwise in

writing, the Contractor shall adhere to the most recent EPA-approved Program Quality Assurance Project Plan (QAPP).

2. In accordance with EPA directive FEM 2012-02 Rev. 1, "Policy to Assure the Competency of Organizations Generating Environmental Measurement Data Under Agency-Funded Assistance Agreements," if the Work performed by the Contractor or any of its subcontractors under this Contract includes generating or using environmental data through sample collection, field measurements and/or laboratory analysis, then it must document and maintain certification demonstrating the competency of individuals using or generating environmental data under this Contract. Certification may include training records, certificates, or educational credentials.

#### **ARTICLE 12. TRAFFICKING IN PERSONS**

1. Prohibition Statement - Contractor may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time of the award; or use forced labor in the performance of the award or subaward under the award.
  - a. TCEQ may unilaterally terminate this award, without penalty, if a Contractor that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement above; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement through conduct that is either (a) associated with performance under this award; or (b) imputed to the Contractor using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)", as implemented at 2 CFR Part 1532. The Contractor must inform TCEQ immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement above.
  - b. TCEQ's right to terminate unilaterally: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to TCEQ under this award.

#### **ARTICLE 13. MISCELLANEOUS PROVISIONS**

1. Drug-Free Workplace. The Contractor must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536. Additionally, in accordance with these regulations, the Contractor must identify all known workplaces under its federal awards and keep this information on file during the performance of the award.
2. Hotel and Motel Fire Safety Act. Pursuant to 40 CFR 30.18, if applicable, and 15 U.S.C. 2225a, the Contractor agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Contractor may search the Hotel-Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance, or to find other information about the Act.
3. Energy Efficiency Standards. Contractor and all of its Subcontractors and Suppliers shall follow standards and policies on energy efficiency contained in the Texas State Energy Conservation Plan issued under 10 CFR Part 420.
4. Violating Facilities. Contractor certifies that is has not been convicted of violating, and is not likely to be convicted, of any offense under section 7413(c) of the Clean Air Act (42 U.S.C. §7413(c)) or section 1319(c) of the Clean Water Act (33 U.S.C. §1319(c)). If the

Contractor is convicted of an offense described in those sections, the Contractor will notify TCEQ and EPA. The Contractor shall be in compliance with all applicable standards, orders or requirements issued under Executive Order 11738. The Contractor is disqualified from eligibility to receive any contract, subcontract, assistance, sub-assistance, loan or other nonprocurement benefit or transaction that is prohibited by a Federal department or agency under the Government-wide debarment and suspension system (see 2 CFR part 180), if the Contractor:

- (a) Will perform any part of the transaction or award at the facility giving rise to a conviction (called the violating facility); and
  - (b) owns, leases or supervises the violating facility.
5. Clean Air Act and Federal Water Pollution Control Act. If the Agreement is in excess of \$150,000, the Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 - 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 - 1387).
6. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. The Performing Party is prohibited from using grant funds to enter into contracts (or extend or renew contracts) with entities that use or provide covered telecommunications equipment or services as described in 2 CFR § 200.216 and Public Law 115-232, Section 889. This provision is subject to the exceptions provided in Public Law 115-232, Section 889.
7. Domestic Preferences for Procurements. In accordance with 2 CFR 200.322, and to the maximum extent practicable, appropriate, and consistent with applicable law, Contractor will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this provision must be included in all contracts and purchase orders for work or products funded by this Contract.



# Instructions on how to fill out the attached Federal Forms:

1. **Disclosure Regarding Lobbying Forms** - If at any time during the course of the Contract you have any lobbying to report, you must provide an updated Disclosure of Lobbying Activities form to the TCEQ Project Representative.
2. **DBE Forms** -Do not complete these forms if a HUB Subcontracting Plan is required.

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB  
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter ____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known: _____	<b>5. If Reporting Entity in No. 4 is Subawardee. Enter Name and Address of Prime:</b>  Congressional District, if known: _____	
<b>6. Federal Department/Agency:</b> _____	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Entity</b> <i>(if individual, last name, first name, MI):</i>    <div style="text-align: center; font-size: small;">(attach Continuation Sheet(s) SF-LLL-A, if necessary)</div>		<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>    <div style="text-align: center; font-size: small;">(attach Continuation Sheet(s) SF-LLL-A, if necessary)</div>
<b>11. Amount of Payment</b> <i>(check all that apply):</i> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment</b> <i>(check all that apply):</i> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
<b>12. Form of Payment</b> <i>(check all that apply):</i> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
<b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b>        <div style="text-align: center; font-size: small;">(attach Continuation Sheet(s) SF-LLL-A, if necessary)</div>		
<b>15. Continuation Sheet(s) SF-LLL-A attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>16.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone No.:</b> _____ <b>Date:</b> _____	
<b>Federal Use Only:</b> _____		<small>Authorized for Local Reproduction Standard Form - LLL</small>

**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**

Approved by OMB  
0348-0046

**Reporting Entity:** \_\_\_\_\_ **Page** \_\_\_\_\_ **of** \_\_\_\_\_

**Authorized for Local Reproduction  
Standard Form - LLL-A**

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

# **SPECIAL TERMS AND CONDITIONS**

## SPECIAL TERMS AND CONDITIONS

- 1. *Contract Term.*** The term of this contract will commence on September 1, 2021 or upon receipt of the signed contract and will terminate on August 31, 2023. The contract will include the option for three, one-year contract renewals, upon agreement between the Vendor and TCEQ.

## **GENERAL TERMS AND CONDITIONS**

# GENERAL TERMS AND CONDITIONS

## 1. DEFINITIONS

The following terms shall have the meanings ascribed below when used in this document:

- 1.1 “Conforming” and “Conformity” and similar words refer to the condition or status of a good, service, property or the Work as meeting and being compliant with the requirements of the Contract.
- 1.2 “Fiscal Year” means the period of time that begins on September 1 and ends on August 31. The fiscal year is designated by the calendar year in which it ends; for example, Fiscal Year (FY) 2016 begins on September 1, 2015 and ends on August 31, 2016.
- 1.3 Whenever used in this contract, “include,” and similar words are intended to mean include but not limited to; they are not intended to be exhaustive.
- 1.4 “Nonconforming” or “Nonconformity” means a failure of a good, service, property or the Work to conform to this Contract, and includes a defect in a good, service, property or the Work.
- 1.5 “Work” means the services, goods and property the Contractor is required to provide in this Contract. The term includes the entire completed undertaking and the various separately identifiable parts. The term also includes all duties of the Contractor.

## 2. ORDER OF PRECEDENCE

The entire Contract between TCEQ and Contractor consists of the documents identified in the Contract Documents List. The Contract Documents are intended to be interpreted in harmony with each other. Any inconsistency in the solicitation or the Contract shall be resolved by giving precedence in the following order:

- a. Contract Signature Page
- b. Federal Conditions and Forms
- c. Special Terms and Conditions
- d. Procedures for Work Orders
- e. Scope of Work
- f. Price Form (completed)
- g. Insurance Section
- h. General Terms and Conditions
- i. HUB Subcontracting Plan and HUB Progress Assessment Forms
- j. Work Orders and Notices to Proceed (incorporated by reference)
- k. Work Plans and other Work Order-related documents created during the Contract (incorporated by reference)
- l. TCEQ Solicitation (incorporated by reference)
- m. Other documents, exhibits, and attachments listed in the Contract Documents List.

## 3. CONTRACT AMENDMENTS

3.1 Material Changes. Material changes to the contract require a written amendment signed by both parties. These Amendments take effect when signed by the Contractor and TCEQ, unless otherwise designated in the Amendment. Material changes include the following:

- 3.1.1 Changes in the total amount of funds in the Budget or the Contract;



- 3.1.2 Changes to the Contract's Expiration Date;
  - 3.1.3 Changes to the Scope of Work that affect TCEQ's obligations to the entity providing funding, such as the United States Environmental Protection Agency (EPA), another state or federal agency, or the Texas Legislature; and
  - 3.1.4 Changes that affect the material obligations of the Performing Party in this Contract.
- 3.2 Unilateral Amendments. As specifically allowed by the Contract, TCEQ may issue unilateral amendments. Unilateral amendments take effect when issued by TCEQ.
- 3.3 Minor Changes. The TCEQ Contract Manager and/or the TCEQ Project Manager has the authority, without a formal Amendment, to correct typographical errors; make written Contract interpretations; and make minor, non-material changes to the requirements in the Scope of Work, the Procedures for Work Orders, or the Work Orders; or as agreed to elsewhere in the Contract. Contractor must provide TCEQ with a written objection to any Notice of Interpretation no later than five (5) business days from the effective date of the Notice. A copy of the agreed change must be retained in the appropriate file by both the Performing Party and TCEQ.
- 3.3.1 Minor, non-material changes include:
    - 3.3.1.1 Changes to the schedule in the Scope of Work including an extension of a deliverable due date, not to exceed the expiration date of the Contract;
    - 3.3.1.2 Changes to the schedule in the Work Order including an extension of a deliverable due date, not to exceed the expiration date of the Work Order;
    - 3.3.1.3 Changes to the individual tasks in the Scope of Work or Work Order, if applicable, that do not substantially change the obligations of the Parties relative to those tasks;
- 3.4 It is the Performing Party's responsibility to request extensions to the deliverable schedule and other changes that are within the authority of TCEQ.

#### **4. TERM AND AMOUNT OF CONTRACT**

- 4.1 *Contract Period.* The Contract Period begins on the later of: 1) the Effective Date on the Contract signature page, or 2) the latest date of the parties' signatures shown on the Contract signature page. The Contract Period ends on the Expiration Date on the signature page.
- 4.2 *Renewals and Extensions.* This Contract may be renewed up to three one-year periods by amendment. TCEQ, by unilateral amendment, may extend the Contract for 180 days beyond any expiration of the Contract Period. In a renewal or extension, TCEQ may increase the Maximum TCEQ Obligation by an amount up to the original Maximum TCEQ Obligation.
- 4.3 *Maximum TCEQ Obligation.* The Maximum TCEQ Obligation is the greatest amount TCEQ may pay for the Work. There is no guaranteed minimum expenditure by TCEQ.
- 4.4 *Service Adjustment/Contingency Requirement (SACR).* TCEQ may in its sole discretion make allowances for unforeseen circumstances or contingency

requirements. TCEQ may increase the current Maximum TCEQ Obligation by an amount not to exceed 200% of the original Maximum TCEQ Obligation at the time the Contract was signed.

## 5. PRICES AND REIMBURSEMENT

- 5.1 *Prices.* Prices are firm, fixed, and fully-loaded.
- 5.2 *Cost Reimbursement.* Reimbursement is limited to direct costs for items specifically identified on the Price Form or in the Scope of Work and approved by the TCEQ Project Manager before the cost is incurred. Reimbursement requests must be itemized and documented in a format acceptable to TCEQ.
- 5.3 *Records.* Contractor must maintain records supporting its costs in accordance with generally accepted accounting principles.
- 5.4 *Reimbursement for Travel.* Travel reimbursement is limited to actual costs, and shall not exceed the maximum allowed for State employees by the Texas Comptroller of Public Accounts.

## 6. QUALITY AND ACCEPTANCE

- 6.1 *Quality Standard.* All Work must be complete and satisfactory to the TCEQ. All materials and equipment shall be handled in accordance with instructions of the supplier, except as otherwise provided in the Contract.
- 6.2 *Acceptance.* TCEQ relies on Contractor to inspect and test the Work to ensure that it conforms to the Contract requirements. TCEQ relies on the Contractor's greater expertise in the field of the Work. Any act by TCEQ indicating acceptance, whether express or implied, shall not be deemed to mean that TCEQ has tested or inspected the Work, but rather that TCEQ has accepted the Work in reliance on Contractor's greater expertise and Contractor's representation that the Work conforms to all Contract requirements. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of nonconforming Work or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
  - payment;
  - use of the Work or any part of the Work by TCEQ;
  - review or approval of a submittal;
  - inspection or testing by TCEQ; or
  - correction of defective Work by TCEQ.
- 6.3 *Quality Assurance.* All Work that involves the acquisition of environmental data shall be performed in accordance with a TCEQ-approved Quality Assurance Project Plan (QAPP) meeting all applicable TCEQ and EPA requirements. Environmental data includes any measurements or information that describe (1) environmental processes, location, or conditions; or (2) ecological or health effects and consequences. Environmental data includes information collected directly from measurements, produced from models, and compiled from other sources such as databases or the literature. No data collection or other Work covered by this requirement shall be implemented until Contractor receives the QAPP approved by TCEQ and, if necessary, the EPA. TCEQ may refuse payment or reimbursement for any environmental data acquisition performed without an approved QAPP.
- 6.4 *Laboratory Accreditation.* Any laboratory data or analyses provided under this Contract must be prepared by a laboratory that is accredited in accordance with

30 Texas Administrative Code (TAC) Chapter 25, Subchapters A and B, for the matrices, methods, and parameters of analysis used, unless one of the regulatory exceptions specified in 30 TAC § 25.6 applies.

## 7. PAYMENTS AND INVOICES

- 7.1 *Excess Obligations Prohibited.* TCEQ's obligations under this Contract are contingent upon the continued availability of funding. If funds become unavailable due to lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, TCEQ may terminate this contract.
- 7.2 *Invoice.* Contractor will submit invoices no later than the 15th day of every month after the services are completed. If the Contract has an approved Historically Underutilized Business (HUB) Subcontract Plan (HSP), a HUB Progress Assessment Report (PAR Form) describing subcontracting activity must also be submitted with the invoice. The invoice may be rejected for failure to comply with all invoice requirements.
- 7.3 *Invoice Contents.* The Contractor must include the following information on the face of all invoices: invoice number, invoice date, TCEQ Contract number, Work Order number if any, Vendor Identification Number, period covered by the invoice, item and unit description, quantity, unit price, extended price, and total amount for which Contractor is requesting payment. Contractor shall submit its invoice to the TCEQ Contract Manager.
- 7.4 *State Agencies/Institutions of Higher Education.* If the Contractor is a State agency or institution of higher education payments must be made via interagency transaction voucher (ITV), please provide a Recurring Transaction Index (RTI) number on the face of the invoice OR if payments are to be deposited into a local bank account, the following statement must be placed on the face of the invoice: "Funds to be deposited into local bank account." For additional information, please refer to the Texas Comptroller's Accounting Policy Statement (APS) 014.
- 7.5 *Progress Payment.* A progress payment is a payment made on a portion of the Work that is part of a line item designated on the Price Form. The Contractor's written request must include a description of the relevant portion of the Work. Contractor may request, and TCEQ at its sole discretion may issue or refuse, a progress payment.
- 7.6 *Final Payment.* Contractor must submit its invoice for final payment within 30 days of completion of the Work.
- 7.7 *Retainage.* TCEQ may withhold 5% or less of each payment as retainage. Release of retainage may be requested in the final invoice.
- 7.8 *Release of Claims by Contractor.* The final invoice shall be accompanied by a complete and legally effective release of TCEQ from all known and unknown claims relating to the Contract on a form provided by TCEQ. Contractor's acceptance of final payment constitutes a waiver of all claims against TCEQ related to the Contract, known or unknown.
- 7.9 *Assignment of Claims.* Contractor may assign its right to be paid under this Contract. Any assignment shall cover all unpaid amounts payable under this Contract. An assignment does not relieve Contractor of any obligation under this Contract. All assignments must be approved by both assignor and assignee in writing and submitted to the TCEQ Contract Manager. Notwithstanding any

contrary provision in applicable law, TCEQ shall have no liability to Contractor or to any assignee on any claim arising from TCEQ's directing payment to Contractor instead of an assignee, or to an assignee instead of Contractor.

- 7.10 *Prompt Payment Act.* In accordance with the Texas Prompt Payment Act, TCEQ will pay an acceptable invoice within 30 days of receipt.
- 7.11 *Disputed Invoices.* TCEQ may dispute an invoice by sending a notice in writing to the Contractor within 21 days of receipt. TCEQ may make a partial payment and dispute the difference on the invoice.
- 7.12 *Liability for Taxes.* Contractor will pay all taxes resulting from this Contract including, any federal, state, or local income, sales or excise taxes of Contractor or its employees.
- 7.13 *Lobbying.* In accordance with Texas Government Code Chapter 556, funds received under this Contract may not be used toward lobbying expenses of an individual or entity.
- 7.14 *Debts and Delinquencies Affirmation.* Contractor agrees that any payments due under the Contract shall be applied towards any debt or delinquency that it owes to the State of Texas.

## **8. COMMUNICATIONS AND NOTICES**

- 8.1 *Notices.* All notices shall be made in writing and be delivered to a party's designated Contract Manager and Project Manager. Notices are effective upon receipt. If the Contractor has no Contract Manager, TCEQ may send notices to any address previously provided by the Contractor.
- 8.2 *Claim.* Contractor shall give notice to TCEQ of any claim, demand, suit, or other action (a "Claim") asserted against Contractor which either arises in relation to the Contract, or which could have an adverse material effect on Contractor's ability to perform the Work. Contractor shall give notice directly to the TCEQ Manager of Procurements and Contracts within three days of Contractor's receipt of notice of the Claim. The notice shall state the date of the Claim, the names and addresses of the claimants, the basis of the Claim, the name of each person or entity against whom the Claim is asserted, and the amount of the Claim.
- 8.3 *Notice of Conflict of Interest.* Contractor shall give notice to TCEQ of any actual, apparent, or potential conflict of interest regarding Contractor or any entity or individual performing any portion of the Work. As determined by TCEQ, any entity with an organizational conflict of interest and any individual with a personal conflict of interest must not take part in any way in the performance of any portion of the Work that creates the conflict of interest. TCEQ has sole discretion to decide whether an actual, apparent, or potential conflict exists. Any such conflict is cause for termination.
- 8.4 *Bankruptcy.* If Contractor becomes the subject of a voluntary or involuntary bankruptcy proceeding, Contractor shall immediately give notice to TCEQ and send a copy of this notice to TCEQ Bankruptcy Program MC-132, P. O. Box 13087, Austin, TX 78711-3087. The notice must include the Contract number.

## **9. SHIPMENT AND DELIVERY OF GOODS AND MATERIAL SAFETY DATA SHEETS**

- 9.1 *Shipping Terms.* All shipments shall be made Free on Board (FOB) destination, full freight allowed and not invoiced. Delivery shall be made between the hours

of 8 a.m. and 5 p.m. Central Time, Monday through Friday, excluding State holidays, unless prior approval for another delivery time has been granted by TCEQ. Each shipment must be accompanied by a packing slip. Packing slips should reflect the TCEQ contract number, item description, lot number and quantity, if applicable.

- 9.2 *Material Safety Data Sheet.* Contractor must provide to TCEQ, at no cost, at least one copy of any applicable manufacturer's Material Safety Data Sheet (MSDS) with all materials provided. Contractor must make available, at no cost, the relevant manufacturer's MSDS to any person that may be affected by the Work.

## 10. SUPERINTENDENCE BY THE CONTRACTOR

- 10.1 *Contractor's Responsibility for Subcontractors.* All acts and omissions of subcontractors, suppliers and others performing or furnishing any of the Work under a direct or indirect contract with Contractor ("Subcontractors") are imputed to Contractor. Nothing in this Contract creates a contractual relationship between TCEQ and any Subcontractor except for product warranties for goods supplied by a third-party manufacturer and delivered to TCEQ. Nothing in this Contract creates any obligation for TCEQ to pay any Subcontractor. Contractor is solely responsible for scheduling and coordinating the work of Subcontractors, and for all communications to Subcontractors.
- 10.2 *Superintendence of the Work.* Contractor shall supervise all Work. Contractor is solely responsible for the means, methods, design, processes, procedures and conduct of the Work. This responsibility includes control of associated hazards to assure the safety of the performance of the Work, and for the protection of all persons, property, premises and facilities which may be affected by the Work. No action by TCEQ will transfer this responsibility to TCEQ. Contractor shall maintain a superintendent capable of overseeing performance of the Work at any location where Work is performed.

## 11. SUBCONTRACTORS AND EMPLOYEES

- 11.1 *Personnel.* Contractor shall provide competent, suitably qualified personnel to perform the Work. Contractor shall at all times maintain good discipline and order at the site of the Work. Contractor shall require its personnel to execute any confidentiality agreements, and any other required assignments, licenses or other instruments, and to provide information related to Intellectual Property, as may be necessary to effectuate the provisions of the Contract. Contractor will, upon request of TCEQ, obtain and provide background checks on personnel performing Work at a TCEQ campus.
- 11.2 *TCEQ Objection.* Contractor shall not use any subcontractor, employee, supplier, or other person or organization to whom TCEQ reasonably objects.
- 11.3 *Key Personnel and Subcontractors.* Contractor's Project Manager and any individuals specified for the key personnel positions listed in the Contract are material to the performance of the Work. Contractor shall provide notice to TCEQ within five (5) business days of making substitutions to key personnel. Substitutes shall be at least as qualified as the personnel or subcontractors being replaced.
- 11.4 *Flowdown of Contract Provisions.* Contractor shall include in its subcontracts, supplier contracts, employment contracts, and employment policies any provision included in this Contract, or shall include a similar provision, whenever and to the extent necessary in order for Contractor to fulfill its

obligations under this Contract, regardless of whether or not the provision expressly requires that it be included in such contracts or policies.

- 11.5 *E-Verify*. Contractor will use the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of (1) all persons employed during the Contract term to perform duties within Texas; and (2) all persons (including subcontractors) within the United States of America assigned by the contractor to perform Work pursuant to the Contract.
- 11.6 *Equal Opportunity*. Contractor shall not discriminate against any person on the basis of race, color, national origin, religion, sex, age, and disability in the performance of this Contract.

## 12. BOOKS AND RECORDS

- 12.1 *Contractor's Books and Records*. During the Contract and for four years thereafter, Contractor shall maintain books, records, documents, and other evidence reasonably pertinent to Contractor's performance of the Work. Contractor shall maintain all financial records in accordance with generally accepted accounting principles. Contractor shall permit representatives and agents of TCEQ, or authorized state and federal agencies, to have unrestricted access to all records, data and facilities as necessary to review, inspect, and audit all financial activities and services associated with TCEQ funds. Contractor shall provide appropriate facilities for such access and inspection.
- 12.2 *Right to Audit*. Pursuant to Section 2262.154 of the Texas Government Code, the State auditor may conduct an audit or investigation of the Contractor or any other entity or person receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the Contractor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor or other entity that is the subject of an audit or investigation by the State auditor must provide the State auditor with access to any information the State auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.
- 12.3 *Time Sheets*. Contractor shall maintain and, upon request by TCEQ, submit weekly time sheets for each person providing services on behalf of Contractor or a subcontractor. The time sheets must state the position held by each person and the number of hours worked. Upon request, the timesheets must be submitted to the TCEQ Contract Manager weekly by noon Central Time on Monday of the following week.

## 13. WARRANTIES AND CERTIFICATIONS

- 13.1 In addition to all warranties established or implied by law, Contractor warrants that:
  - 13.1.1 All goods, services and property provided conform to this Contract and to all representations made or provided by the Contractor for the purpose of inducing the TCEQ to enter this Contract, and are merchantable, fit for the purpose intended, of best quality and

- workmanship, and free from all deficiencies in media, material, workmanship, and quality;
- 13.1.2 All goods, services and property provided conform to standards established for such goods in accordance with any applicable laws and regulations, including the Occupational Safety and Health Act (29 U.S.C. §§ 651-678);
- 13.1.3 All services are performed in a professional and workmanlike manner, consistent with relevant accepted standards and practices.
- 13.2 The warranties set forth above are effective upon TCEQ's issuance of final payment under the Contract or Work Order, and for 24 months thereafter. Nonconformities are not deemed waived by TCEQ's failure to notify Contractor upon receipt of goods, property or completion of services or by payment of invoice. Contractor shall, at its expense, repair or replace any goods and property and re-perform any services that are found to be or that become nonconforming or defective. If, after notice of a claim under these warranties, Contractor fails to promptly repair, replace, or re-perform as required, TCEQ may undertake its own remedial action and Contractor shall reimburse the TCEQ for all costs of such action. If TCEQ does not choose to repair, replace, or re-perform in place of the Contractor, Contractor shall promptly refund to TCEQ the full purchase price paid for the entire Work.
- 13.3 *Ability to Perform.* Contractor has the corporate authority, capability, experience and means to enter into this Contract and to perform the Work.

#### **14. INTELLECTUAL PROPERTY**

- 14.1 *Work for Hire.* All Work created under this Contract is a work for hire. TCEQ is the owner of the Work, including user documentation, and all intellectual property in the Work. Contractor will enter into written agreements with its employees and subcontractors that confirm TCEQ's ownership interest.
- 14.2 *License.* If any intellectual property that is incorporated into the Work or intellectual property created under this Contract is not work for hire, Contractor grants to TCEQ a royalty-free, nonexclusive, perpetual, irrevocable, fully paid-up, enterprise-wide and worldwide license to use, reproduce, publish, modify, create derivative works, distribute, publicly perform and display the intellectual property and associated user documentation, and to authorize others to do the same.
- 14.3 *Third Party Intellectual Property.* Contractor shall secure the necessary intellectual property rights from third parties to comply with this article. Contractor's prices include all user documentation, and applicable license and/or royalty fees necessary for TCEQ to use the Work. Commercially available software that is necessary to use the Work may be exempted from this requirement with prior approval from TCEQ. Contractor shall take all necessary steps to pass-through to TCEQ all warranties, representations and other service commitments applicable to third party intellectual property incorporated into the Work.
- 14.4 *Electronic Deliverables.* Electronic deliverables must be delivered in a format approved by TCEQ.

#### **15. INDEMNIFICATION**

- 15.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE STATE OF TEXAS, INCLUDING

TCEQ AND ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, FROM AND AGAINST ALL LOSSES, LIABILITIES, ACTIONS, DAMAGES, DEMANDS, SUITS, AND OTHER CLAIMS OF ANY TYPE ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ITS EMPLOYEES, SUBCONTRACTORS, SUPPLIERS, OR AGENTS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND TCEQ AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

## **16. HISTORICALLY UNDERUTILIZED BUSINESSES**

- 16.1 If applicable, Contractor will comply with the Historically Underutilized Business (HUB) requirements of Texas Government Code, Chapter 2161. If this Contract includes an approved HUB Subcontracting Plan (HSP), Contractor shall implement the HSP in good faith. Any substitutions of personnel or subcontractors that require a revision of the Contractor's approved HSP must receive prior review and approval from TCEQ and comply with the good faith effort requirements of 34 TAC § 20.285.
- 16.2 The HSP must contain the subcontractors' Texas Comptroller-issued Texas Identification Number System (TINS) identifier. If the subcontractor does not have a TINS identifier, the Contractor will obtain a completed Application for Texas Identification Number from its subcontractor and immediately submit it to TCEQ, or in the case where a subcontractor is being proposed for addition to the HSP, submit it with the Contractor's HSP Amendment Request.

## **17. PUBLIC INFORMATION, CONFIDENTIALITY, AND PUBLICITY**

- 17.1 Public Information and Release of Information.
- 17.1.1 All information provided by TCEQ and the Work is the property of TCEQ. The Texas Public Information Act (PIA), Texas Government Code Chapter 552, applies to all information provided by TCEQ and the Work. At no additional charge to the TCEQ, Contractor shall surrender or return information regarding this Contract, including information provided by TCEQ or the Work, to TCEQ not later than the 10th day after the date TCEQ requests the information.
- 17.1.2 *Requests for Public Information.* TCEQ has sole responsibility to respond to any requests for information regarding this Contract, including information provided by TCEQ or the Work. If Contractor receives a request for information from any third party, Contractor shall immediately forward the request to TCEQ. Except as provided below, the Contractor will not release any information without the express written authorization of the TCEQ Contract Manager or relevant TCEQ Project Manager. The Contractor may release the amount of the Contract and any information required to comply with laws or rules. Contractor will make Work available in a format that is accessible by the public at no additional charge as requested by TCEQ.



- 17.1.3 *Use of Information.* Contractor is permitted to use, copy, and disclose information to Contractor's employees and subcontractors only as necessary to fulfill Contractor's obligations.
- 17.1.4 *Contracting Information Responsibilities.* In addition to the other records retention requirements in this Contract, for contracts with a Maximum TCEQ Obligation of at least \$1 million, in accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the TCEQ for the duration of the Contract, (2) promptly provide to the TCEQ any contracting information related to the Contract that is in the custody or possession of the Contractor on request of the TCEQ, and (3) on termination or expiration of this Contract, either provide at no cost to the TCEQ all contracting information related to the Contract that is in the custody or possession of the Contractor or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the TCEQ. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 17.2 Confidential Information.
- 17.2.1 *TCEQ's Confidential Information.* If TCEQ provides Contractor information identified as confidential or proprietary, Contractor has a duty to maintain its confidentiality and prevent unauthorized release. Contractor is permitted to use, copy, and disclose confidential information to Contractor's employees and subcontractors only as necessary to fulfill Contractor's obligations.
- 17.2.2 *Contractor's Confidential Information.* If TCEQ receives a request for information that Contractor submitted to TCEQ in response to a request for a bid, proposal, qualification or other solicitation or provided during or after the term of the Contract and Contractor has identified the information as business confidential or proprietary, TCEQ will timely notify Contractor of the request. Contractor may submit arguments to the Texas Office of the Attorney General if it believes the information should not be released. TCEQ will not submit arguments on behalf of Contractor and will not release the information unless ordered to do so by the Attorney General. Information contained in this Contract and vouchers, communications, and other information sent between TCEQ and Contractor related to the performance of this Contract or work performed on behalf of TCEQ is considered public information under § 552.1101(b) of the Texas Government Code regardless of whether Contractor identifies it as being confidential.
- 17.3 *Publicity.* Contractor may not participate in any media event or issue any media release, publication, editorial, or article that pertains to the Work without prior written approval of TCEQ.

- 17.4 *Endorsement of Contractor.* Contractor shall not state or imply that TCEQ endorses or recommends its services, goods, or property. Contractor may not use any TCEQ logo or trademark or the likenesses of TCEQ employees in sales brochures, press releases, or other promotions, unless prior approval is obtained from the TCEQ External Relations Division.

## 18. OTHER LIABILITIES

- 18.1 No employee, officer, director or agent of TCEQ assumes personal liability by signing this Contract or by reason of default in the performance of any of the Contract.

## 19. TIME DELAYS, SUSPENSION

- 19.1 *Time is of the Essence.* Contractor's timely performance is essential to this Contract.
- 19.2 *Suspension.* TCEQ may suspend all or part of the Work at any time, for any reason. Contractor shall resume performance within ten days of receipt from TCEQ of a notice to resume. If Contractor's performance is delayed by TCEQ, Contractor's sole remedy is an extension of the schedule for the delivery of the Work. TCEQ may extend the Contract Period to accommodate an extension of the schedule for the delivery of the Work.
- 19.3 *Force Majeure.* Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, or other causes that are beyond the reasonable control of either party, could not reasonably be foreseen, and by the exercise of all reasonable due diligence, is unable to be overcome by either party. Neither party shall be liable to the other for any failure or delay of performance of any requirement included in the contract caused by force majeure. Upon timely notice by the non-performing party, the time for performance shall be extended for a reasonable period after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. The non-performing party must provide evidence of any failure resulting in impossibility to perform.
- 19.4 *Disaster Recovery.* Contractor shall maintain a business continuity plan designed to enable Contractor to recover normal business operations and data within seventy-two hours of any declared disaster or force majeure event.

## 20. TERMINATION

- 20.1 *Termination for Cause.* If Contractor fails to perform a material obligation, stops Work, or becomes insolvent, TCEQ may give notice of breach of contract. Within ten days of the notice, Contractor must attempt to cure the breach or demonstrate that a breach has not occurred. If Contractor does not cure the breach or demonstrate that a breach has not occurred, TCEQ may terminate the Contract for cause by notice. A material obligation includes delivery of Conforming Work on schedule for the agreed prices, maintaining and providing evidence of required insurance coverage, compliance with HUB requirements, and integrity in dealing with TCEQ.
- 20.2 *Termination for Convenience.* TCEQ may terminate this Contract without cause by giving ten days' prior notice of termination for convenience. Upon receipt of the notice, Contractor shall promptly stop all Work except as specified in the notice of termination. Contractor's exclusive remedy is payment for goods, services and property ordered, delivered and not rejected by TCEQ. TCEQ shall

not be liable for anticipated profits, unabsorbed overhead, interest on borrowing, or other damages not specifically stated in this Contract.

- 20.3 *Debarment.* If Contractor is debarred by the State of Texas or it or any of its officers, directors, owners, partners, or primary managers or supervisors is subject to suspension, debarment, exclusion, disqualification, or similar ineligibility determined by any federal, state or local government entity, the Contractor must immediately notify TCEQ and TCEQ may terminate this contract for cause.
- 20.4 *Hazardous Waste Violations.* If Contractor is adjudicated of having committed substantive, non-clerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial danger to the public health and safety or the environment, Contractor will immediately notify TCEQ and TCEQ may terminate this Contract for cause.
- 20.5 *Termination for Noncompliance.* If Contractor knowingly or intentionally fails to comply with a requirement under Subchapter J, Chapter 552, Texas Government Code, and, after notice and opportunity to cure, TCEQ determines that Contractor has not taken adequate steps to ensure future compliance, TCEQ may terminate this Contract without further obligation to Contractor.

## 21. REMEDIES

- 21.1 *Right of Set-off.* In addition to other remedies available under the Contract or in law or equity, TCEQ or the Comptroller may set-off the State's good faith claims, whether or not adjudicated, against a Contractor's claim for payment.
- 21.2 *Schedule of Remedies Available to TCEQ.* In accordance with Texas Government Code Chapter 2261, the following Schedule of Remedies applies to this Contract. In the event of Contractor's nonconforming performance, TCEQ may:
  - 21.2.1. Issue notice of nonconforming performance;
  - 21.2.2. Reject nonconforming performance and request corrections without charge to TCEQ;
  - 21.2.3. Accept (subject to limitations on TCEQ acceptance) late performance, nonconforming performance, or correction of nonconforming performance and make payment therefore, with or without a set-off to cover damages, even if such performance is tendered after the end date of the Contract;
  - 21.2.4. Reject a payment request and/or suspend further payments pending acceptable revision of the nonconformity;
  - 21.2.5. Suspend all or part of the Work and/or payments pending accepted revision of the nonconformity;
  - 21.2.6. Demand restitution and recover payments where performance is subsequently found nonconforming;
  - 21.2.7. Recover all actual damages incurred by TCEQ, including costs of delay, costs of securing a replacement contractor, reasonable attorney's fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate;
  - 21.2.8. Terminate the Contract without further obligation for payment;
  - 21.2.9. File a cause of action for specific performance, rescission, damages and other relief as appropriate; and/or

21.2.10. Award the Contract to another entity.

21.3 Cumulative Remedies. The rights and remedies provided to TCEQ in this Contract are in addition to, and do not limit, any rights and remedies available under state or federal law.

## 22. DISPUTES; CLAIMS

22.1 *Continuing the Work.* Except as expressly permitted by law, Contractor must not delay or stop Work because of a dispute or disagreement with TCEQ.

22.2 *Dispute Resolution Process.* TCEQ and Contractor shall use the dispute resolution process provided for in Texas Government Code Chapter 2260 to attempt to resolve all disputes arising under the Contract. The rules of TCEQ found in 30 TAC Chapter 11, Subchapter D, describe the requirements for filing a notice of claim, conducting negotiations, and requesting a hearing.

## 23. MISCELLANEOUS PROVISIONS

23.1 *Severability of Provisions.* If any provision of this Contract is held by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the remainder of the Contract shall remain in force and shall be construed to conform as closely as possible to the originally-expressed intent of the parties.

23.2 *Sovereign Immunity.* This Contract does not waive TCEQ's sovereign immunity or any official immunity to which TCEQ's officers, employees, or agents are entitled under law.

23.3 *Relationship of the Parties.* This Contract does not create an employer/employee relationship, agency relationship, partnership, or joint venture. Contractor is an independent contractor in performing the Work. Contractor shall be responsible for all compensation, coverages, claims and taxes of its employees and subcontractors.

23.4 *Venue.* Contractor agrees that the Contract is being performed in Travis County, Texas, because this Contract has been solicited, executed, and will be administered in Travis County, Texas. The Contractor agrees that any permissible cause of action involving this contract arises solely in Travis County.

23.5 *Third-Party Beneficiaries.* There are no third-party beneficiaries to this Contract.

23.6 *Accessibility.* All electronic deliverables must meet State of Texas accessibility requirements in 1 TAC Chapters 206 and 213 effective April 18, 2020.

23.7 *Computation of Time.* A period of days is computed as follows: (1) exclude the day of the event that triggers the period; (2) count every day, including Saturdays, Sundays, and legal holidays; (3) include the last day of the period; (4) if the last day is a Saturday, Sunday or legal holiday, the period continues to run until the next business day.

23.8 *Governing Law.* This Contract and any disputes arising out of or related to it will be governed by the laws of the State of Texas, without regard to its choice of law rules and without regard to conflicts of laws principles.

23.9 *Waiver.* With the exception of an express, written waiver in the form of a unilateral amendment signed by TCEQ, no act or omission will constitute a waiver or release of Contractor's obligation to perform Conforming Work. No waiver on one occasion, whether expressed or implied, shall be effective as a waiver for any other occasion.

- 23.10 *Assignment of Contract Obligations.* No assignment of the obligations, rights or interests in the Contract by Contractor will be binding on TCEQ without its written consent. No assignment will relieve Contractor from its obligations under this Contract.
- 23.11 *Survival of Obligations.* Except where a different period is specified in this Contract or applicable law, all representations, indemnifications, and warranties made in, required by or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, survive for four years beyond the termination or completion of the Contract, or until four years after the end of a related proceeding. A related proceeding includes any litigation, legal proceeding, permit application, or State Office of Administrative Hearings proceeding, which is brought in relation to the Contract or which in TCEQ's opinion is related to the subject matter of the Contract. Either party shall notify the other of any related proceeding if notice of the proceeding has not been provided directly to that other party.
- 23.12 *Visits to Work Site.* TCEQ may make a scheduled or unscheduled visit to any location where the Work is being performed.
- 23.13 *Contractor Performance Evaluations.* TCEQ may prepare written evaluations of Contractor's performance and use its evaluations in the selection criteria for future contracts. Contractor acknowledges that these evaluations are made on a subject in which TCEQ and its officers and employees have an interest or duty, and are made for the purpose of communicating with other persons having a corresponding interest or duty. TCEQ may provide this information to state agencies and others. Contractor consents to disclosure of TCEQ's evaluations to Texas state agencies and others, including submitting CPA's Texas Procurement and Support Services Division vendor performance forms to appropriate state databases.
- 23.14 *Compliance with Law.* Contractor must comply with all applicable federal, state, and local statutes, regulations, and other laws. Contractor has sole responsibility for obtaining all licenses and permits necessary for the Work, and for giving all notices required by law.
- 23.15 *Certifications.* Contractor will maintain the status of all certifications made in the solicitation response, including but not limited to, not boycotting Israel during the term of this Contract. Contractor will notify TCEQ of any change to its certifications.
- 23.16 *Texas Made Products.* In accordance with Texas Government Code, § 2155.4441, in performing this Contract, Contractor must purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside of Texas.
- 23.17 *Anti-Trust.* Neither the Contractor, nor any firm, corporation, partnership, or institution, represented by the Contractor, or anyone acting for such a firm, corporation or institution has violated or will violate the antitrust laws of this state (Chapter 15 of the Texas Business & Commerce Code) or federal antitrust law. Contractor assigns to TCEQ any and all claims for overcharges associated with this Contract arising under the antitrust laws of the United States and the State of Texas.
- 23.18 *Cybersecurity Training.* Contractor shall ensure that any Contractor representative (employee, officer, or subcontractor personnel) who has Access to a TCEQ Computer System or Database completes a cybersecurity training

program certified by the Texas Department of Information Resources (DIR) under § 2054.519 of the Texas Government Code, during the term of the Contract and each renewal.

- 23.18.1 “Access to TCEQ Computer System or Database” means having a TCEQ network user account or the authorization to maintain, modify, or allow access control to any TCEQ web page, TCEQ computer system, or TCEQ database.
- 23.18.2 Within seven (7) days after the execution of the Contract and any renewals, Contractor shall provide a list of persons requiring training to the TCEQ Contract Manager, and thereafter provide an updated list by the first workday of any additional person who becomes subject to the training requirements. For applicable umbrella contracts, Contractor shall provide a list of any persons requiring training within seven (7) days of issuance of Notice to Proceed/Commence for any Work Order that requires Access to a TCEQ Computer System or Database.
- 23.18.3 If a Contractor representative has previously completed a DIR-certified cybersecurity training during the term of the Contract or renewal, Contractor shall provide evidence that the Contractor representative completed the required training to the TCEQ Contract Manager within seven (7) days after the execution of the Contract or as applicable, the issuance of Notice to Proceed/Commence for any Work Order that requires Access to a TCEQ Computer System or Database.
- 23.18.4 For the term of the Contract and each renewal, all Contractor representatives subject to the training requirement must complete DIR-certified training within seven (7) days after TCEQ provides access to the training, unless the Contractor provides evidence to TCEQ that the Contractor representative previously completed the required training. Contractor shall retain in their records, and upon request, provide the TCEQ Contract Manager evidence that the training was successfully completed.
- 23.18.5 TCEQ will provide access to the cybersecurity training program. Contractor is responsible for all other costs associated with their representatives completing the training, including time spent completing the training.
- 23.18.6 Contractor shall notify the TCEQ Contract Manager within two (2) business days when a person with Access to a TCEQ Computer System or Database no longer needs Access to such Computer System or Database.
- 23.18.7 TCEQ may terminate the Contract for Cause if Contractor fails to adhere to any of the above terms, including completing the required certified cybersecurity training or notifying the TCEQ Contract Manager when access is no longer needed.
- 23.18.8 TCEQ may terminate the Contract for Cause if a Contractor’s representative misuses a TCEQ Computer System or Database, including allowing multiple individuals to utilize a single individual’s TCEQ network user account.

## **INSURANCE SECTION**

## INSURANCE SECTION

1. **COVERAGES REQUIRED.** Contractor shall obtain and maintain throughout the Contract term the insurance coverages listed below:
  - 1.1 *Worker's Compensation Insurance:* Coverage to secure the payment of compensation to injured employees as defined in the Texas Worker's Compensation Act.
  - 1.2 *Employer's Liability Insurance:* Coverage in the following minimum amounts:
    - Bodily Injury, \$500,000 per accident;
    - Disease, \$500,000 per employee;
    - Aggregate policy limit of \$1,000,000.
  - 1.3 *Commercial Automobile Liability Insurance:* Coverage in the following minimum amounts for owned, hired, and non-owned vehicles for claims of automobile bodily injury and property damage which may arise in the performance of the Contract:
    - \$500,000 per person;
    - \$500,000 per occurrence for bodily injury; and
    - \$1,000,000 per occurrence for property damage; or
    - \$1,000,000 per occurrence if the policy is issued for bodily injury and property damage combined.
  - 1.4 *Commercial General Liability Insurance:* Coverage for claims of personal injury and bodily injury, including accidental death, and property damage which may arise from the performance of the contract. The types of coverage required are: Blanket, Broad Form Property Damage, Premises and Operations Hazards, Products and Completed Operations Hazards, Independent Contractor's, and Contractual Liability in the minimum amounts of:
    - \$1,000,000 per occurrence for bodily injury; and
    - \$1,000,000 per occurrence for property damage; or
    - \$2,000,000 per occurrence if the policy is issued for bodily injury and property damage combined.
  - 1.5 *Excess Liability Insurance (Umbrella):* Additional coverage for all liability policies required for this Contract (excluding Worker's Compensation and Employer's Liability Insurance, which are not liability insurance) in an amount not less than \$1,000,000 in the aggregate.
  - 1.6 *Requirements for Subcontractors:* Contractor shall require in writing that all Subcontractors performing Work under this Contract shall obtain insurance which will protect the TCEQ and its employees from the risks associated with the Work performed under the Contract Documents. Required insurance for Subcontractors shall include Workers Compensation in accordance with Section 1.1 above. Before any subcontractor enters the TCEQ facility, Contractor shall provide TCEQ with a certificate of insurance for the Subcontractor showing coverage for Workers Compensation in accordance with Section 1.1.
2. **MINIMUM INSURER RATING.** The Contractor will obtain all required policies from insurers licensed, eligible or registered under Texas law with a rating of A- or better in a financial size category of IV or higher according to A.M. Best Company.
3. **NOTICES OF CHANGE.** The Contractor's insurance policies must require the insurer or the insurer's authorized agent to notify TCEQ of any cancellation, or material change, other than for non-payment, at least 30 days in advance. The Contractor's insurance policy must require the insurer or the insurer's authorized agent to notify TCEQ of any cancellation or material change due to non-payment at least 10



days in advance. These notices of changes must reference the TCEQ contract number and be made in writing by certified mail to the TCEQ Contract Manager at the address shown in the Contract.

4. **INSURANCE CERTIFICATE.** Contractor shall provide TCEQ with evidence of the insurance coverage required under this Contract. The evidence of the coverage shall be a certificate of insurance on a form approved by the Texas Department of Insurance. Contractor will submit the certificate to the TCEQ Contract Manager no later than ten days after award of the Contract, or as directed by the Special Terms and Conditions. Prior to the expiration of any insurance coverages during the term of the Contract, Contractor will submit a certificate evidencing renewed or new insurance policies. Certificates must bear the contract number of this Contract. If Contractor changes insurers, Contractor shall give TCEQ a new certificate of insurance within ten days. The certificate of insurance shall set out any deductible or self-insured retention amounts for each coverage required.
5. **REQUIRED ADDITIONAL PROVISIONS.** All policies of insurance shall include the following provisions:
  - 5.1 TCEQ and its officers and employees are named additional insureds to the *Commercial General Liability Insurance, Excess Liability Insurance (Umbrella), and Excess Liability Insurance (Other than Umbrella)*;
  - 5.2 Waiver of subrogation in favor of TCEQ, its officers and employees for bodily injury (including death), property damage or any other loss arising from this Contract, except for the Professional Liability Insurance; and
  - 5.3 The Contractor's insurance is primary insurance with respect to the TCEQ and its officers and employees.
6. **SELF-INSURANCE.** Contractor must disclose on its insurance certificate if any of the coverage required under the contract is being satisfied with a Self-Insured Retention (SIR) and list the amount of the SIR.

## **PROCEDURES FOR WORK ORDERS**

# PROCEDURES FOR WORK ORDERS

## Article 1. Introduction

The Contractor will perform the Work described in the Scope of Work in accordance with written Work Orders issued by the TCEQ and other applicable requirements in the Contract, including the process described in this Procedures for Work Orders. The TCEQ does not guarantee any minimum amount of Work or Work Orders. If federal funds will be used to pay for a Work Order, the Federal Terms and Conditions apply to that Work Order.

## Article 2. Work Orders

- a) During the Contract Term, the TCEQ will order the Work by issuing Work Orders for separate tasks that may or may not relate to each other and that do not necessarily form an entire discrete, separate deliverable or project.
- b) The Scope of Work is intended to provide a general overview of the type of Work that will be requested. The Work Orders will contain more detailed specifications of the Work to be completed. Each Work Order shall contain a not-to-exceed amount that represents the total value of that Work Order. The Contractor's response to the Work Order is to prepare a Work Order Budget, using the template included in the Contract, identifying the cost for each task. The Contractor will also prepare a Work Plan if specified in the Work Order. The TCEQ will then either approve the Contractor's Work Order Budget and any required Work Plan or disapprove them and request modifications. If the TCEQ approves the Work Order Budget and any required Work Plan, TCEQ will issue a Notice to Proceed, (using the template included in the Contract) and the Contractor shall start Work as directed. If allowed by the Contract or Work Order, Contractor will be reimbursed reasonable expenses for preparation of the Work Order Budget and any required Work Plan, up to the amount listed on the Price Form or set out in the Work Order.
- c) Work Orders must be in writing and signed.
- d) Each Work Order shall include:
  - 1) The Contract number and name;
  - 2) The Work Order number and name;
  - 3) Maximum dollar amount for the Work Order;
  - 4) Balance remaining for the total Contract amount based on total dollar amount of previously issued Work Orders;
  - 5) A statement indicating whether federal funds will be used to pay for the Work;
  - 6) TCEQ Timeline for the Work. The Work Order may indicate the date by which the entire Work must be completed (end date). Other completion dates in the Work Order are provided to guide the Contractor in preparing the Work Plan. A Work Order without a specified end date shall end at the Contract's Expiration Date;
  - 7) The name and contact information of the TCEQ Project Manager and any other TCEQ contacts;
  - 8) Scope of Work for the Work Order broken out by tasks and deliverables;
  - 9) Instructions to the Contractor including format of copies; availability for questions; anything to be provided by the TCEQ, including any work, data,

models, or reports; required models or software to be used; Quality Assurance/Quality Control procedures or other standards, if not previously provided; any special contents of the Work Plan; testing procedures; and acceptance criteria; and

10) Any additional information or requirements at the discretion of TCEQ.

### **Article 3. Work Order Budgets and Work Plans**

- a) Within Fourteen (14) calendar days after the receipt of a Work Order issued under this Contract, unless a different time is specified in the Work Order, Contractor shall submit one (1) copy of a Work Order Budget and any required Work Plan to the designated TCEQ Project Manager. TCEQ may waive the requirement for a Work Order Budget and Work Plan and may provide the Work Order to the Contractor for signature. If the Work Plan is waived, the Contractor must adhere to the interim completion dates in the Work Order.
- b) If this Contract includes a HUB Subcontracting Plan (HSP), the Work Plan must confirm that all subcontractors to be used are listed on the HSP. If the Contractor intends to use other subcontractors, it must follow TCEQ procedure and good faith effort standards to amend the HSP during the 14 days allowed for submitting a Work Plan.
- c) The Work Order Budget shall contain the estimates of all charges required to complete the Work and produce each deliverable or milestone. The Budget submitted shall be sufficiently detailed to allow TCEQ to easily determine the hours, prices, and personnel by labor classification related to each deliverable. The Work Order Budget shall also include, items and item descriptions, unit and extended prices, prices for requested reimbursables, and a total price for the Work. Reimbursables must be requested in writing and approved by TCEQ prior to incurring a payment obligation for the item. The form for the Budget is included in the Contract. The Contractor shall have the Work Order Budget document signed and dated by a person with the authority to bind the Contractor to the performance of the Work Plan, and include the title and printed name of the person signing the Work Order Budget. The Work Order Budget shall include the Contractor's organization name and Work Order number in a prominent place on the document.
- d) Any requested Work Plan shall contain, at a minimum, the following:
  - 1) The Contractor's organization name and the Work Order number in a prominent place on the document;
  - 2) Contractor's Project Manager and other contacts assigned to the Work Order;
  - 3) Key Personnel, including key subcontractor personnel, that will perform Work on the Work Order, current resumes for each (if one was not provided), and an estimate of the time to be spent by each of them on each deliverable;
  - 4) Timeline: A list of the tasks and deliverables and a schedule including the start date and end date for each deliverable. The Timeline may also include a graphical representation of projected cumulative labor hours for each person working on each deliverable;
  - 5) Technical Approach and Technical Solution: The Contractor shall describe the technical approach and technical solution for completing the tasks and deliverables. This shall contain detailed descriptions of the methods and formats for the performance of tasks and production of deliverables, as well

as any additional work or modification of the tasks the Contractor deems necessary in order to complete the Work;

- 6) Quality Assurance/Quality Control Procedures: A description of the process and procedures to be performed by the Contractor to ensure the product meets the applicable requirements, including proposed testing procedures and proposed acceptance criteria;
  - 7) A description of the process for providing the required reports to TCEQ;
  - 8) Any additional information requested in the Work Order; and
  - 9) Signature of a person with the authority to bind the Contractor to the performance of the Work Plan, with their printed name and job title and the date of signature.
- e) Work Order End Dates
- 1) Any specified Work Order end date must fall within the Contract term.
  - 2) If no Work Order end date is specified, the expiration date of the Contract shall be the Work Order end date.

#### **Article 4. Work Plan Review**

TCEQ may review the Work Order Budget and any required Work Plan and either approve it or request changes. If TCEQ requests changes, Contractor shall re-submit the Work Budget and/or Work Plan to the TCEQ Project Manager within seven (7) calendar days.

#### **Article 5. Notice to Proceed**

Upon approval by the TCEQ of the Work Order Budget and any required Work Plan, the TCEQ shall issue a Notice to Proceed. Unless otherwise provided in the Notice to Proceed, the Contractor shall begin Work upon its receipt. The TCEQ may, at its discretion, issue a Partial Notice to Proceed with a specified approved portion. This does not waive any deficiencies in the Work Plan as a whole. Upon TCEQ's approval of Contractor's corrected Work Plan and/or Work Order Budget, TCEQ will issue a Notice to Proceed for all of the work, which supersedes and replaces the original Partial Notice to Proceed and adopts the corresponding Revised Work Plan and Budget, as necessary. A Notice to Proceed must contain the TCEQ Contract Name and Number, Work Order Name and Number, and be signed by the TCEQ Project Manager.

#### **Article 6. Amending Work Orders**

- a) TCEQ and Contractor may agree to amend a Work Order at any time during the term of a Work Order. An amended Work Order shall identify the Work it is revising, and meet all requirements of a Work Order stated in Article 2. Except as described in Section d), an amended Work Order must be signed by both Parties.
- b) Upon receiving an amended Work Order, Contractor shall continue Work under the previously approved Work Plan, unless TCEQ instructs the Contractor to stop all or part of the Work.
- c) If required, Contractor shall submit an amended Work Plan and/or an amended Work Order Budget within seven (7) calendar days after TCEQ issues a Revised Work Order. Amended Work Plans and amended Work Order Budgets shall meet all requirements in Article 3.
- d) TCEQ may review the amended Work Plan and/or amended Work Order Budget and either request changes or approve it by issuing a Revised Notice to Proceed. A

Revised Notice to Proceed supersedes and replaces the original Notice to Proceed, and adopts any corresponding Revised Work Plan and Work Order Budget. A Revised Notice to Proceed shall meet all requirements of a Notice to Proceed described in Article 5.

- e) The TCEQ may unilaterally increase the maximum amount of a Work Order to agree with an amended Work Order Budget which has been approved by the TCEQ.
- f) If the Contract Expiration Date has been changed by Contract Amendment, the end date of any existing noncompleted Work Order without a specified end date shall automatically assume the end date of Contract as updated by the Amendment.
- g) Minor changes may be made to Work Orders as described in the Contract Amendments Section of the General Terms and Conditions.

### **Article 7. Revising Work Budgets and Work Plans**

- a) The Contractor shall submit revisions to the Work Order Budget and any required Work Plan to the TCEQ Project Manager within seven (7) calendar days of the following events:
  - 1) when the original Work Order Budget and/or Work Plan is rejected or otherwise disapproved, in whole or in part, by the TCEQ Project Manager;
  - 2) when directed by the TCEQ Project Manager;
  - 3) whenever the Work Order requirements are changed by a TCEQ Work Order amendment;
  - 4) with the approval of TCEQ, as soon as it appears that any completion or deliverable date or maximum payment amount may be exceeded; and/or
  - 5) when the Contractor believes such a revision is deemed desirable for optimum achievement of Contract and Work Order objectives.
- b) The Contractor must obtain written Revised Notice to Proceed from the TCEQ Project Manager of every amendment to the Work Order Budget and/or Work Plan prior to implementation. The Revised Notice to Proceed may be sent as an email attachment.

### **Article 8. Termination**

TCEQ may terminate a Work Order by providing notice. Termination may be for cause, convenience, or force majeure. Contractor will stop Work as soon as practicable after termination. Upon termination, Contractor may request payment for completed and accepted Work. In case of termination for convenience or force majeure, Contractor may also request payment for partially performed Work, and for timely, reasonable expenses directly attributable to termination. TCEQ shall not be liable for anticipated profits, unabsorbed overhead, interest on borrowing, or other damages not specifically stated in this Contract.

### **Article 9. Invoices**

Contractor must submit a separate invoice for each Work Order. Each invoice must include the Work Order number and any Work Order title. Work Order invoices must conform to the Contract. The Work Order may indicate that the Contractor may invoice based on completion of deliverables.

## **Article 10. TCEQ Reliance on Work Order Budget**

The Contractor shall be extremely attentive to the preparation of the labor hour and item estimates contained in Work Order Budgets that are prepared in response to Work Orders. The Contractor agrees to complete Work assigned under a Work Order within the original estimate of hours and budget provided in the Contractor's Work Order Budgets unless the TCEQ agrees to an adjustment. The TCEQ budgets for and encumbers funds only up to the not-to-exceed dollar amount contained in the approved Work Order Budget. Therefore, the TCEQ materially relies on the Contractor's due diligence in the preparation of estimates submitted for approval in the Work Order Budget. The essence of the reliance is that partially completed Work products, which could be a consequence of inadequately prepared estimates, may be of little or no use to the TCEQ. The Contractor acknowledges and agrees that the TCEQ materially relies on these Contractor-prepared estimates.

**NOTICES, PROJECT  
REPRESENTATIVES, AND  
RECORDS LOCATION**



## NOTICES, PROJECT REPRESENTATIVES, AND RECORDS LOCATION

Contract Number: **582-22-30075**

Contract Name: **Take Care of Texas Marketing Plan**

1. **Representatives.** The individual(s) named below are the representatives of TCEQ and Contractor. They are authorized to give and receive communications and directions on behalf of the TCEQ and Contractor as indicated below. All communications including official contract notices must be addressed to the appropriate representative or his or her designee.
2. **Changes in Information.** Either party may change its information in this *Notices, Project Representatives and Records Location* document by providing notice to the other party's representative for contractual matters.
3. **TCEQ Representatives.**

**TCEQ PROJECT MANAGER  
(for Technical Matters)**

\_\_\_\_\_

(Title) \_\_\_\_\_ (Mail Code) \_\_\_\_\_

Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
Telephone No.: (512) 239-1000  
Facsimile No.: N/A  
Email Address:

Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
Telephone No.: (512) 239-\_\_\_\_\_  
Facsimile No.: (512) 239-\_\_\_\_\_  
Email Address:

4. **Contractor Representatives.**

**For Contractual Matters:**

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

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

\_\_\_\_\_  
(Mailing Address)

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

Telephone No.: ( ) - -  
Facsimile No.: ( ) - -  
Email Address:

**For Technical Matters:**

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

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

\_\_\_\_\_  
(Mailing Address)

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

Telephone No.: ( ) - -  
Facsimile No.: ( ) - -  
Email Address:

5. **Invoice Submittal.** Invoices must be submitted to the TCEQ Contract Manager.
6. **Designated Location for Records Access and Review.** Contractor designates the physical location indicated below for record access and review pursuant to any applicable provision of this contract:

\_\_\_\_\_  
(Physical Location Address Line 1)

\_\_\_\_\_  
(Physical Location Address Line 2)

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

**Section 4:**  
**Response Documents**  
**Fill out and Submit with Response**

## RESPONDER'S SIGNATURE AND INFORMATION

(Failure to sign below will disqualify your Response.)

Registered Name of Responder: \_\_\_\_\_

D/B/A \_\_\_\_\_

Company Address: \_\_\_\_\_

Vendor ID Number: \_\_\_\_\_

The ID number is the payee identification number assigned and used by the Comptroller of Public Accounts of Texas to process payment for goods/services. Provide one of the following:

- Federal Employers Identification Number (EIN):
- Social Security number behind Tab 8.

DUNS Number, if applicable: \_\_\_\_\_

Every vendor MUST provide an EIN or Social Security number prior to receiving payment under an awarded contract. If you provide a Social Security number, include it behind Tab 8. For information on obtaining your EIN, you may call the IRS at 800-829-4933 or visit [Apply for an Employer Identification Number \(EIN\) Online \(https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online\)](https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online)

Printed Name and Title of individual authorized to bind Responder to this Response: \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

*Your signature binds you to everything in the Solicitation and your Response, including the Certifications and your completed HUB Subcontracting Plan. By signing, you also affirm that everything in your Response is complete, true and accurate.*

Date of Signature: \_\_\_\_\_

Name of Responder Representative to contact regarding this Response:

\_\_\_\_\_

Title of Representative: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Pursuant to Texas Family Code § 231.006(c), regarding child support, Responses must include names and Social Security Numbers of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the Response. See Responder's Certifications for additional information. Check one of the following:

- This provision applies, and the required information is submitted behind Tab 8 in the Response.
- This provision does not apply to the Responder.

## RESPONSE CONTENTS

Response must be organized with the designated index tabs and in the designated order. If the item for a tab is not applicable to the Response, insert a page marked “Not Applicable” behind the tab.

- **TAB 1** Authorized Signature and Information
  - Responder’s Signature and Information
  - Signed Cover Page of Addenda
  - TIN Form
  
- **TAB 2** Executive Summary
  
- **TAB 3** Statement of Qualifications
  
- **TAB 4** Past Performance
  
- **TAB 5** Technical Approach to Performing the Scope of Work
  
- **TAB 6** Price Form
  
- **TAB 7** Additional Response Forms
  - Preferences
  - HUB Subcontracting Plan Forms (if applicable)
  - Federal Forms
  
- **TAB 8 Confidential Information** (including Social Security Numbers) (if applicable)
  
- **TAB 9 Other** (May be used to include information that does not fall under another designated Tab, to explain a Certification you cannot make, or disclose a conflict of interest.)

## RESPONDER'S CERTIFICATIONS

By signing and submitting its Response, Responder certifies each of the numbered statements below. If Responder cannot affirm any of the certifications, please provide the facts that prevent Responder from making the certification in **Tab 9**. These certifications are part of the Response and any resulting Contract. False certifications may lead to disqualification of the Response or to contract remedies, such as termination for cause, and other administrative and criminal penalties.

1. Responder has not given or offered, and does not intend to give or offer, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, service or other thing of value to a public servant in connection with its Response.
2. Responder has disclosed in **Tab 9** any known financial interest of, or foreseeable financial benefit to, any TCEQ commissioner, executive director, deputy executive director, general counsel or chief procurement officer, and their family members, as defined by Section 2261.252, Government Code. Responder has disclosed any proposed personnel who are related to any current employees of TCEQ.
3. Responder represents that no person who served as an executive head of TCEQ, in the past four years ending on the date of the Response, was involved with or has any interest in this Response. If Responder employs or has used the services of a former executive head of TCEQ or any other state agency during the four years ending on the date of the Response, then Responder shall provide the following information in the Response: name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Responder, and the date of employment with Responder.
4. The Responder has not been an employee of TCEQ within the preceding 12 months. Also, if the Responder employs a person that worked for TCEQ within the preceding 12 months, the person will not perform services on projects for the Responder that the employee worked on while employed by TCEQ.
5. Neither Responder nor any of its officers, directors, owners, partners, or primary managers or supervisors is subject to suspension, debarment, exclusion, disqualification, or similar ineligibility determined by any federal, state or local government entity.
6. The Response does not include financial participation by any individual or entity that was compensated for preparation of the specifications or request for proposal. In accordance with Section 2155.004 of the Texas

Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

7. Neither the Responder, nor the firm, corporation, partnership, or institution, represented by the Responder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state (Chapter 15 of the Texas Business & Commerce Code) or federal antitrust law. Responder has not communicated its Response, directly or indirectly, to any competitor or any other person engaged in the same line of business. Responder has not received information about any other Response to this Solicitation.
8. No individual who is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent of Responder is a child support obligor who is more than 30 days delinquent in paying child support. In accordance with Section 231.006, of the Texas Family Code, the Responder certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract [if any] may be terminated and payment may be withheld if this certification is inaccurate.
9. The Response does not include proposed financial participation by any person who, during the five-year period preceding the date of the Response submittal and the date of Contract award, if any, has been convicted of violating a federal law or assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of any disaster occurring on or after September 24, 2005, including Hurricane Rita and Hurricane Katrina. In accordance with Sections 2155.006 and 2261.053 of the Texas Government Code, the Responder certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract, if any, may be terminated and payment withheld if this certification is inaccurate. Signature on the Contract (if any) indicates that the Contract does not include financial participation by any person who, during the five-year period preceding the date of the Contract award, has been convicted of violations listed above.
10. The Responder has not been adjudicated during the preceding three-year period to have committed substantive, non-clerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial danger to the public health and safety or the environment.
11. Responder, nor any of its officers, has been adjudicated by a court of law to have violated the Texas Deceptive Trade Practices Act.

12. If Responder gives a Texas address for itself, that address is Responder's legal business address, and Responder qualifies as a Texas Bidder, meaning that Responder is either incorporated in Texas, has its principal place of business in Texas, or has an established physical presence in Texas.
13. The Responder does not boycott Israel and will not boycott Israel during the term of the contract. In accordance with Government Code Section 2270.002, the Responder certifies that it does not boycott Israel and will not boycott Israel during the term of the contract. If Responder is exempt from this provision, Responder must provide supporting information in **Tab 9**.
14. In accordance with Chapter 2252, Subchapter F and Chapter 2270 of the Texas Government Code, Responder represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization and that it is not identified on the lists prepared and maintained under Sections 2252.153, 2270.0153, or 2270.0201 of the Texas Government Code. A company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or to a foreign terrorist organization, is not subject to contract prohibition under this clause. A company claiming such exemption must submit the official copy of the declaration.
15. Responder certifies that it is not listed in the prohibited vendors lists authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.
16. Responder acknowledges that TCEQ is required by law to post on its public website information about this Solicitation and any awarded Contract. Responder acknowledges its Response is subject to disclosure pursuant to the Texas Public Information Act, and it is Responder's obligation to conspicuously mark each and every page of information that is business confidential or proprietary. Responder must place all Personal Identifying Information (PII) and Sensitive Personal Information (SPI) information, including Social Security Numbers, behind **TAB 9**. See [Texas Business & Commerce Code § 521.002\(a\)\(1\), \(2\)](#) for relevant definitions.
17. Abortion Funding Limitation. Responder represents and warrants that payments made by TCEQ to Responder and Responder's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.25 of the General Appropriations Act, 86th Legislative Session (2019), nor by Texas Government Code Chapter 2272 Prohibited Transactions [Senate Bill 22, 86th Legislative Session (2019)].

- 18. Human Trafficking Prohibition.** In accordance with Texas Government Code § Section 2155.0061 of the Texas Government Code, Responder certifies that any individual(s) and/or business entity(ies) named in this Response are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate.

If any of these certifications change between submittal of the Response and award of a contract or cancellation of the Solicitation, Responder will promptly notify TCEQ.



## APPLICATION FOR TEXAS IDENTIFICATION NUMBER (TIN) FORM

Please fill out the following form and return with your proposal behind **Tab 1**. This form will be used to ensure proper set up of contractor information in our contract and payment system.

PLEASE NOTE: A completed TIN form must be submitted with your response even if you have done business with TCEQ in the past for verification that we have the correct information in our accounting system.

For Comptroller's use only

# Application for Texas Identification Number

• See instructions on back

1. Is this a new account?  YES Mail Code 000  NO Enter Mail Code \_\_\_\_\_ Agency number \_\_\_\_\_  
 Complete Sections 1 - 5 Complete Sections 1, 2 & 5

**Section 1**

2. **Texas Identification Number (TIN)** - Indicate the type of number you are providing to be used for your TIN

Employer Identification Number (EIN) (9 digits)

Social Security number (SSN) (9 digits) Enter the number indicated \_\_\_\_\_

Individual Taxpayer Identification Number (ITIN) (9 digits)

Comptroller's assigned number (FOR STATE AGENCY USE ONLY) (11 digits)

Current Texas Identification Number (FOR STATE AGENCY USE ONLY) (11 digits)

3. Are you currently reporting any Texas tax to the Comptroller's office such as sales tax or franchise tax?  YES  NO If "YES," enter Texas Taxpayer Number \_\_\_\_\_

**Section 2**

**Payee Information (Please type or print)**

4. Name of payee (Individual or business to be paid) \_\_\_\_\_

5. Mailing address where you want to receive payments \_\_\_\_\_

6. (Optional) \_\_\_\_\_

7. (Optional) \_\_\_\_\_

8. (Optional) \_\_\_\_\_

9. City \_\_\_\_\_ State \_\_\_\_\_ ZIP code \_\_\_\_\_

10. Payee telephone number (Area code and number) \_\_\_\_\_ SIC code \_\_\_\_\_ Security type code ( 0, 1, 2 ) \_\_\_\_\_ Zone code \_\_\_\_\_

**Section 3**

11. **Ownership Codes** - Check only one code by the appropriate ownership type that applies to you or your business.

**I** - Individual Recipient (not owning a business)

**S** - Sole Ownership (Individual owning a business): If checked, enter the owner's name and Social Security number (SSN)  
 Owner's name \_\_\_\_\_  
 SSN / ITIN (9 digits) \_\_\_\_\_

**P** - Partnership: If checked, enter two partner's names and Social Security numbers (SSN). If a partner is a corporation, use the corporation's Employer Identification Number (EIN).  
 Name \_\_\_\_\_  
 SSN / ITIN / EIN (9 digits) \_\_\_\_\_  
 Name \_\_\_\_\_  
 SSN / ITIN / EIN (9 digits) \_\_\_\_\_

**L** - Texas Limited Partnership: If checked, enter the Texas File Number \_\_\_\_\_

**T** - Texas Corporation: If checked, enter the Texas File Number \_\_\_\_\_

**A** - Professional Association: If checked, enter the Texas File Number \_\_\_\_\_

**C** - Professional Corporation: If checked, enter the Texas File Number \_\_\_\_\_

**O** - Out-of-State Corporation

**G** - Governmental Entity

**U** - State agency / University

**F** - Financial Institution

**R** - Foreign (out of U.S.A.)

**N** - Other: If checked, explain. \_\_\_\_\_

**Section 4**


12. Payment Assignment?  YES  NO Note: A copy of the assignment agreement between payees must be attached.

Assignee name \_\_\_\_\_

Assignee TIN \_\_\_\_\_ Assignment date \_\_\_\_\_

**Section 5**

13. Comments \_\_\_\_\_

14.  Authorized signature (Applicant or authorized agent) \_\_\_\_\_ Date \_\_\_\_\_

Agency name \_\_\_\_\_ Prepared by \_\_\_\_\_ Phone (Area code and number) \_\_\_\_\_

15. Texas Commission on Environmental Quality Request for Proposals Solicitation Number 582-22-30075



# Application for Texas Identification Number

**GLENN HEGAR**

**TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**

Fiscal Management  
Austin, TX 78774-0100

## Who Must Submit This Application -

This application must be submitted by every person (sole owner, individual recipient, partnership, corporation or other organization) who intends to bill agencies of the state government for goods, services provided, refunds, public assistance, etc. The Texas Identification Number (TIN) will be required on all maintenance submitted by state agencies. The use of this number on all billings will reduce the time required to process billings to the State of Texas.

**Note: To expedite processing of this application, please return the completed application to the state agency with which you are conducting business. It is not necessary for the payee to sign or complete this form. The state agency representative may complete the form for the payee.**

## For Assistance -

For assistance in completing this application, please call the Texas Comptroller's office at 1-800-531-5441, ext. 6-8138, or 512-936-8138.

### Notice to State Agencies -

When this form is used to set up additional mail codes, Sections 1, 2 and 5 must be completed. State agencies may refer to the Texas Identification Number System (TINS) Guide at <https://fm.x.cpa.state.tx.us/fmx/pubs/tins/tinsguide> for additional information.

## General Instructions -

- Do not use dashes when entering Social Security, Employer Identification, Individual Taxpayer Identification or Comptroller's assigned numbers.
- Disclosure of your Social Security number is required. This disclosure requirement has been adopted under the Federal Privacy Act of 1974 (5 U.S.C.A. sec. 552a(note)(West 1977), the Tax Reform Act of 1976 (42 U.S.C.A. sec. 405(c)(2)(C) (West 1992), TEX. GOV'T. CODE ANN. sec. 403.055 (Vernon 2005) and TEX. GOV'T. CODE ANN. sec. 403.056 (Vernon 2005). Your Social Security number will be used to help the Texas Comptroller of Public Accounts administer the state's tax laws and for other purposes. See Op Tex. Att'y Gen. No. H-1255 (1978).

## Specific Instructions -

### Section 1 - Texas Identification Number

- EIN: For all ownership codes other than Individual Recipient listed in Section 3, enter a 9-digit Employer Identification Number (EIN) issued by the Internal Revenue Service.
- SSN: For Individual Recipient or Sole Owner without an EIN, enter your 9-digit Social Security number (SSN) issued by the Social Security Administration.
- ITIN: For Individual Recipient or Sole Owner without an EIN, enter your 9-digit Individual Taxpayer Identification Number (ITIN) issued by the IRS.
- Comptroller Assigned Number – 11 digits: FOR STATE AGENCY USE ONLY. A Comptroller Assigned Number is an ID number that is given to a state agency that needs to pay either a foreign entity or a foreign individual who does not have an EIN, SSN or ITIN.
- Current Texas Identification Number – 11 digits: FOR STATE AGENCY USE ONLY.

Are you currently reporting any Texas tax to the Comptroller's office such as sales tax or franchise tax? If "YES," enter Texas Taxpayer Number.

### Section 2 - Payee Information

- Items 4 through 8 - Enter the complete name and mailing address where you want payments to be received. Names of individuals must be entered first name first. Each line cannot exceed 50 characters including spaces. If the name is more than 50 characters, continue the name in Item 5 and begin the address in Item 6.
- Item 9 - Enter the city, state and ZIP code.
- Item 10 - Enter payee telephone number.
- SIC code, Security type code and Zone code: FOR STATE AGENCY USE ONLY.

### Section 3 - Ownership Codes

- Item 11 - Check the box next to the appropriate ownership code and enter additional information as requested. Please check only one box in this section. The Secretary of State's office may be contacted at 512-463-5555 for information regarding Texas file numbers.

### Section 4 - Payment Assignment

- Item 12 - Use when one payee is assigning payment to another payee. When setting up an assignment payment, fill out this section completely and include a copy of the assignment agreement between the assignee and the assignor.

### Section 5 - Comments and Identification

- Item 13 - Enter any additional information that may be helpful in processing this application. Items 14 and 15 are for identification purposes. Always complete the identification section, including comments and authorized signature.

Under Ch. 559, Government Code, you are entitled to review, request and correct information we have on file about you, with limited exceptions in accordance with Ch. 552, Government Code. To request information for review or to request error correction, contact us at the address or phone numbers listed on this form.

## EXECUTIVE SUMMARY

Responder must submit its Executive Summary behind **Tab 2**. Use the outline and format prescribed in Submittal information in Section 1 and Evaluation Criteria in Section 2.

## STATEMENT OF QUALIFICATIONS

Responder must submit its Statement of Qualifications behind **Tab 3**. Use the outline and format prescribed in Submittal information in Section 1 and Evaluation Criteria in Section 2.

## PAST PERFORMANCE

Responder must submit its Past Performance behind **Tab 4**. Use the outline and format prescribed in Submittal information in Section 1 and Evaluation Criteria in Section 2.

## TECHNICAL APPROACH TO PERFORMING THE SCOPE OF WORK

Responder must submit its Technical Approach to Performing the Scope of Work behind **Tab 5**. Use the outline and format prescribed in submittal information in Section 1 and Evaluation Criteria in Section 2.

# Price Form

Responder must submit its Price Form behind **TAB 6**.

Contract No: 582-22-30075

Contract Name: Take Care of Texas - Marketing Plan FY22

Propose your fully loaded, firm, fixed prices to perform the services listed in the Scope of Work. Price shall include all costs of performance, including materials, equipment, labor, communication, necessary subcontracts and planning to successfully complete all services. The submitted price shall be considered as a fully loaded rate, that is, the rate including an accounting of all expenses. No other cost may be charged to TCEQ or paid by TCEQ except those listed in an approved Work Order Budget.

<b>Cost Item:</b>	<b>Cost per unit</b>	<b>Units</b>
<b>Task 1: Marketing Plan:</b>		
Preparation of Marketing Plan (including Work Orders Budget)	\$	Plan
<b>Task 2: PSA</b>		
Production of PSA	\$	PSA
Fee for purchasing Media Advertising	\$	Buy
Cost of Media Advertising	\$	Buy
<b>Task 3: Social Media</b>		
Preparation of Flight Plans		Plan
Fee for Purchasing Social Media Advertising	\$	Buy
Cost of Social Media Advertising	\$	Buy

## HOURLY RATES

In the event of work performed outside of the above items, list the Hourly Rates that the Contractor will charge to provide the following staff under this Contract. Some roles have been suggested by TCEQ. Please provide Titles and Rates for all staff required for the Contract. Only Labor Categories included in this Price Form may be utilized in the Contract. Please include any Titles used by Contractor that differ from TCEQ descriptions. Please include a brief description of Work Performed. In the blank rows, please list any additional Labor Categories necessary for the Contract. Please include minimum hourly rates.

<b>Labor Category</b>	<b>Alternate Title</b>	<b>Hourly Rates (\$/hr.)</b>
Account Manager/Executive		
Art/Creative Director		
Clerical Support		
Copy Writer		
Graphic Designer		
Media Buyer		
Project Director		
Software/Hardware Specialist		
Web Database Manager		
Web Designer		
Webmaster		

## PREFERENCES

Identify the preferences for which Responder qualifies.

Not all preferences apply to all procurements. Preferences may not apply to procurements of scientific and technical services. Texas Water Code § 5.2291. Texas bidder preferences may not apply to contracts with financial support from federal agencies. *See* 2 CFR § 200.319(b). For more information about preferences, see the State of Texas Procurement Manual.

Tie bid preferences (Tex. Gov. Code 2155.444):

- Goods or services produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Texas vegetation native to the region, for landscaping
- Agricultural products grown in Texas
- Agricultural products offered by a Texas bidder
- Non-agricultural goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- USA-produced supplies, materials or equipment

Specification preferences:

- Products made of recycled, remanufactured, or environmentally sensitive materials (Tex. Gov. Code 2155.445)
- Energy-efficient products (Tex. Gov. Code 2155.442)
- Rubberized asphalt paving material (Tex. Gov. Code 2155.443)
- Recycled motor oil and lubricants (Tex. Gov. Code 2155.447)
- Recycled paper products (Tex. Gov. Code 2155.448(a))
- Foods of higher nutritional value, for public cafeterias (Tex. Gov. Code 2155.452)
- Manufacturers that recycle or reuse computer equipment made by other manufacturers (Tex. Health and Safety Code 361.965(d))

Source preferences:

- Products produced at facilities located on formerly contaminated property (Tex. Gov. Code 2155.450)
- Products and services from economically depressed or blighted areas (Tex. Gov. Code 2155.449, 2306.004)
- Vendors that meet or exceed air quality standards (Tex. Gov. Code 2155.451)
- Products made by persons with disabilities (Tex. Gov. Code 2155.441)
- Products made by Texas Correctional Industries (Tex. Gov. Code Ch. 497)

## **HUB SUBCONTRACTING PLAN**





# HUB SUBCONTRACTING PLAN

## (HSP)

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

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

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

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

**-- Agency Special Instructions/Additional Requirements - -**

In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

**In accordance with 34 TAC 20.284, the agency-specific Historically Underutilized Business Goal for this **Other Services contract is 26%. (Modify accordingly)****

**Attention Responders: An electronic format of the HUB Subcontracting Plan (HSP) Form is available on the Texas Comptroller of Public Accounts website (<https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>). FAILURE TO SUBMIT A COMPLETED HSP WITH THIS SOLICITATION WILL DEEM YOUR PROPOSAL/BID NON-RESPONSIVE AND WILL NOT BE CONSIDERED FOR AN AWARD.**

The TCEQ has identified possible HUB subcontracting opportunities related to the type of work being undertaken in this project. This listing is not an inclusive listing. Additional opportunities may be added at the respondent's option and can be referenced on the TPASS's Commodity Book, Listing by Class, located at:

<https://mycpa.cpa.state.tx.us/commbook/>

**The following goods and/or services are possible HUB subcontracting opportunities:**

Class Code	Item Code	Description


**Finding HUBs on the Centralized Master Bidders List (CMBL) and HUB Directory:**

1. Access the CMBL and HUB Directory at:  
<https://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>
2. *CMBL* Page will default to certain fields already checked - ensure that *All Vendors* are searched.
3. Enter Class Code and Item (leave Item blank to select any).
4. Enter District Number to select specific geographic location (leave district blank to select all).
5. Click the Submit Search button.
6. *Detail List* page will default to certain fields already checked.
7. Check Ethnicity, Gender fields, and Business Description as well as any other fields needed.  
Click go.
8. Identify HUBs on the *Results for CMBL Plus HUBs Search* page (HUB category is on far right of page).
9. Select HUB vendor and click on company name. Sometimes a vendor will have more than one listing - use the most current one.
10. Confirm that *HUB Status* is "A" (Approved; Active) on the *Vendor Detail* page.
11. If vendor appears to meet your needs, then solicit a bid or response of interest.
12. Repeat this process until you have found a minimum of three (3) certified HUBs per subcontracting opportunity/area, either identified by the TCEQ or your company.
13. Statewide Procurement Division (SPD) Minority/Business Links (for accessing women and minority trade associations or development centers):  
  
<https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>