



**STATE OF TEXAS  
OFFICE OF THE GOVERNOR**

**FINANCIAL SERVICES DIVISION**

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**REQUEST FOR PROPOSALS**

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**Tourism Public Relations and Marketing Services in the United Mexican States Service Region**

**RFP No. 301-9-0798**

**NIGP CLASS ITEMS**

<b>915-03</b>	<b>915-22</b>	<b>961-75</b>	
<b>961-28</b>	<b>961-53</b>		

**Proposal Date and Due Time: 09/27/2019 no later than 5:00 pm  
(CST in Austin, Texas)**

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**NOTE: This Request for Proposals ("RFP") is composed of two parts: (1) Part A: RFP Information and Instructions, (including attachments and appendices, in any) and (2) Part B: General Terms and Conditions (including attachments and appendices, if any). In the event an instruction or term in Part A conflicts with an instruction or term in Part B, the instruction or**

**term in Part A prevails, and any addenda or amendment to either Part A or Part B control over the original versions.**

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## **1. GLOSSARY OF TERMS**

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This Glossary assigns definitions to the listed terms. The definition given to a term listed in this Glossary applies whenever the term appears in this RFP and in any response, including a proposal, to this RFP.

### **1.1. Account Manager**

The individual who oversees and provides direction for and manages all activities under the Contract including, but not limited to, coordinating public relations and marketing campaigns in the Target Market, account management, accounting for the entire Contract, billing, and reporting.

### **1.2. Acceptable Quality Level**

The level of performance of requested services and goods, based entirely on the judgment of the OOG staff, below which the Contract will not be paid and/or damages may be assessed.

### **1.3. Addendum**

A modification of the specifications contained in the RFP and distributed to prospective Respondents prior to the opening of responses.

### **1.4. Advertising Equivalency Value**

Cost to the Contractor to make paid media placements of key messages on actual per-line cost for the publicity generated or other method per medium as agreed upon by the OOG.

### **1.5. Business Day**

The State of Texas's business days are Monday through Friday, 8:00 a.m. through 5:00 p.m., except for scheduled State of Texas holidays (see, <http://www.hr.sao.texas.gov/Holidays>).

### **1.6. Contract**

The contract awarded as a result of the RFP and all exhibits thereto, as further described in Section 2 of Part B of the RFP.

### **1.7. Contractor**

The Respondent(s) awarded a Contract as a result of the RFP.

### **1.8. Convention and Visitors Bureau ("CVB")**

A local organization supported by hotel/motel occupancy taxes, government budget allocations, private memberships or a combination of any of these funding mechanisms. A CVB encourages groups to hold meetings, conventions, and trade shows in its city, offers assistance for these meetings, and promotes tourism to its city. In some communities these activities may be accomplished by a Chamber of Commerce.

**1.9. Cooperative Marketing**

Marketing and/or promotional activity in which the OOG and one or more other Texas Partner(s) pool their resources to provide effective and attractive marketing and promotional opportunities that enhance and extend awareness of the Texas vacation message.

**1.10. CPA**

The Texas Comptroller of Public Accounts.

**1.11. Destination Marketing Organization (“DMO”)**

A state or provincial tourism office, convention and visitor bureau, chambers of commerce, or similar entities that promote a city, region, or state as a travel destination.

**1.12. Editorial Calls**

Telephone calls or personal visits conducted to encourage Media coverage of Texas.

**1.13. ESBD**

The Electronic State Business Daily, which is available online at <http://www.txsmartbuy.com/sp>.

**1.14. Feature Brief**

A release distributed to the Media that is typically more detailed than a news release and describes and promotes an aspect(s) of travel to Texas. Feature briefs are designed to generate placements of feature stories.

**1.15. Fiscal Year**

The fiscal year is the period beginning September 1 and ending August 31.

**1.16. Fulfillment Materials**

Pamphlets, brochures, travel guides, press kits, and any such materials that may be requested by individuals, Travel Trade, or Media.

**1.17. Generally Accepted Accounting Principles (“GAAP”)**

A set of rules that encompass the details, complexities, and legalities of business and corporate accounting.

**1.18. Historically Underutilized Business (“HUB”)**

A business certified by the CPA that is a historically underutilized business as defined by Texas Government Code, Title 10, Subtitle D, Chapter 2161. For further explanation, see the CPA

administrative rules at Title 34, Texas Administrative Code, Part 1, Chapter 20, Subchapter D, Division 1 and <https://comptroller.texas.gov/purchasing/vendor/hub/>.

#### **1.19. Intellectual Property Rights**

The worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

#### **1.20. Media**

Includes, but is not limited to, consumer and trade broadcast (e.g. radio, television), print (newspapers, magazines), and digital or interactive media viewed via a computer/mobile device on the internet (e.g., world wide web, social media).

#### **1.21. Media Familiarization (“FAM”) Tour**

A travel program to Texas for qualified members of the most effective trade and consumer Media in order to promote travel to Texas. Media FAM Tours may include complimentary or reduced rate transportation, accommodations, attractions admissions, and meals. A Media FAM Tour is designed to acquaint Media with specific Texas destinations and/or travel experiences to encourage and generate positive Media coverage about travel to Texas. Media FAM Tours can last up to seven (7) calendar days and usually, but not always, include travel to multiple Texas cities. Media FAM Tours may be individual or group tours.

#### **1.22. Media Measure**

Agreed upon metrics for evaluating public relations activities that generate Media coverage.

#### **1.23. Media Mission**

A concentrated public relations effort consisting of one-on-one editorial appointments for the Contractor’s account team members, representatives of the OOG, and/or Texas Partners with key representatives of targeted media for the purpose of generating positive Media coverage about Texas and travel to Texas. A Media Mission may include other promotional or special events and is usually conducted within a specific geographic market during a brief period of time and can include multiple destinations.

#### **1.24. Monthly Service Fee**

The firm, fixed monthly fee that will be charged by the Contractor to fully compensate the Contractor, and supporting subcontractors if applicable, for the costs of all of the Contractor’s in-house services and goods and administrative expenses required to complete work under the Contract. Such expenses include, but are not limited to, all labor (e.g., all agency account service time; project and account management, direction, supervision, and coordination; writing and editing of newsletters, speeches,



news releases, feature briefs, print and electronic clippings services, press kits, blog posts, development and use of specialized of Media and Travel Trade contacts, regularly scheduled client meetings, background research, oversight of social media activities; strategic counsel; industry and issue monitoring, crisis management; accounting and billing services; administrative support; legal services and fees; development of the annual Public Relations and Marketing Plan and required monthly and quarterly reporting; facilities; and equipment, as required to meet the Contract performance requirements. The Monthly Service Fee also includes all incidental and normal business operating expenses, such as local and long distance phone (landline and mobile) calls; facsimile; local travel; postage; local courier service; internal copying; supplies; materials; parking and other ongoing services performed or required for routine performance. The Monthly Service Fee does not include Reimbursable(s).

**1.25. Motor Coach**

An over-the-road passenger coach or mini-bus with driver that transports buyer, Media FAM Tour participants, and or/Travel Trade FAM Tour participants, and their luggage within Texas.

**1.26. News Release**

A one or two-page printed or electronic document (with or without photographs and captions) or video(s) describing aspect(s) of the Travel Texas product sent to the Media and designed to generate a hard news story placement. A News Release may be distributed via a variety of means including, but not limited to, email, Internet (e.g., world wide web, social media), and/or satellite broadcast. A News Release may also be referred to as a Press Release.

**1.27. OOG**

The Office of the Governor of Texas, Economic Development and Tourism Office (“OOG”).

**1.28. Performance Period**

Each annual period of the Contract Term, running contemporaneously with a Fiscal Year, during which the Contractor will perform the required services under the Contract. Each Performance Period will be separately budgeted by the OOG, subject to available appropriations.

**1.29. Plan of Action**

The comprehensive, annual plan to be proposed by the Contactor, which shall include, at a minimum, a complete schedule of all proposed public relations and marketing activities, other detailed data, and recommendations for target audiences and the Target Market consistent with the requirements of the RFP, including the goals and objectives identified in Section 4 of Part A of the RFP. Subject to revision and approval by the OOG, the Plan of Action as proposed by the Contractor shall become the Public Relations and Marketing Plan to be initially implemented by the Contractor.

**1.30. Public Relations and Marketing Plan**

The Plan of Action revised, if necessary, and approved by the OOG, to be implemented and maintained by the Contractor.

**1.31. Print, Digital, and Broadcast Publicity**

Publicity generated in a printed publication, online, digital, social media or broadcast (TV or radio) format.

**1.32. Proactive Contact**

Contacts (telephone call, email or personal meeting) with key representatives of targeted Media and/or Travel Trade proactively conducted by the Contractor to encourage Media coverage (Media contact) and/or development of travel packages featuring the Travel Texas products and services (trade contact).

**1.33. Product Educational Seminar**

An independent destination marketing seminar for pre-qualified Travel Trade in the Target Market that is designed to inform and educate Travel Trade sales staff about the Travel Texas product. A product educational seminar may be held in conjunction with other special events such as a trade show, sales mission, product launch, marketing or promotional event, meal function, or reception. Product educational seminars may be conducted in conjunction with Texas Partners or in-market Travel Trade.

**1.34. Product Launch**

An event or series of events designed to present Texas suppliers' new and/or expanded tourism products to retail travel agents, tour operators, group leaders, meeting planners, and/or Media, in the Target Market. A product launch may include special events, such as a trade show, a product seminar, a press event, a promotional function, a meal function, and/or a reception.

**1.35. Promotions**

Consumer direct marketing activities (e.g., sweepstakes, trip giveaways, contests, and consumer activations) that incorporate Media and Travel Trade that maximizes the awareness of the Travel Texas product by reaching a mass audience through a variety of Media, trade outlets, and/or consumer direct tactics.

**1.36. Reimbursable(s)**

Purchases made and external expenses incurred by the Contractor, on behalf of the OOG, for services, goods, and local travel associated with coordinating and/or representing Travel Texas at travel trade shows or missions and out-of-town travel, not included in the Contractor's Monthly Service Fee. All Reimbursable(s) must be pre-approved, in writing, by the OOG.

**1.37. Respondent**

An entity submitting a proposal in response to the RFP.

**1.38. Sales Mission**

A concentrated marketing effort consisting of one-on-one sales contacts and other promotional activities and special events between the Contractor's account team and/or the OOG's representative(s) and/or

Texas Partners, and key Travel Trade for the purpose of encouraging tour operators, travel agents, meetings market professionals or other buyers, to develop and sell travel to Texas. A sales mission may include other promotional or special events and is usually conducted within a specific geographic market during a brief period of time and can include multiple destinations.

**1.39. Suppliers**

Attractions, accommodations, CVBs, and other businesses and organizations which supply tourism products.

**1.40. Target Market:**

The United Mexican States (“Mexico”), as a whole, or any subdivision(s) thereof.

**1.41. Texas Partners**

Any Texas tourism industry representatives or suppliers participating in a given marketing and/or promotional activity.

**1.42. Travel Texas**

A program within the OOG that is responsible for promoting travel to and enhancing tourism development in Texas (also formerly known as “Texas Tourism”).

**1.43. Travel Trade Familiarization (“FAM”) Tour**

A travel program for qualified Travel Trade that may include some or all of the following: complimentary or reduced rate transportations, accommodation, attractions, admissions, and meals. A Travel Trade FAM Tour is designed to acquaint participants with specific Texas travel destinations or suppliers to increase the participants’ knowledge of the Travel Texas product and to encourage them to develop and/or expand travel packages to Texas. Travel Trade FAM Tours usually last between four (4) and seven (7) calendar days and usually include multiple Texas cities. Travel Trade FAM Tours may be individual or group tours.

**1.44. Travel Trade**

Retail travel agents, tour operators, group leaders, wholesalers, receptive operators, meetings market travel professionals and planners, corporate travel divisions, and other buyers and/or packagers of tourism products.

**1.45. Wholesalers**

Individuals or companies that accumulate tour packages for sale to Travel Trade.

**1.46. Works**

All documents, reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with the Contract, including,

but not limited to, newsletters, speeches, news releases, feature briefs, print and electronic clippings, press kits, advertising copy, social media, data, and/or data compilations, print and digital invitations, photographs, mats, video, display materials, and other collateral prepared, developed, supplied, commissioned, gathered or generated by the Contractor in the performance of its obligations under the Contract, and/or provided by the OOG or any other person or entity to the Contractor in order that it may perform the services or provide the goods required under the Contract

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## **2. GENERAL INFORMATION**

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### **2.1. Purpose of Procurement.**

The OOG seeks written proposals from qualified Respondents in accordance with the specifications contained in this RFP for Tourism Public Relations and Marketing Services in the Mexico Service Region.

Respondents shall be required to demonstrate ability to perform services as specified in this RFP and shall fully understand the Travel Texas program, organization, mission and targeted audience. Respondents are encouraged to review market overviews and travel statistics and the Marketing Plan located at <https://travel.texas.gov/> and <https://www.traveltexas.com/>.

Respondents are invited to submit written proposals for a comprehensive and strategic tourism public relations and marketing campaign that fully integrates consumer and Media activities, and supports the OOG's Travel Trade activities in Mexico. The campaign shall create a responsible, accurate, and positive image of Texas, while effectively marketing and promoting the state as a premier travel destination in Mexico. The Contractor will implement, oversee, and measure all activities within Mexico.

### **2.2. Procurement Authority**

The OOG is authorized by Texas Government Code, Section 481.172, as the primary state governmental entity responsible for out-of-state tourism marketing and promotion efforts to promote and advertise the State of Texas within the United States and in foreign countries by any means considered appropriate.

### **2.3. Term of Contract**

#### **2.3.1. Primary Term**

The primary term of the Contract awarded as the result of this RFP (if any) shall commence on October 14, 2019 or the date of execution of the Contract, whichever is later, and shall terminate on August 31, 2020, unless terminated earlier pursuant to the terms of the Contract. The primary term plus any renewal terms or extensions, if any, shall constitute the "Contract Term."

#### **2.3.2. Renewal Terms**

The OOG shall have the right to renew the term of the Contract for up to the three (3) additional twelve (12) month periods through August 31, 2023 with consideration to Contractor performance.

#### **2.3.3. Optional Extension**

Upon the exhaustion of any and all renewal terms, the OOG may, in its sole discretion, extend the term of the Contract in any increment of months for up to six (6) months if the OOG determines that an extension is necessary to facilitate the transition services to a new vendor. The OOG shall provide the Contractor with written notice of its intention to extend the term of the Contract in writing at least thirty (30) days prior to the Contract termination date. Any compensation to the Contractor for this extension period would be based upon negotiated rates between the OOG and the Contractor and/or the reimbursement for actual expenses.

#### **2.4. Contractor's Relationship to the OOG**

The OOG is a part of the executive branch of Texas state government, and as such, the OOG will not relinquish control over public relations and marketing decisions to the Contractor. Rather, the Contractor shall provide all services and goods under the Contract with the OOG's prior approval.

#### **2.5. Parts Incorporated**

All attachments listed in the Table of Contents are incorporated into and expressly made a part of this RFP.

#### **2.6. Captions/Headings**

The captions to the sections of this RFP are for convenience only and shall not affect the construction or interpretation of the RFP's substantive terms.

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### **3. OVERVIEW**

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#### **3.1. Economic Impact of Tourism**

Tourism benefits Texans. For example, total direct travel spending in Texas in 2018 was \$ 80.2 billion. Travel expenditures generated a projected \$7.5 billion in state and local taxes. Travel and tourism continues to be one of the largest industries in the state. Travel and tourism supported 1.2 million Texan jobs in 2018.

#### **3.2. Mission**

It is the mission of the OOG's Travel Texas program to enhance and extend local economic development efforts by marketing Texas as a premier travel destination in domestic, out-of-state, and international markets, generating non-Texan travel to the state, creating revenues and jobs.

#### **3.3. Program Organization**

The OOG Travel Texas program is organized into three interrelated functional areas: Travel Research, Advertising, and Public Relations and Marketing. Each area plays a critical role in the overall mission to market Texas as a premier travel destination. Collectively, these areas provide an integrated marketing effort that supports the mission to generate non-Texan travel to the state.

The Travel Research area provides data and information that identifies key consumer travel patterns and trends that drive the OOG's tourism marketing activities, determining overall marketing strategies and key messages, advertising content and placement, selection of markets, and the development and evaluation of advertising and marketing programs. The Travel Research section also directs important tourism development outreach services, providing Texas communities with information and tools needed to develop tourist attractions and to effectively use tourism as an economic development tool.

Advertising is the OOG's primary tourism marketing tool. Advertising efforts are outsourced using a full-service, contracted advertising agency. Most advertising is conducted outside the state. Advertising efforts include, but are not limited to, national and international advertising through consumer, digital, national television, and interactive methods. In the domestic market, the OOG uses the "Let's Texas" campaign. This campaign is activity driven in that it communicates to consumers the "experiential value" that a Texas vacation has to offer by focusing on the state's many diverse travel activities and experiences. The OOG also uses the Texas "Travel Texas" logo trademark in international markets to effectively market Texas and all of its travel experiences throughout the world under the umbrella of a single, readily recognizable Travel Texas product.

The Advertising area also manages the OOG's brand and use of its logos in ancillary marketing programs, as well as coordinating with an in-market vendor to provide translation and other services as needed.

The Public Relations and Marketing area conducts tourism public relations activities, both domestically and internationally, to increase travel to the state by marketing and promoting Texas as a premier travel destination to consumers, the Media, and the Travel Trade. Traditionally, strategies and tactics pursued have included, but have not been limited to the following consumer, Media, and Travel Trade activities: consumer promotions, representing Texas in domestic and international Travel Trade and consumer shows, conducting Travel Trade and Media missions, conducting educational seminars, and conducting Media and Travel Trade FAM tours within Texas to acquaint the Travel Trade and Media with the Travel Texas product.

Because research shows that domestic travel decisions are primarily consumer driven, Public Relations and Marketing efforts have principally focused on Media and consumer-direct marketing and promotion activities in the United States. However, because the Travel Trade remains an influential factor in international travelers' travel planning and trip decision process, marketing to the Travel Trade in international markets remains a component of the overall Public Relations and Marketing efforts.

While Public Relations and Marketing efforts are primarily targeted outside the state, in-state activities are also conducted as needed to create awareness among the Texas public, the Texas Media, and Texas Partners about the importance of tourism as a means of economic development in the state. Examples include but are not limited to, the Texas Travel Summit held in the fall and National Travel and Tourism Week. Multiple Travel Texas activities to encourage in-state travel by Texans to the state's scenic, historical, cultural, natural, agricultural, educational, recreational, and other attractions.

The Public Relations and Marketing area includes cooperative marketing opportunities that enable the state's travel industry Suppliers to jointly market their destinations and products with the state in the OOG's tourism marketing and promotional activities. Cooperative marketing programs can offer Suppliers cost savings, while extending awareness, reach and exposure of the Travel Texas message and

product. Fees generated from cooperative marketing programs are used to help offset some of the OOG's costs for conducting Public Relations and Marketing activities.

### **3.4. Positioning**

Research indicates that many domestic and international travelers have a stereotypical and one-dimensional image of Texas, recognizing the state for its rich cowboy image and western heritage. The “*Let's Texas*” campaign is an invitation. It is a friendly challenge to explore all the state has to offer. By turning the state name into a verb, we are presenting a trip to Texas an experience like no other. This is not because we are the only state with beaches, hiking trails, exciting cities, historical attractions and five-star restaurants, to name just a few experiences that can be enjoyed in Texas, but because these attractions and experiences come with a side of true Texas spirit that you cannot get anywhere else. In Travel Texas TV ads, we showcase authentic slices of the state told through the point of view of our straightforward narrator. The variety of the state's offerings will come from the number of moments we witness as individual TV spots, digital videos, and digital ad units. When it comes to telling the truth about Texas - the real Texas, that is – our narrator should be as honest as the state itself. We do not sell or push. Remarks are not polished or embellished. We simply describe the state as it is, region by region, vista by vista, experience by experience, moment by moment. Our narrator is fresh and modern with a sense of history, comfortable wandering the country or exploring the city, and never in search of a stereotype. For our logo, we used our iconic shape as a simple signoff rather than a themed corporate logo.

### **3.5. Current Marketing Plan**

A copy of the OOG's current tourism marketing plan can be obtained at [www.travel.texas.gov](http://www.travel.texas.gov). The plan includes briefings on each of the primary target markets and identifies key target audiences.

### **3.6. Travel Research Information**

The OOG's travel research reports and information can also be obtained at <https://travel.texas.gov/travel-research/>.

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## **4. STATEMENT OF WORK – SERVICE REQUIREMENTS**

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### **4.1. Public Relations and Marketing Requirements**

The OOG strives to use the most innovative and cost-effective marketing and public relations programs to raise awareness of Texas as a premier travel destination. The scope of work for services sought by the OOG in the Mexico Service Region includes a primary focus on public relations and marketing strategies targeting consumers and Media. Secondly the scope of work requires assistance with the Travel Texas public relations and marketing activities. With this in mind, the Contractor shall have the following goals while providing public relations and marketing services for the OOG to raise awareness on a national level of Texas as a premier travel destination:

- a. generate maximum positive press coverage of the Travel Texas product while expanding perceptions of the diverse travel experiences Texas offers visitors;

- b. develop and implement a robust social media strategy that successfully promotes the Travel Texas product;
- c. conduct high profile integrated consumer promotions;
- d. assist the OOG in promoting and marketing Texas as a premier travel destination to Travel Trade as directed;
- e. create effective cooperative public relations and marketing programs that provide for maximum partner participation; and
- f. generate measurable results from public relations and marketing efforts.

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

- a. leading industry standard measures for traditional and digital media activities and placements including, but not limited to, Advertising Equivalency Value;
- b. leading industry standard measures for results of social media strategy and activities;
- c. creative integrated consumer promotions which incorporate Media, Travel Trade, and other appropriate partners to generate maximum consumer awareness of the Travel Texas product; and
- d. successful completion of agreed upon marketing activities.

#### **4.2. Public Relations and Marketing Initiatives**

To meet the OOG's tourism Mission, as further described in Section 3.2 of Part A of this RFP, and to fulfill the Public Relations and Marketing Requirements, as further described in Section 4 of Part A of this RFP, the OOG is seeking an agency that is capable of providing the following goods and services:

##### **4.2.1. Media Relations**

4.2.1.1. Conduct public relations activities targeting key consumer and Travel Trade Media in both traditional and non-traditional outlets to generate Media placements of key messages that result in maximum positive publicity of Texas as a premier travel destination.

4.2.1.2. Provide market insight and guidance based on demonstrated facts and research to help grow awareness and visitation to Texas.

4.2.1.3. Concentrate public relations activities during key travel planning seasons that provide the greatest potential to enhance the effectiveness and extend the reach of the OOG's planned advertising activities.

4.2.1.4. Media relations activities may include, but are not limited to:

- proactive Media outreach and pitching;
- organizing, planning, executing and attending:
  - Media FAM Tours – individual and/or group;
  - Media missions;
  - Media/public relations events;
  - Media appointments;
  - press conferences; and
  - interviews and presentations;



- compiling and maintaining a database of consumer and Travel Trade Media and travel influencers to accomplish public relations and Media activities and providing the database to the OOG upon request;
- preparing and distributing regular Press Releases and/or Media pitches to generate Media impressions in both traditional and non-traditional Media outlets;
- responding to Media and influencer inquiries;
- assembling and fulfilling traditional and/or electronic press kits as needed and developing, maintaining, and fulfilling an evergreen press kit;
- producing, storing, and fulfilling of collateral and promotional materials;
- translating of materials as needed;
- clippings services; and
- contracting necessary venues, transportations, and other similar goods or services to accomplish the activities listed above.

4.2.1.5. Monitor editorial calendars of Mexico Media outlets for travel story opportunities and create an annual editorial calendar for the OOG. Proactively pitch story ideas to Media in Mexico via phone, email, or in-person meetings.

4.2.1.6. Influencer Campaigns: The Contractor should be able to identify and recommend travel influencers and execute agreements with said influencers to spread awareness of the Travel Texas product and experiences via social media channels.

#### **4.2.2. Social Media**

The Contractor shall develop and implement a strategic plan and brand voice for all of the OOG's social media platforms. Social media content calendars and should be delivered at a cadence agreed upon by the OOG. Ongoing social media activities shall include, but are not limited to, real-time community management, production and management of social media assets including photography and video, monthly and campaign-specific reporting, paid promotions, and additional program support as needed. Reporting should reflect leading industry standard measurements for all social media activity.

#### **4.2.3. Consumer Promotions**

Conduct aggressive and creative integrated consumer Promotions to maximize awareness of the Travel Texas product by reaching a mass audience through a variety of Media, Travel Trade, or consumer direct tactics.

#### **4.3. Response Tracking**

The Contractor shall track and maintain records of all of the Contractor's assisted placements promoting the Travel Texas product. The Contractor shall use up-to-date industry standard measures approved by the OOG and proposed by the Contractor, including Advertising Equivalency Value, to calculate and report on the traditional and digital coverage of Texas generated. The Contractor shall report on the types and amount of Media placements generated.

#### **4.4. Travel Trade Relations**

The Contractor shall assist the OOG to promote and market Texas as a premier travel destination to key Travel Trade industry representatives as directed.

Assistance in Travel Trade activities may also include, but is not limited to, production, storage, and fulfillment of collateral and promotional materials, presentations, brochures, promotional items, newsletters, photographs, Travel Trade FAM tours, sales missions and promotional events, trade show marketing including registration and exhibition booth procurement, educational seminars, product launches, promotions, and related events.

#### **4.5. Promotional Functions**

The Contractor shall be responsible for conducting and coordinating promotional functions and providing supporting collateral materials needed to support tourism efforts at local, state, national and international meetings, conferences, and similar events. These materials shall complement the overall Travel Texas public relations and marketing efforts and may include, but are not necessarily limited to, use of computer and interactive technologies. Examples include, but are not limited to, event program sponsorships, experiential marketing, trade shows, conferences, receptions, presentations, committee meetings, and Media and trade missions. The Contractor shall store, maintain, and pre-stage Travel Texas collateral and promotional items as necessary to facilitate the timely delivery of services in the Target Market.

#### **4.6. Creative Services**

The Contractor shall be responsible for coordinating the production of presentation, promotional and, collateral materials, including but not limited to: Press Releases, collateral, print and digital invitations, photographs, mats, videos, filming, editing, equipment rentals, display materials, brochures, trade and consumer show booths, and infographics, as required to meet the Contract performance requirements.

#### **4.7. Plan of Action**

On or before June 1st of each Fiscal Year of the Contract Term, the Contractor shall be responsible for development and submission of an annual Plan of Action for the services the Contractor proposes to undertake and the goods and services the Contractor proposes to provide during the upcoming Fiscal Year. The Plan of Action shall include the Contractor's evaluations and recommendations for all proposed activities and projects, to be undertaken, that will most effectively position Texas as a premier travel destination and create market awareness of and stimulate interest in travel to Texas among consumers, the Media, and the Travel Trade. Appropriate market research and planning should be conducted and provided in order to determine the most effective and cost efficient public relations and marketing efforts. The Plan of Action must include a detailed budget for all proposed projects, activities, and services to be performed, as well as recommendations of specific goals and measurements which demonstrate the success of the Plan of Action in meeting or exceeding the objectives outlined in Section 4 of Part A of this RFP.

Any routine use of subcontractors for the provision of Contractor's in-house services that are to be included in Contractor's Monthly Service Fee shall be disclosed and clearly identified in the proposed Plan of Action.

The Plan of Action must be approved by the OOG prior to implementation, at which point it becomes the Public Relations and Marketing Plan for the Fiscal Year as further described in Section 4.8 of Part

A of this RFP.

#### **4.8. Public Relations and Marketing Plan**

Upon the OOG's approval, the Plan of Action will be adopted and serve as the Public Relations and Marketing Plan to be implemented by the Contractor for the Fiscal Year. The Contractor shall operate in accordance with an approved, detailed, written Public Relations and Marketing Plan, including budget allocation for using public relations and marketing activities (consumer, Media and trade relations) to market and promote Texas as a premier travel destination. Any changes made to the Public Relations and Marketing Plan throughout the Fiscal Year in which it is in effect must be approved by the OOG in writing.

#### **4.9. Coordination of Efforts**

When appropriate, and as required by the OOG, the Contractor shall coordinate activities with other of the OOG's vendors (e.g., advertising, public relations and marketing, or research), other state agencies and local, regional, and statewide tourism industry associations and organizations involved with or affected by services and goods provided under the Contract.

#### **4.10. Crisis Management**

The Contractor shall provide a crisis management plan and ongoing crisis management in relation to the services provided under this Contract. Services shall include, but are not limited to, the identification and monitoring of domestic and international crisis situations that may impact the tourism industry, the implementation of the Public Relations and Marketing Plan, or the effectiveness, cost-efficiency, or desirability of ongoing public relations and marketing efforts. The crisis management plan shall facilitate the ability of the OOG to promptly cancel or modify existing marketing promotions in response to a domestic or international crisis situation. The Contractor shall coordinate such efforts with the OOG and other of the OOG's vendors as necessary (e.g., advertising, public relations, or research).

#### **4.11. Intellectual Property Licenses and Releases**

The Contractor shall be responsible for securing the Intellectual Property Rights for all Works (including the goods and services) to be provided to the OOG under the Contract, including, but not limited to, all releases, licenses, waivers, permits, model releases for use of talent, copyrighted or trademarked materials, information, sound and/or images that are or may be subject to Intellectual Property Rights. The Contractor shall be solely and exclusively responsible for any contracts, agreements, licenses, releases, fees, or negotiations needed to obtain the necessary Intellectual Property Rights for such Works.

#### **4.12. Responsibility for Correction of Errors and Oversights**

The Contractor shall be responsible for ensuring that there are no errors or oversights in the final Works, including but not limited to, mistakes in the production, presentation, direct mail pieces, publications, digital materials, collateral material, and video and audio materials, and including those produced in English and other foreign languages for implementation in the Target Market.

If any Works are not delivered or performed in accordance with the applicable Service Requirements approved by the OOG, the Contractor will remedy in a timely manner (maximum thirty (30) calendar

days, although this time period may be reduced in the OOG's sole discretion depending on the circumstances) any such errors, oversights, deficiencies, Contract noncompliance, or audit exceptions. Such remedy may include a refund or offset of Contract payments or any other appropriate corrective actions deemed necessary by the OOG. The Contractor's failure to comply to timely remedy such errors and oversights may be grounds for termination of the Contract by reason of default. The Contractor shall be solely and exclusively responsible for bearing all costs associated with correcting the Contractor's errors and oversights.

#### **4.13. Timelines**

The OOG and the Contractor shall determine projected timelines at the onset of individual projects. Every effort should be made to produce materials well-ahead of the determined deadlines. Proofs of collateral and other promotional materials shall be submitted to the OOG in a timely manner (as determined in the OOG's sole discretion) so that editing is implemented, approval given, and deadlines met.

#### **4.14. Required Reports and Status Calls**

The Contractor's account team, in coordination with the OOG's designated representative, shall compile, maintain and provide certain required reports to, and participate in status calls with, the OOG. Texas Government Code, Section 2252.907 requires that information created or exchanged by the Contractor must be made available in a format that is readily accessible to the public; accordingly, reports may not be delivered or made available to the OOG solely through portal access to the Contractor's information systems or project management applications. Reports must be provided in either Microsoft Word, Microsoft Power Point, or Microsoft Excel formats. Reports may be, but are not required to be, delivered electronically to the OOG, such as via email, USB flash drive, or through a State of Texas secure file transfer. These reports and status calls shall include:

**4.14.1. Weekly/Regularly Scheduled Status Calls.** The Contractor will be required to participate in weekly (or, at the OOG's sole discretion, regularly scheduled) status calls and provide a written weekly (or, if applicable, regularly scheduled) summary status report in electronic form for each such call relating to Works in progress at the time of the particular Weekly/Regularly Scheduled call, and, if requested by the OOG, and if tangible, copies of such Works in draft or final form.

**4.14.2. Monthly Report.** This report shall be delivered to the OOG no later than the fifteenth (15th) Business Day of each month and shall include the following:

**4.14.2.1. Response Tracking Report** - a log sheet which records all monthly Media placements generated during the prior month's period, that provides measurements agreed upon by the OOG and the Contractor for traditional and digital Media, including, but not limited to, Media value generated with explanations of Media calculation, circulation or impressions, title of publication/program, title of article, Media type, publication date, and description of activity that generated article/program. Copies of all Media generated listed on the log sheet shall be included in the monthly report;

**4.14.2.2. Ongoing and Completed Projects Update** – a description and evaluation of all ongoing projects and activities completed by the Contractor (including all necessary back-up) during the prior month's period, including but not limited to, all services and goods (e.g.,

materials production/distribution, industry events, research, Media relations, trade relations, special events, and promotions). A copy of all materials produced shall be included with the report; and

4.14.2.3. **Accounting Report** - a monthly accounting of the prior month's expenditures, including the Monthly Service Fee and all Reimbursable(s) amounts by project, projected future expenditures, a cumulative total of expenditures for the Fiscal Year and Contract Term, and available budget balances for the remainder of the Contract Term and Fiscal Year.

**4.14.3. Quarterly Report.** Within thirty (30) calendar days following the close of each quarter, the Contractor shall submit to the OOG a written quarterly report of the Contractor's work and activities. The quarterly report shall include:

4.14.3.1. **Log of Proactive Media Contacts** - a log sheet of all quarterly and annual proactive Media contacts made during the prior quarter;

4.14.3.2. **Response Tracking Report** - a log sheet which records all quarterly and annual Media placements generated during the prior quarter, including all required Media clips;

4.14.3.3. **Subcontracting Report** - a report of all subcontracts awarded during the quarter, including a listing of each subcontract made with a HUB (including certification number) and/or non-HUB, the amount of each subcontract, subcontractor names and addresses, and the total dollar value of all subcontracts issued to HUBs and the total dollar value of all subcontracts issued to non-HUBs;

4.14.3.4. **Performance Update** - a report, including all relevant figures, on the Contractor's progress during the previous quarter toward meeting key Contract performance standards and the Contractor's evaluations and recommendations for meeting annual performance standards targets. The report shall include quarterly totals for:

- a. agreed upon measures of traditional and non-traditional Media placements, including, but not limited to, Advertising Value Equivalency;
- b. social media strategy activities and results;
- c. number of consumers reached via promotions generated by the Contractor;
- d. number of proactive and reactive Media contacts; including resulting Media placements, impressions, and/or Media FAM tours generated; and
- e. number of completed Travel Trade activities assisted including, but not limited to, Travel Trade shows, missions, and FAM tours.

4.14.3.5. **Crisis Management** - a report on all crisis management situations that occurred during the previous quarter, including an assessment of the actions taken to address the situations and speed recovery, the Contractor's evaluations and recommendations for revising/improving the Contractor's crisis management plan, including any necessary plan revisions, and a copy of the revised plan, if applicable; and

4.14.3.6. **Contractor's Evaluations and Recommendations** – The Contractor's evaluation on all goods and services provided under the Contractor's Public Relations and Marketing Plan during the previous quarter and any recommendations for improvements, including plan revisions and additional services and goods proposed for future implementation.

#### **4.15. Annual Report**

On or before September 15th of each Fiscal Year of the Contract Term, the Contractor shall submit a written annual report that provides a comprehensive overview of the performance of the Contractor's provision of goods and services, including, but not limited to, a review of all activities, major accomplishments, performance summaries (including all performance measures), and industry awards received.

#### **4.16. Failure to Comply with Reporting Requirements**

The OOG and the Contractor agree that failure by the Contractor to meet the performance standards and timelines set forth in Sections 4.14 and 4.15 will cause the OOG to sustain actual damages in an amount that it is difficult to quantify. It is agreed that the OOG may require the Contractor to pay liquidated damages for failure to comply with the reporting requirements contained herein.

The parties understand that liquidated damages are not intended to be punitive but compensatory and that the amounts of liquidated damages to which the OOG and the Contractor agree will be enforceable. In addition to assessing liquidated damages, the OOG may begin default proceedings if the Contractor has failed to comply with the awarded Contract.

The OOG reserves the right to provide the Contractor with a cure period prior to assessing liquidated damages. The assessment of liquidated damages is at the OOG's discretion. Written notification of failure to meet a performance standard relating to required reporting may be given by the OOG's Contract Manager at any time a failure occurs.

The Contractor may not be liable for liquidated damages which result from events that are directly caused by the failure of the OOG, any Texas state agency, or any governmental entity to perform any required activity. Additionally, the Contractor may not be liable for liquidated damages to the extent any delays or service interruptions are directly due to any of the following:

- a. Action or inaction by the OOG, its end-users, their employees, invitees, and third parties, including, but not limited to, changes in applications, protocols, or transmission parameters without prior coordination with the respondent;
- b. Breach of the Contract by the OOG; or any other cause beyond the control of the Contractor including, but not limited to Force Majeure (in accordance with the section of the Contract referring to "Force Majeure") or failure or unavailability of the OOG or equipment not provided by the Contractor (as long as the delay or service interruption is due to a problem with the equipment itself and is not due to the fact that the Contractor recommended the wrong equipment or equipment that is not suited for this project).

The OOG has the option to offset any liquidated damages from any payment due to the Contractor under the Contract. The Contractor has the burden of proof that the delay or other failure is attributable to someone or something other than the Contractor.

The OOG has the right to offset any liquidated damages payable to the OOG against any payments due to the Contractor, as well as from any funds that are escrowed for this purpose. If sufficient payments or escrow funds are not available to offset such liquidated damages, then the Contractor shall pay to the

OOG any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

The Contractor must meet the reporting requirements specified in Sections 4.14 and 4.15 of the RFP on the dates specified in those Sections. The reporting requirements specified in Sections 4.14 and 4.15 will be used to measure compliance with this service level requirement. A liquidated damages amount of \$50/day for each calendar day beyond the date the Weekly (or if applicable, Regularly Scheduled), Monthly, Quarterly, or Annual Report is due such report is not provided.

#### **4.17. Contracted Account Staff**

The Contractor shall dedicate qualified professional staff who are experienced in public relations and marketing, including social media strategy and execution and Travel Trade relations, to work on the OOG's account in the Target Market. The Contractor must dedicate an Account Manager to oversee all activities of the Contract including, but not limited to, coordination of public relations and marketing activities, account management, accounting for the entire Contract, billing and reporting. The Account Manager will be the OOG's primary day-to-day contact. Personnel must include key account team members. Key account team members shall be responsible for day-to-day activities required to support and service the OOG's tourism account. Key account team members must be proficient in the English language and experienced in working on public relations and marketing, including social media strategy and execution, in providing public relations and marketing services and goods for tourism, travel and/or Destination Marketing Organization accounts, and in working on accounts similar in nature and budget size to the OOG's account, unless otherwise agreed to by the OOG. The OOG reserves the right to approve and accept key personnel, including the Account Manager. The Contractor must notify the OOG in writing if key personnel cannot continue on the account, and the OOG must approve replacement personnel.

#### **4.18. Assumption of Existing Contracts, Subcontracts and Programs**

The Contractor may, at the OOG's sole discretion, be required to assume certain subcontracts, licensing agreements, and programs that may have been originally established by a prior vendor of the OOG and that remain in effect on the date the Contract is awarded.

#### **4.19. Physical Offices**

The Contractor shall have established and shall maintain, a fully operational physical office located within Mexico, with a preference for Mexico City. The Contractor must provide oversight of the Contract from the Contractor's office. The office shall be adequately staffed and equipped at all times to provide day-to-day operations from that office to support and service the OOG's account. Unless otherwise agreed to by the OOG, key members of the Contractor's OOG account staff, as further described in Section 4.17 of Part A of this RFP, shall be located at, and provide day-to-day operations from, the Contractor's office.

#### **4.20. Research**

Appropriate market research and planning should be conducted in order to determine the most effective and cost-efficient public relations and marketing efforts. Activities should reinforce creative messages and appeal to the targeted audiences. The Contractor shall instigate long term planning, yet also be

responsive to immediate opportunities that arise suddenly to ensure the most effective and cost-efficient marketing is utilized. The Contractor shall become familiar with and use travel research data and information made available by the OOG and shall incorporate such research into campaign strategies. The OOG's travel research reports are available at <https://travel.texas.gov/>.

#### **4.21. Pre-Contract Account Familiarization and Transition**

The Contractor shall work cooperatively with the OOG and other vendors of the OOG to ensure that there is a smooth transition of services to the Contractor. The Contractor shall become familiar with existing Travel Texas advertising and marketing campaign and programs, and shall secure, transfer and assume all essential legal rights and contracts or subcontracts to the Contractor prior to effective date of the Contract. The Contractor will not be compensated for any time expended or expense incurred before the effective date of the Contract to develop the required account familiarization or perform the required transition services.

#### **4.22. End of Contract Transition**

At the end of the Contract or upon any termination of the Contract, beginning at a time determined solely by the OOG, the Contractor shall provide all necessary goods and services required by the OOG to ensure account transition, account familiarization, and transfer of goods and services to any new vendor. The OOG may, in its sole discretion, maintain concurrent contracts for a limited period in order to facilitate this transition.

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### **5. FINANCIAL TERMS AND CONDITIONS**

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#### **5.1. Maximum Contract Amount**

The OOG's maximum liability to the Contractor, including payment of Monthly Service Fees and all Reimbursable(s), in consideration for the full, satisfactory and timely performance of all its duties, responsibilities and obligations as set forth in the Contract or arising out of any performance as the result of this RFP, shall not exceed \_\_\_\_\_ AND NO/100 DOLLARS (\$ \_\_\_\_\_ .00) (*amount to be determined at time of Contract award*) ("Maximum Contract Amount") for the initial Performance Period beginning October 14, 2019, or the date of Contract execution, whichever is later, through August 31, 2020. The Contractor shall have no entitlement to payment of the maximum liability amount. Any increase(s) in this amount for subsequent Performance Periods, any renewals, extensions, or as a result of increases in available funding shall require a written amendment to the Contract, which will specify the new Maximum Contract Amount for such Performance Period.

#### **5.2. Increase in the Maximum Contract Amount**

The Contractor shall monitor all cost estimates, Monthly Service Fees, and Reimbursable(s) to ensure that the amount of each new invoice added together with all previous invoices during the current Performance Period will not exceed the Maximum Contract Amount for the Performance Period. The Contractor shall provide sixty (60) calendar days advance notice to the OOG in the event that the cost of goods or services is anticipated to exceed the Maximum Contract Amount for the Performance Period. Any increase(s) in the Contract amount for a given Performance Period as a result of increases in available funding shall require a written Contract amendment executed by the parties, which will specify the new Maximum Contract Amount for the Performance Period. The total of any and all such



increase(s) should not exceed 25% of the original amount determined for that Performance Period.

### **5.3. Availability of Funds**

The Contractor agrees that nothing in the Contract will be interpreted to create an obligation or liability of the OOG in excess of the funds delineated in the Contract. The Contractor agrees that funding for this Contract is subject to the actual receipt by the OOG of funds appropriated to the OOG. The Contractor agrees that the funds, if any, received from the OOG are limited by the term of each state biennium and by specific appropriation authority to and the spending authority of the OOG for the purpose of the Contract. The Contractor agrees that notwithstanding any other provision of the Contract, if the OOG is not appropriated the funds or if the OOG does not receive the appropriated funds, or if the funds appropriated to the OOG are required to be reallocated to fund other state programs or purposes, then the OOG may reduce the Maximum Contract Amount or terminate the Contract without cost or penalty.

### **5.4. Purchase of Services/Utilization**

The OOG cannot and does not guarantee the purchase of particular level, quantity, or utilization of any goods or services during the Contract Term. All quantities of services and goods (excluding the Contractor's Monthly Services Fee) shall be purchased upon the OOG's request, in "as-needed" quantities, on an "as-needed" basis, as determined by the OOG. No authorization for the purchase of any services or goods is provided until the Contractor receives such written notice from the OOG in accordance with the terms of the Contract.

### **5.5. Monthly Service Fee**

Except as to pre-approved Reimbursable(s), the Contractor is expected to provide the services and goods described in Section 4 of Part A of the RFP as part of its regular Monthly Service Fee.

### **5.6. Reimbursable(s) and Cost Estimates**

As defined in Section 1.36, Reimbursable(s) include purchases made, and external expenses incurred, by the Contractor on behalf of the OOG for goods and services and pre-approved out-of-town travel necessary to complete work under the Contract. All Reimbursable(s) must be pre-approved, in writing, by the OOG.

#### **5.6.1. Cost Estimates**

Prior to making any purchases or incurring any expenditures or costs on behalf of the OOG that are not otherwise included within the Contractor's Monthly Service Fee (i.e., Reimbursable(s)), the Contractor shall submit a written cost estimate for advanced, written approval by the OOG. All purchases of Reimbursable(s) are subject to the OOG's procedures and guidelines for travel, procurement of goods and services, and Fiscal Year spending requirements. Upon the OOG's written approval of the cost estimate, the Contractor shall purchase the goods or services and complete the project as stated and agreed upon in accordance with the cost estimate. The OOG has the right to refuse to approve any cost estimate, obtain independent cost estimates, and/or to require the Contractor, in whole or in part, to obtain different or additional cost estimates or price quotes on the project. The OOG may require the Contractor to use the most reasonable quote as determined in the sole discretion of the OOG, or to modify the Contractor's cost estimate to make it comparable with any independent quotes obtained by the OOG.

The OOG will have the final approval in deciding which cost estimates will result in the best value to the State of Texas.

**5.6.2. Limitations on Reimbursable(s)**

**5.6.2.1. General Travel.** The OOG will reimburse the Contractor for the Contractor's and/or subcontractor's reasonable out-of-town travel expenses necessary to complete work under the Contract on a basis comparable with the OOG and the CPA's travel procedures, provided that such expenses have been approved in advance and in writing by the OOG. The costs of routine travel expenses for Contractor's account service team to attend required account service meetings at the physical offices described in Section 4.19 of Part A of the RFP shall be included in the Contractor's Monthly Service Fee, except as approved in advance by the OOG.

**5.6.2.2. Mileage.** The OOG will reimburse the Contractor for non-routine personal or company automobile travel mileage that is reasonable and necessary at the lesser of actual costs or the per mile rate posted on the CPA's website at <https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>.

**5.6.2.3. Meals and Lodging.** Unless prior written approval of the OOG is provided, the OOG will reimburse the Contractor for reasonable and necessary meal/per diem expenses and lodging relating to overnight travel at the lesser of actual costs or the maximum United States dollar rates for reimbursement of United States government civilians traveling on official business: (i) in the continental United States as established by the General Services Administration's Domestic Maximum Per Diem Rates, posted on the CPA's website at: <https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>; or (ii) in foreign areas as established by the United States State Department, Office of Allowances, posted on the United States State Department website at [https://aoprals.state.gov/content.asp?content\\_id=184&menu\\_id=78](https://aoprals.state.gov/content.asp?content_id=184&menu_id=78).

**5.6.2.4. Airfare.** Airfare required for the performance of the Contract will be reimbursed at the lesser amount of the actual expense or the regular published rates for airfares for commercial airlines. The OOG will not reimburse the Contractor for expenses relating to first-class or business class airfare.

**5.6.2.5. Subcontractor Expenses.** Except as to any subcontractor payments relating to supporting the Contractor's provision of in-house services and goods that are included in Contractor's Monthly Service Fee, the OOG will reimburse the Contractor for the actual, reasonable and necessary expenses relating to the Contractor's use of subcontractors. The Contractor shall be solely and exclusively responsible for any payments and other claims due to subcontractors for work performed under this Contract. If required for the receipt of goods and/or services provided by a subcontractor, the OOG may, in its sole discretion, approve the Contractor's request to provide advance payment of all or part of the Reimbursable(s) associated with subcontractor's performance.

**5.6.2.6. Postage.** The OOG will reimburse the Contractor for the actual cost of purchase of postage required for fulfillment or other operations conducted on behalf of the OOG, except that postage required for the Contractor's normal business operations which shall be included in the Monthly Service Fee.

5.6.2.7. **Gratuities/Alcohol.** The OOG will not reimburse the Contractor for tips, gratuities, or for the purchase of alcohol.

5.6.2.8. **Reimbursement for The OOG's Employee Expenses.** The OOG will not reimburse the Contractor for the cost of expenses incurred by or for the benefit of the OOG's employees.

5.6.2.9. **No Mark-up.** The Contractor will only be reimbursed for actual expenses. The Contractor shall not be reimbursed for any mark-up or other overhead costs.

5.6.2.10. **Expenses prohibited by Texas law.** The OOG will not reimburse the Contractor for any cost of expenses incurred by the Contractor relating to an expense for which agencies of the State of Texas are prohibited by law or by the policies and procedures of the OOG or the CPA from paying.

## 5.7. **Contract Issuance**

The OOG shall issue an executed Contract, or amendment as applicable, as written notice for all Contract, Contract renewal or extensions, and authorizations for the purchase of services and goods specified in the Service Requirements in Section 4 of Part A of this RFP. No authorization for the purchase of any services or goods is provided until such Contract or, if applicable, amendment, has been fully-executed by the Contractor and the OOG. Upon notice from the OOG that a Contract or amendment, if applicable, has been properly executed, the Contractor shall identify the Account Manager authorized to receive direction from the OOG, to manage the work being performed, and to act on behalf of the Contractor. The Contractor shall ensure that its Account Manager, or his or her authorized designee, is available at all times for consultation with the OOG.

## 5.8. **Delivery**

All deliveries of the goods or services authorized under the Contract shall be made in accordance with the contract Service Requirements in Section 4 of Part A of this RFP. No substitutions or cancellations shall be permitted without prior written approval of the OOG. The Contractor shall keep the OOG advised at all times of the delivery status of goods and services to be provided. If the Contractor foresees problems, delays, or adverse conditions that may prevent the Contractor from meeting delivery requirements, the Contractor shall give timely written notice to the OOG that explains the reason(s) for the delay and proposes an alternate delivery for the OOG's approval. The OOG has the right to accept or reject the proposed alternative delivery in its sole discretion. Default in promised delivery, without accepted reasons, authorizes the OOG to purchase goods or services elsewhere and to charge to the defaulting Contractor the full amount of any increase in costs associated with procuring replacement goods or services. Default in the Contractor's delivery may result in termination of the Contract for reason of default.

## 5.9. **Acceptance of Work Performed**

All work performed by the Contractor shall be accepted in writing by an authorized official of the OOG before payment will be approved. Acceptance shall be based upon the Contractor's compliance with all applicable Contract requirements, including, but not limited to, the service requirements identified in Section 4 of Part A of the RFP. The OOG will not pay for work which is of poor quality and/or fails to

fully comply with the Contract requirements. Should the OOG determine, in its sole discretion, that the Contractor's work is of poor quality and/or the Contractor fails to perform services or provide goods in a manner that complies with the Contract requirements, the OOG may require the Contractor to promptly re-perform the services or re-provide the goods in conformity with the Contract requirements at no additional cost to the OOG, or the OOG may reject payment of invoices for the Contractor's work without penalty or further obligation to the Contractor. The OOG may further require new performance, a refund, or offset in the event that work is discovered after payment has been made to be either unauthorized or below the accepted quality level. Failure to perform work in compliance with all Contract requirements may result in termination of the Contract for reason of default.

## **5.10. Invoicing and Payment**

**5.10.1.** All invoices for the goods and services provided shall be submitted to the OOG on a timely basis. Any invoice that does not comply with the minimum requirements stated in this section, or that does not comport with the Limitations on Reimbursable(s) as set forth in Section 5.6.2, may not be considered valid and may be subject to rejection and/or return to the Contractor. Upon the request of the OOG, the Contractor must submit to the OOG any additional documentation or explanation the OOG may require to support or document the requested payment under the Contract.

**5.10.2.** As a prerequisite to the OOG's ability to process any payments to the Contractor under the Contract, the Contractor shall provide the OOG with required tax and payee identification information in the form of a completed "Application for Texas Identification Number" (information is available on the CPA's website at [https://fmx.cpa.texas.gov/fmx/payment/resources/svpr\\_all.php](https://fmx.cpa.texas.gov/fmx/payment/resources/svpr_all.php)). If the Contractor has previously completed the required documentation to obtain a Texas Identification Number ("TIN") prior to the effective date of the Contract, the Contractor may satisfy this requirement by providing the OOG with the Contractor's current TIN, name, and address to permit the OOG to verify registration in the TINS System with the CPA.

**5.10.3.** Each invoice presented must include: (i) the OOG's Contract number; (ii) the Contractor's TIN; (iii) the name and division of the OOG contact; (iv) a report for the services and goods provided under the Contract; (v) description of each service/expense/good and the dollar amount attributable to each; and (vi) the name of the entity or individual to which each service/expense/good is attributable. The OOG's acceptance and receipt of an acceptable invoice is required under this section.

**5.10.4.** The Contractor shall submit itemized monthly invoices once every thirty (30) calendar days for all services and goods completed, delivered to and accepted by the OOG, per the Contract requirements. Invoice amounts shall be in United States dollars. All invoices shall be made payable to the Contractor at the address for the TIN on file with the CPA and/or with the wire transfer instructions indicated in the Contract.

**5.10.5.** Invoices and payment inquiries shall be submitted directed to:

ap@gov.texas.gov or by mail to:  
Office of the Governor  
Accounts Payable  
P.O. Box 12878

Austin, Texas 78711-2878

**5.10.6.** Each invoice is subject to review and approval by the OOG before payment will be processed. Invoices will be reviewed and the Contractor notified of any errors in its invoice in accordance with the timeframe specified in Chapter 2251 of the Texas Government Code (the Texas Prompt Payment Act). Upon acceptance of the Contractor's performance and receipt of an acceptable invoice required to be submitted under this section, the OOG will process payment to the Contractor in accordance with the Texas Prompt Payment Act. It is the policy of the OOG to make payment on a properly prepared and submitted invoice within thirty (30) calendar days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice.

**5.10.7.** The Contractor shall bill and the OOG will make payment to the Contractor for approved costs that are incurred and properly invoiced in accordance with the following:

**5.10.7.1. Monthly Service Fee.** The OOG will pay the Monthly Service Fee for services performed and goods provided in accordance with the requirements of the Contract. Monthly Service Fees shall be billed as set forth in Contractor's Fee Schedule, which shall be an Exhibit to the Contract. Invoices for partial month's services shall be pro-rated and paid based upon a 30 calendar day work period/month.

**5.10.7.2. Reimbursable(s).** All Reimbursable(s) incurred by the Contractor on the OOG's behalf, including those made by the Contractor's subcontractors, shall be billed at actual costs. OOG will make payment only to the Contractor for such Reimbursable(s) that OOG has pre-approved in writing. The Contractor's invoices for Reimbursable(s) shall include: (i) the approved project cost estimate with the OOG's written approval; (ii) the Contractor's documentation of any variation from the approved project cost estimate, including a change order signed by the OOG, if applicable; (iii) all supporting documentation for any Reimbursable(s) for which the Contractor has incurred costs, including copies of original receipts or other documentation of actual expenditures deemed acceptable by the OOG for all purchases of Reimbursable(s); and (iv) proper bid documentation, when applicable.

If the Contractor's actual costs for Reimbursable(s) exceed the OOG-approved cost estimate, the OOG may either (i) require the Contractor to submit additional information for the OOG's review and approval to support a finding that the increased cost of the expenditure is reasonable and necessary; or (ii) reimburse the Reimbursable(s) at the amount indicated in cost estimate approved by the OOG.

Only services and goods that have been approved, completed, and received by the OOG during the invoice period should be invoiced, unless the OOG has provided prior written approval to authorize an advance payment to the Contractor for approved Reimbursable(s).

**5.10.8.** By submission of the invoices, the Contractor is warranting the following: (i) its invoices have been carefully reviewed to ensure that all invoiced services and goods have been performed and provided in compliance with all terms of the Contract; (ii) the charges and expenses shown on the invoice are allowable costs that are reasonable and necessary; and (iii) all supporting documentation is attached.

**5.10.9.** Upon satisfactory completion by the Contractor of all the services and goods identified in the

Contract, acceptance by the OOG, and the OOG's release of any payment holds, the Contractor will be paid the unpaid balance of any money due for such services and goods in accordance with the payment terms outlined in the Contract. The Contractor understands and agrees that determination of satisfactory completion will be based entirely on the judgment of the staff of the OOG, and that the OOG and its staff are not liable for any damages to the Contractor or any subcontractors for claims arising from the OOG's enforcement of the requirements of this section.

#### **5.11. Accounting Systems**

The Contractor shall have an accounting system that accounts for costs in accordance with GAAP or International Accounting Standard ("IAS"). The Contractor's accounting system must include an accurate and organized file/records system for accounting and financial purposes for providing backup materials for billings.

#### **5.12. Contract Monitoring**

The Contractor's performance will be monitored regularly as work is performed in accordance with the terms and conditions of the Contract. Monitoring activities may include, but are not necessarily limited to:

- 5.12.1. Inspection of goods and services, prior to acceptance, to ensure Contract compliance;
- 5.12.2. Invoice review to ensure compliance with all applicable Contract terms and conditions;
- 5.12.3. Periodic reporting by the Contractor based on pre-defined criteria and review of the Contractor's reports for verification that services and goods are provided in accordance with the Contract, as described in Sections 4.14 and 4.15 of Part A of the RFP;
- 5.12.4. Periodic review of the Contractor's progress on meeting specified goals and measurements that demonstrate the success of the Contractor's Public Relations and Marketing Plan;
- 5.12.5. Performance review and project planning meetings to be held in Austin, Texas or as may otherwise be coordinated between the OOG and the Contractor; and
- 5.12.6. On-site reviews at the Contractor's work site, to include observation, monitoring, and interview of the Contractor's staff to ascertain their understanding of program goals, review key Contract requirements and service and goods documentation, review fiscal records, and observe operations with respect to the OOG's account.

#### **5.13. Audit, Access to Records, Records Retention**

##### **5.13.1. Inspections**

Throughout the Contract Term, all goods and services provided under the Contract may be subject to inspection and testing by the OOG's authorized representatives. The OOG reserves the right, at all reasonable times, to have access to and inspect all goods and services provided by the Contractor and its subcontractors, including, but not limited to, all Works, facilities, equipment, supplies, and pertinent records or written material relating to the Contract

requirements. Failure of the Contractor and its subcontractors to provide reasonable access to authorized representatives of the OOG who desire to perform such inspections or tests may result in termination of the Contract for reason of default. In the event inspected or tested goods or services are deemed unacceptable by the OOG for failure to meet or exceed all Contract requirements, the cost of the sample used and the cost of testing shall be borne by the Contractor. The OOG's discovery of latent defects in the goods or services purchased under the Contract may result in revocation of acceptance of any good or service and may result in the Contractor being required to refund or offset related Contract payments.

- 5.13.2. Contractor Cooperation.** The Contractor will cooperate fully in any monitoring, inspection, assessment, review or audit conducted by the OOG or its authorized representatives related to any services or goods provided under the Contract or billed to the OOG. The Contractor will remedy in a timely manner (maximum thirty (30) calendar days, although this time period may be reduced in the OOG's sole discretion depending on the circumstances), any weaknesses, deficiencies, Contract noncompliance, or audit exceptions found as a result of a review by the OOG or its authorized representatives. Such remedy may include a refund or offset of Contract payments or any other appropriate actions deemed necessary by the OOG. The Contractor's failure to comply with this requirement shall be grounds for termination of the Contract, for reason of default.
- 5.13.3. Access to Records.** The OOG, through any of its duly authorized representatives, shall have access to books, records, documents, financial records and any other information, pertinent to performance of all work under the Contract for the purpose of audit, review, inspection, copying, and/or audit. This right of access applies to goods and services provided or performed by, or financial records pertaining to, all subcontracts and subcontractors. The Contractor shall provide proper facilities for such access and inspection, or otherwise promptly make such records available to the OOG or its authorized representatives through the production or copying of any documents or information required by the OOG at the Contractor's expense.
- 5.13.4. Records Retention.** The Contractor shall maintain adequate records to support its charges, procedures, and performances for all work relating to the Contract. Records shall be maintained by the Contractor and made available to the OOG and its authorized representatives during the Contract Term and thereafter until the later of the expiration of: (i) seven (7) years from date of final payment by the OOG for the services and goods provided under the Contract; or (ii) seven (7) years from date of final completion of any audit, dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken.
- 5.13.5. State Auditor.** In addition to and without limitation on the other audit provisions of the Contract, pursuant to Section 2262.154 of the Texas Government Code, the Texas State Auditor's Office may conduct an audit or investigation of the Contractor or any other entity or person receiving funds from the OOG directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds by the Contractor or any other entity or person directly under the Contract or indirectly through a subcontract under the Contract is acceptance of the authority of the Texas State Auditor's Office to conduct an audit or investigation in connection with those funds. The Contractor or other entity that is the subject of an audit or investigation by the Texas State Auditor's Office must provide the Texas State Auditor's Office with access to any information the Texas State Auditor's Office considers

relevant to the investigation or audit. The Contractor further agrees to cooperate fully with the Texas State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. The Contractor shall ensure that this paragraph 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. The Texas State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor related to the Contract.

**5.13.6. Transition to New Vendor.** The Contractor shall allow such access to the goods or services it has created for the OOG under the Contract as may be necessary to enable any new tourism public relations and marketing services vendor of the OOG's to accomplish a smooth transition to the new vendor.

**5.14. Delivery of Notices**

Any notice required or permitted under the Contract by one party to the other party must be in writing and correspond with the contact information noted in this section. Any notice required or permitted to be given under the Contract may be given by regular first class mail and/or email and shall be deemed to have been given on the date of attempted or actual delivery to the recipient if addressed to the receiving party at the address specified in this section. At all times, the Contractor will maintain and monitor at least one active email address for the receipt of Contract-related communications from the OOG. It is the Contractor's responsibility to monitor this email address for Contract-related information.

**5.14.1. Contractor's Contact Information. The mailing address of the Contractor for all notices is:**

<TBD>

**5.14.2. Office of the Governor's Contact Information. The mailing address of the OOG for all notices is:**

Director of Tourism  
c/o Javier Renteria, Director of Operations  
Office of the Governor of Texas  
Economic Development and Tourism Office  
P.O. Box 12878  
Austin, TX 78711-2878  
[javier.renteria@gov.texas.gov](mailto:javier.renteria@gov.texas.gov)

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**6. PROPOSAL PROCESS AND GENERAL INFORMATION FOR RESPONDENTS**

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**6.1. Understanding of RFP Requirements**

The Respondent is solely responsible for thoroughly understanding the RFP and its attachments, exhibits, and forms. By submitting a proposal in response to this RFP, the OOG has a right to assume that the Respondent fully understands the RFP specifications and will abide by all terms and conditions



of the RFP. Respondents shall have no right to cancellation or relief without penalty from the Contract awarded as the result of this RFP (if any) based on any purported misunderstanding or lack of information.

**6.2. RFP Addenda**

To the extent there are any revisions or additions to the information provided or requested in the RFP, an Addendum to the RFP will be posted on the ESBD. Any Addenda so issued are to be considered part of the specifications of the RFP. If a Respondent fails to monitor the ESBD for any revisions or additions to the RFP, such failure will not relieve the Respondent of its obligation to fulfill the requirements as posted.

**6.3. Calendar of Events**

The solicitation process for this RFP will proceed according to the schedule below. The OOG reserves the right to revise any of the time periods listed below and will post all changes by published Addendum on the ESBD at <http://www.txsmartbuy.com/sp>.

<b>Event</b>	<b>Date</b>
Deadline for Respondent Submission of RFP Questions	September 6, 2019 @ 5:00 PM CST
The OOG's Response to Questions Posted on the ESBD	September 12, 2019
Deadline for Respondent Submission of Proposals	September 27, 2019 @ 5:00 PM CST
Anticipated Start Date	October 14, 2019

**6.4. Point of Contact**

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

Spencer Cummings, Certified Texas Procurement Manager  
 CTPM 12011704  
 Office of the Governor of Texas  
 Financial Services Division  
 Phone: 512-463-1776  
 Email: [spencer.cummings@gov.texas.gov](mailto:spencer.cummings@gov.texas.gov)

**6.5. Prohibition Against Unauthorized Contact**

The OOG is committed to a procurement process that maintains the highest level of integrity. Accordingly, Respondents, as well as their agents, liaisons, advocates, lobbyists, governmental affairs representatives, representatives or others promoting their position, are limited to those communications authorized by and described in this RFP. Any attempt to influence any of the

participants, whether that attempt is oral or written, formal or informal, direct or indirect, outside of this RFP process is strictly prohibited and may result in disqualification of the Respondent.

Should allegations of improper contact be made prior to Contract award, the OOG may investigate those allegations and, in its sole discretion, disqualify a Respondent.

## **6.6. Respondents Questions**

**6.6.1.** Written questions from Respondents concerning this RFP will be accepted and responses posted on the ESBD according to the timetable established in the Calendar of Events in Section 6.3 of Part A of this RFP. Inquiries received after the deadlines set in the Calendar of Events may be reviewed by the OOG, but may not be answered. Any addenda or amendments, whether made as a result of a prospective Respondent's written questions or otherwise, will be posted on the ESBD. **It is the responsibility of the Respondent to check the ESBD for addenda, amendments, and answers to Respondent questions.**

**6.6.2.** Any questions concerning this RFP should be directed to the point of contact identified by the Deadline for Respondent Submission of RFP Questions identified in Section 6.3. The OOG has no obligation to respond to Respondent inquiries that are received after the Deadline for Respondent Submission of RFP Questions.

**6.6.3.** Prior to submitting a proposal, a Respondent shall identify in writing and seek clarification as to any ambiguity, conflict, discrepancy, exclusionary specification, omission or error in this RFP (collectively, "errors"). In no event shall a Respondent be entitled to additional compensation, relief or additional time for preparing its proposal by reason of any alleged errors, addenda, or corrections to the RFP. If a Respondent fails to identify and seek written clarification of any errors, the Respondent shall submit its proposal at its own risk; and, if awarded the Contract, the Respondent shall be deemed to have waived any claim to contest the OOG's interpretation thereof.

## **6.7. Obligation to Update Information Supporting Proposal**

Following the submission of a proposal and prior to the signing of the Contract, a Respondent is under a continuing obligation to notify the OOG in writing of any updates or changes to information offered in support of its proposal that might reasonably be expected to affect the OOG's consideration of the proposal. Nothing in this section shall be interpreted to permit the unilateral modification by a Respondent of its commitment to provide any goods and services described in its proposal as filed for the cost stated therein.

## **6.8. Multiple Proposals**

Each Respondent may submit only one proposal. If a Respondent submits more than one proposal, all proposals from that Respondent may be rejected.

## **6.9. Ownership of Proposals**

All proposals and accompanying documentation shall become property of the OOG and will not be returned. The OOG reserves the right to use any and all ideas presented in a proposal unless the Respondent presents a valid legal claim that such ideas are trade secret or confidential information, and

identifies the information as such in its proposal. A Respondent may not object to the use of ideas that are not the Respondent's Intellectual Property Rights and so designated in the proposal that: (i) were known to the OOG before the submission of the proposal; (ii) were in the public domain through no fault of the OOG; or (iii) became properly known to the OOG after proposal submission through other sources or through acceptance of the proposal. Proposals that have been copyrighted, in whole or in part, by any Respondent may be rejected as non-responsive.

#### **6.10. Proposals Subject to Disclosure under the Public Information Act**

The OOG is subject to the Texas Public Information Act (the "Act"), Texas Government Code, Chapter 552. Accordingly, after the award and/or execution of the Contract, all proposals, offers and other information submitted by a Respondent to the OOG in response to the RFP are presumed to be subject to disclosure as public information. However, a proposal or specific parts thereof may be demonstrated by a Respondent to fall within one or more of the legal exceptions to disclosure provided in the Act. Respondents are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information. If it is necessary for a Respondent to include proprietary or otherwise confidential information in its proposal, that particular information should be clearly identified in its proposal. The Respondent should specify the confidential information by marking "Confidential" on each page or by each paragraph containing such information prior to submitting the proposal to the OOG. Respondents are further encouraged to identify the specific legal exception that applies to each item marked "Confidential." Vague and general claims to confidentiality, such as marking an entire proposal as "Confidential" or "Copyrighted," are generally unacceptable. The OOG will notify a Respondent if all or part of its proposal is requested under the Act. Failure of a Respondent to timely respond to such notification may result in the release of all or part of the proposal as public information. It is the Respondent's obligation to timely submit briefing to the Office of the Attorney General of Texas in accordance with the Act, setting forth the legal basis upon which the requested information should remain confidential. The OOG assumes no responsibility for asserting legal arguments to the Office of the Attorney General of Texas on behalf of Respondents.

#### **6.11. Rejection of Proposals and Cancellation of RFP**

Issuance of this RFP and/or receipt of proposals does not constitute a commitment on the part of the OOG to award a Contract. The OOG maintains the right to accept or reject any or all proposals and to cancel this RFP, re-issue a subsequent solicitation, and/or remedy technical errors in the RFP process if the OOG, in its sole discretion, considers it to be in the best interests of the State of Texas to do so. The decision of the OOG in this regard shall be conclusive.

#### **6.12. Proposals Not Binding on OOG**

Any terms and conditions attached to the proposal by Respondent that are purported to be binding on the OOG will not be considered binding on the OOG in any manner and may result in disqualification of the Respondent.

#### **6.13. Costs Incurred**

Respondents understand that issuance of this RFP in no way constitutes a commitment by the OOG to award a Contract or to pay any costs incurred by a Respondent in the preparation of a proposal. The Respondent is responsible for any expense related to the preparation and submission of its proposal.

which may include travel costs associated with an in-person presentation to the OOG in Austin, Texas. Costs of developing proposals, preparing for or participating in oral presentations, negotiations, or any other similar expenses incurred by a Respondent are entirely the responsibility of the Respondent, and will not be reimbursed in any manner by the OOG.

**6.14. Proposal Tenure**

Any proposal may be withdrawn in writing prior to the date and time set for receipt of proposals. Any proposal submitted and not withdrawn prior to the date and time set for receipt of proposals will be considered a valid offer. All proposals shall be valid for a period of one hundred and eighty (180) calendar days from the deadline for submitting proposals.

**6.15. No Obligation of the OOG for Discussion of Proposals with Respondents**

The OOG reserves the right to select one or more qualified Respondent(s) to this RFP without providing any Respondent with an opportunity to present or discuss its proposal.

**6.16. The OOG's Right to Obtain Additional Information**

By submitting a proposal, Respondents grant the OOG the right to obtain any information from any lawful source regarding the past history, practices, conduct, ability and eligibility of Respondents to supply goods and services, and to fulfill requirements under this RFP, and the past history, practices, conduct, ability and eligibility of any director, officer or key employee of Respondents. By submitting a proposal, Respondents generally release from liability and waive all claims against any party providing information about Respondents at the request of the OOG. Such information may be taken into consideration by the OOG in evaluating proposals.

**6.17. Site Visits and/or Oral Presentations**

The OOG, in its sole discretion, reserves the right to require selected Respondents to make oral presentations as part of the Phase II evaluations described in Section 6.20 of Part A of this RFP prior to the award of the Contract (if any). The OOG may consider such presentations when evaluating proposals.

The OOG, in its sole discretion, further reserves the right to conduct optional site visits to selected Respondents' office locations where work under the Contract is proposed to be performed. Such site visits may occur at any time prior to the award of the Contract (if any). The OOG may consider such visits when evaluating proposals.

Respondents will be notified in writing and will be provided with equal advance notification of site visits and/or oral presentation assignments and guidelines. Failure to acknowledge or attend to an OOG request for a site visit or oral presentation may result in disqualification of the proposal. Costs of preparing for or participating in oral presentations or site visits, among other costs, incurred by a Respondent are entirely the responsibility of the Respondent, and will not be reimbursed in any manner by the OOG.

**6.18. Changes, Modifications and Cancellation**

The OOG reserves the right to make changes to and/or cancel this RFP and will post all changes and

modifications, whether made as a result of a potential Respondent's written inquiries or otherwise, and cancellation notices on the ESBD. **It is the responsibility of the Respondent to check the ESBD for any additional information regarding this RFP. If a Respondent fails to monitor the ESBD for any changes or modifications to the RFP, such failure will not relieve the Respondent of its obligation to fulfill the requirements as posted.**

## **6.19. Proposal Evaluation**

### **6.19.1. Initial Screening of Proposals**

The OOG's Financial Services Division will conduct an initial screening of all proposals received to determine timeliness, responsiveness, and completeness of the proposals. Non-responsive, incomplete, or late proposals will not be considered for further evaluation.

### **6.19.2. Evaluation Committee**

The OOG intends to conduct a fair, comprehensive and impartial evaluation of all proposals received in response to this RFP using an evaluation committee. The evaluation committee will be selected by the OOG's Financial Services Division and may consist of employees of the OOG or outside individuals with expertise in the Texas tourism industry. In addition, the OOG's General Counsel Division and outside legal counsel may assist by advising the evaluation committee. The OOG's employees and executive administration may also assist in the process as technical non-voting members of the evaluation committee. Separate evaluating committees may be established to evaluate the proposals in both Phase I & Phase II evaluations.

Each member of the evaluation committee will independently score each proposal responsive to this RFP. Evaluation committee members may seek, obtain and consider the opinions of other committee members or subject matter experts (including the OOG staff, staff from other Texas agencies and consultants retained by the OOG when evaluating and independently scoring particular areas of the proposals).

The evaluation committee may request clarification of information or representations in a proposal before completing the initial evaluation. Requests for clarification and responses to requests for clarification will be in writing and will become part of the evaluation record. All such responses to requests for clarification must be directed to the Point of Contact as set forth in Section 6.4.

The evaluation committee also may consider any references provided, as well as vendor performance reviews maintained by the CPA under Texas Government Code, Section 2262.055.

## **6.20. Evaluation Criteria and Process**

The intent of the OOG to award the Contract to the Respondent whose proposal is considered to be the best value to the State of Texas. The OOG has the sole discretion and reserves the right to reject any or all proposals. The OOG further reserves the right to take as much time as it deems necessary in order to properly evaluate proposals.

### **6.20.1. Summary of Evaluation Process**

The RFP evaluation process may take place in separate stand-alone phases and will be based upon the

evaluation of information and materials submitted in the proposal. The phases are described as follows:

- In **Phase I**, the proposal will be evaluated based upon Company Information, Experience and Qualifications, References, Proposal Quality and Responsiveness, Methodology of Plan of Action, and the proposed Monthly Service Fees.
- If the OOG determines in its sole discretion that further evaluation of the invited Respondents' proposals is required, then the OOG may invite certain selected Respondents to participate in Phase II.
- **Except as otherwise provided by this section, only Respondents with up to the three (3) highest total scores from the Phase I evaluation may be invited to participate in Phase II of the evaluation. If two or more Respondents are tied for any of the top three highest scoring positions, then those tied Respondents may be invited to proceed to Phase II of the evaluation. If any of the top three Respondents is disqualified or withdrawn from the evaluation process, then the next highest scoring Respondent may be eligible to proceed to Phase II evaluation. Any Respondent invited to participate in Phase II of the evaluation, must have received a minimum combined percentage score of 25.2% in the OOG's Phase I evaluation of Experience and Qualifications, References, and Methodology of Plan of Action.**
- If the OOG determines in its sole discretion that Phase II evaluations are required, then the OOG may review the invited Respondents' proposed Plan of Action and a required oral presentation. If the OOG determines in its sole discretion that further evaluation of the invited Respondents' proposals is required, then the OOG may invite certain selected Respondents to participate in Phase III.
- If the OOG determines in its sole discretion that Phase III evaluations are required, then the OOG may invite selected Respondents to discuss and submit revisions to proposals by submission of a Best and Final Offer ("BAFO") at the conclusion of discussions. A deadline will be set for receipt of BAFOs, including instructions on exactly what should be submitted in response to the BAFO. Phase III evaluations will be conducted based on content of each BAFO. After consideration of all BAFO responses, the OOG may choose one or more Respondents with which to commence final contract negotiations.

**6.20.2. Weighted Evaluation Scoring Criteria.** The OOG intends to evaluate proposals using the following weighted scoring criteria, subject to overall best value considerations as authorized by law:

<u>Criteria</u>	<u>Weight</u>
<b>Phase I</b>	
Company Information	5%
Experience and Qualifications, References	15%
Proposal Quality and Responsiveness	15%
Methodology of Plan of Action	30%
Monthly Service Fees	<u>35%</u>
	100%
<b>Phase II</b>	
Plan of Action: Presentation & Creative Recommendations	100%
<b>Phase III</b>	
	BAFO

**6.21. Evaluation Criteria Phase I – Evaluation of Written Proposals**

- 6.21.1. Evaluation of Company Information.** All proposals will be evaluated based on company information and Financial Responsibility (as provided in Tab 3 of the proposal), including a review of the Respondent's demonstrated financial capacity to carry out its Plan of Action.
- 6.21.2. Evaluation of Experience, Qualifications and References.** Responsive proposals will be evaluated based on the qualifications, experience and resources of each Respondent, and each Respondent's past experience in servicing tourism and marketing accounts of similar type and scope in the Target Market as required by the OOG (as provided in Tabs 4, 5, and 6 of the proposal). This evaluation may include, but is not limited to, demonstrated success in similar public relations and marketing goods and services, provided work samples, proposed account personnel, past performance as referenced in Section 6.25 of Part A of the RFP, and each Respondent's resources and capability to perform the services and provide the goods.
- 6.21.3. Evaluation of Proposal Quality and Responsiveness.** Responsive proposals will be evaluated based on their quality and response to the specifications in the RFP. This may include, but is not limited to, the comprehensiveness of the proposal, including, but not limited to, the extent to which the proposal addresses the specifications in the Request for Proposals.
- 6.21.4. Evaluation of Plan of Action.** Responsive proposals will be evaluated based on their Plan of Action. This evaluation may include, but is not limited to, the quality of the Plan of Action, incorporation of non-negotiable elements, the effectiveness of the Plan of Action in meeting the specified public relations and marketing objectives outlined in Section 4 of Part A of this RFP and the financial and time feasibility of the Plan of Action.
- 6.21.5. Evaluation of Monthly Service Fee.** Responsive proposals will be evaluated based on their proposed Monthly Service Fee. This evaluation will include consideration of all work and costs to be included in the Monthly Service Fee. Respondents must clearly specify any services that are considered to be excluded from a Monthly Service Fee. The OOG will more favorably consider those proposals that offer best value to the State of Texas for the Monthly Service Fee.

**6.22. Evaluation Phase II – Evaluation of Oral Presentations**

- 6.22.1.** Based on the requirements set forth in Section 6.21, the OOG may determine, which Respondent(s), if any, will be invited to make an oral presentation. Respondents that are not invited to participate in Phase II evaluations, if any, will not be given further consideration in the evaluation process.
- 6.22.2.** Respondents invited to make Phase II presentations shall present their strategy and executions to the evaluation team in Austin, Texas. The purpose of the oral presentation is for the selected Respondent(s) to demonstrate the type of program the Respondent can develop as an overall public relations and marketing services effort to create a responsible, accurate, and positive image of Texas, while effectively marketing and promoting the state as a premier travel destination in the United States.
- 6.22.3.** Each Respondent will present the Plan of Action and recommendations at the Respondent's

scheduled presentation time or the proposal will be disqualified.

**6.22.4.** Presentations will be limited to one and one-half (1-1/2) hours, followed by a 30-minute opportunity for questions and answers. Attendance at the presentations will be limited to the evaluation team and the Respondent making the presentation.

**6.22.5.** Members of the Respondent's proposed account team must be physically present during the presentation and must remain available to answer questions from the evaluation team members. Former OOG employees will NOT be permitted to participate in the presentations on behalf of any Respondent. Upon completion of each presentation, the Respondent will exit the room and members of the evaluation team will score the presentation. Respondents will be required to leave all presentation materials for review by evaluation team.

## **6.23. Evaluation Criteria for Phase II**

**6.23.1. Evaluation of Strategy and Planning.** The oral presentations of responsive proposals will be evaluated based on their proposed Plan of Action. Best value evaluation criteria may include, but is not limited to, the quality of the Plan of Action, incorporation of non-negotiable elements, the effectiveness of the proposed Plan of Action in meeting the specified objectives outlined in Section 4 of Part A of this RFP and the financial and time feasibility of the proposed Plan of Action.

**6.23.2. Evaluation of Creative Presentation.** The oral presentations of responsive proposals will be evaluated based on their proposed Plan of Action. Evaluation criteria may include, but are not limited to, creative ability and effectiveness, communication strategy, and demonstrated ability to provide new and creative approaches to promoting Texas as a premier travel destination.

**6.23.3. Evaluation of Oral Presentation.** The oral presentation will be evaluated to further assess the Respondents' qualifications and to provide Respondents with the opportunity to present their Plan of Action, with an emphasis on strategy and approach, to the evaluation committee. Respondents will demonstrate the services they can provide, and the evaluation committee will assess each Respondent's capabilities on the basis of creativity and expertise. Evaluation criteria may include, but are not limited to, the ability of the proposed account team to effectively and clearly describe the proposed Plan of Action, the quality of the proposed Plan of Action, creative ability, presentation quality, and responsiveness.

## **6.24 Phase III – Discussions, Negotiations and/or BAFOs**

**6.23.4.** The OOG will determine, in its sole discretion, if discussions, negotiations, and/or BAFOs are necessary, however, the Contract awarded (if any) may be awarded without discussions, negotiations, or BAFOs if it is in the best interest of the OOG. Discussions or negotiations with Respondents may be necessary to clarify or verify written proposals and the OOG may request revisions to proposals by formally requesting BAFOs. The OOG reserves the right to limit the opportunity for the discussions/negotiations/BAFOs to one or more top-scoring Respondents in the competitive range. The OOG's written request for clarifications or BAFOs will include specific instructions for each Respondent as applicable and as to exactly what the Respondent should address. After consideration of any clarifications, negotiations, or BAFOs, the OOG will evaluate the finalist(s) and make a final recommendation for award.

## **6.24. Overall Best Value Considerations**



The OOG may also consider several enumerated “best value” criteria and any other criteria the OOG deems relevant to the procurement consistent with the applicable and relevant criteria listed in Texas Government Code, Sections 2155.074-.075 and 2156.125, and as required by the CPA’s Administrative Rules, 34 Texas Administrative Code, Sections 20.208 and 20.217 and the CPA’s Contract Management Guide.

Best value factors that may be considered by the evaluation committee in evaluating proposals may include: (i) the Respondent’s price to provide the requested goods and services; (ii) the probable quality and reliability of the offered goods or services; (iii) the OOG’s evaluation of the likelihood of the proposal to produce the desired outcome for the OOG; (iv) the quality of the Respondent’s past performance in contracting with the OOG, with other state entities, or with private sector entities; (v) the qualifications of the Respondent’s personnel; (vi) the experience of the Respondent in providing the requested goods and services; and (vii) the OOG’s evaluation of the likely financial capacity of the Respondent to perform the requested goods and services.

#### **6.25. Past Performance, Including Reference Checks**

A Respondent’s past performance will include compliance with the aforementioned best value criteria provisions of Texas Government Code and may also include consideration of other factors. In addition to evaluating performance through the CPA’s Vendor Performance Tracking System as authorized by 34 Texas Administrative Code, Section 20.509, the OOG may conduct reference checks with other entities regarding past performance. The OOG may also examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such reference checks shall be at the sole discretion of the OOG, and any negative findings, as determined by the OOG, may result in non-award to a Respondent. In addition, Respondents may not meet this selection criterion for any of the following conditions: (i) a score of less than C or Legacy Unsatisfactory in the Vendor Performance Tracking System; (ii) currently under a Corrective Action Plan through the CPA; (iii) having repeated negative Vendor Performance Reports for the same reason; or (iv) having any purchase orders or contracts that have been cancelled in the previous 12 months on the basis of failure to meet specifications or contract requirements. Vendor performance information is located on the CPA’s website at: <https://www.comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>

#### **6.26. Response to the OOG’s Requests for Information**

By submitting a proposal, each Respondent agrees to furnish such information as the OOG may reasonably require to evaluate the Respondent’s proposal. The OOG reserves the right to make reasonable inquiries regarding the qualifications of the Respondent, including the right to make additional inquiries for any Respondent selected for final negotiation or award.

#### **6.27. Complete Proposals Required**

Respondents are required to propose a complete solution to the OOG’s requirements in their proposals. Any items not specifically requested, but integral to the requested services and goods, shall be included in the proposal and identified in the appropriate sections thereof.

Respondents responding to the RFP must fully and completely address all goods, services and other requirements described in the RFP. Incomplete or partial proposals may not be considered. Each

Respondent shall provide all information that the Respondent believes would be helpful to the OOG in evaluating the Respondent's ability to fulfill the RFP requirements.

#### **6.28. Acceptance/Rejection/Modification to Proposals**

The OOG reserves the right to negotiate modifications to the proposals, to reject any or all proposals, to request and consider additional information from any Respondent, and to waive minor irregularities and technical defects.

#### **6.29. Award**

Award may be made to the Respondent who provides the best value to the OOG based on information submitted with the proposal and any BAFO. The OOG will be the sole judge of best value. No disclosure of the Contract award will be provided until after completion of all evaluation processes and final execution of the Contract.

#### **6.30. Protest Procedure**

Any protest shall be governed by the OOG's protest procedure and filed with the OOG in a manner consistent with Title 34, Texas Administrative Code, Section 20.535.

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### **7. PROPOSAL CONTENT REQUIREMENTS**

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#### **7.1. Due Date of Proposals**

**Respondents wishing to receive consideration must submit their completed proposal to the OOG by no later than 5:00 pm CST in Austin, Texas on September 27, 2019. Proposals received after the due date and time will not be considered.**

#### **7.2. Purpose**

The purpose of the proposal is to demonstrate the qualifications, competence, and capacity of the Respondent and proposed staff to undertake the engagement described herein. The proposal should contain sufficient information to assure the OOG of its completeness.

#### **7.3. Responsive Information**

Responsive information shall be presented in substantially the same order as it is set forth below.

#### **7.4. Content of the Proposal**

Each Respondent is solely responsible for its proposal and all documentation submitted. Each Respondent is solely responsible for thoroughly understanding the RFP and its attachments, exhibits, and forms. Each Respondent must demonstrate its understanding of the Service Requirements in Section 4 of Part A of this RFP and all other aspects of the RFP, and must address specifically, in writing, the Respondent's approach to providing each requirement in this RFP. The Respondent is cautioned to pay particular attention to the clarity and completeness of its proposal.

**Proposals must include all the required information identified.** Failure to include all required information may result in the proposal being deemed non-responsive, or may result in a contract not being awarded to the Respondent.

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

## **7.5. Response Format and Organization**

The proposal shall include all information required in this RFP and shall be in the format required and must be organized in the manner described in this section.

### **7.5.1. Tab 1 of the Proposal: The Transmittal Letter and Respondent Information Form**

Each Respondent must submit a Transmittal Letter that identifies the entity submitting the proposal and includes a commitment by that entity to provide the goods and services required by the OOG in the RFP. The Transmittal Letter must state that the proposal is valid for one hundred and eighty (180) calendar days from the day after the deadline for submitting proposals. Any proposal containing a term of validity of less than one hundred and eighty (180) calendar days may be rejected as non-responsive. The Transmittal Letter must be signed by a person(s) legally authorized to bind the Respondent to the representations in the proposal.

The Transmittal Letter should include the following information: (i) identification of the responding business entity; (ii) the Respondent's formal name and all assumed names used by the business entity; (iii) the structure of business entity; state and country in which business entity was formed or incorporated; (iv) physical address and mailing address and principal place of business; (v) whether, and to what extent, the Respondent has established a physical presence in the State of Texas (for the purpose of qualification as a resident bidder) including relevant timeframes; and (vi) name, title, address, telephone number, facsimile number if applicable, and email address of Respondent's primary contact.

The Transmittal Letter must also include a statement of acceptance of the terms and conditions set forth in Parts A and B of the RFP, as these terms and conditions will be incorporated without substantial changes into the Contract (if any is awarded). If the Respondent takes exception to any of the proposed terms and conditions in the RFP, the Respondent should indicate this in the Transmittal Letter, and any exceptions must be noted separately in Tab 10 of the proposal as indicated herein.

If any material that is included with Respondent's proposal is marked as proprietary, financial, or trade secret information, this information should also be noted in the Transmittal Letter and shall be accompanied by a separate attachment to the Transmittal Letter that clearly indicates the proposal section(s) and page(s) so marked in accordance with the guidance provided in Section 6.10 of Part A of the RFP.

Tab 1 should also include completed and executed copies of RFP Exhibit A (Execution of Proposal) and Exhibit B (Respondent Information Form).

### **7.5.2. Tab 2 of the Proposal: Executive Summary**

Each Respondent shall provide an Executive Summary (maximum five (5) pages) that thoroughly describes its understanding of the RFP's goals and objectives, its capacity to meet the OOG's need for comprehensive and strategic tourism public relations and marketing services, and a short narrative that provides a synopsis of the Respondent's approach to providing the goods and services required under this RFP. The Executive Summary should represent a full and concise summary of the contents of the proposal. Each Respondent's Executive Summary should also indicate why it believes it is the most qualified Respondent to provide the services and goods requested in the RFP.

If a Respondent is proposing to provide goods or services beyond those specifically requested in the RFP, those goods or services must be identified in the Executive Summary. If a Respondent's proposal is offering goods or services that do not meet the specific requirements of this RFP, but in the opinion of the Respondent are equivalent to those specifically requested, any such differences must be noted in the Executive Summary. However the Respondent should realize that any proposal that fails to offer comprehensive and strategic tourism public relations and marketing services as specifically requested in the RFP may be deemed as non-responsive.

### **7.5.3. Tab 3 of the Proposal: Financial Responsibility**

Each Respondent must provide evidence, in United States dollars, of financial responsibility and stability for performance of a contract and must demonstrate the ability to financially support the services and goods described in its submission. In addition, the Respondent **must** disclose the source of any outside financial resources, in United States dollars, (e.g., financing support from a parent company) that will be utilized by the Respondent to enable it to perform the Contract (if any is awarded).

Please provide financial statements that are compliant with GAAP and/or IAS, including, but not limited to:

1. if the Respondent is the sole source of financial resources, the Respondent must submit three years of audited annual financial reports showing the Respondent's ability to finance the required services on its own with current resources;
2. if the Respondent is the subsidiary of a parent corporation and the parent corporation is providing financial resources or assurance, the Respondent must submit three years of audited Annual Financial reports for both the Respondent and the parent corporation;
3. for a privately and solely-owned business where audited financial reports are not required, then unaudited financials will suffice;
4. if the Respondent is a joint venture or a group of affiliated companies, the proposal must include three years of audited Annual Financial Reports for each member or affiliate of such joint venture or group, as applicable;
5. if the Respondent does not have three years of audited Annual Financial Reports, then acceptable evidence of financial responsibility may include, but is not limited to, the Respondent's most recent annual financial reports, income statements, and/or a current balance sheet reports that have been attested to by either an independent certified public accountant or a certified accounting firm; and
6. if a Respondent is unable to provide the evidence of financial responsibility required

by this section, the Respondent must then provide a performance bond and or financial guarantees or assurance that demonstrates the ability to financially support the services described in it submission. The OOG reserves the right disqualify a Respondent's proposal for failure to provide a performance bond and/or financial guarantees or assurances.

The OOG reserves the right to require a Respondent to provide any additional information necessary to determine the financial responsibility and stability of the Respondent.

Each Respondent must notify the OOG of any change in financial condition during the pendency of the solicitation process. If a Respondent experiences a substantial change in its financial condition prior to the award of the Contract (if any), the OOG must be notified of the change in writing at the time the change occurs or is identified. A Respondent's failure to notify the OOG of such substantial change in financial condition will be sufficient grounds for rejecting the proposal or terminating a Contract with the Respondent. For the purposes of this section, examples of a substantial change in financial condition are events such as merger, acquisition, insolvency, bankruptcy or receivership.

#### **7.5.4. Tab 4 of the Proposal: Respondent's Background**

Each Respondent shall provide a brief description of its company, history, and relevant accomplishments, including, but not limited to, the number of years the company has been in business and a link to the Respondent's website, if any (maximum six (6) pages).

#### **7.5.5. Tab 5 of the Proposal: Experience and Qualifications**

**Comparable Experience** (maximum eight (8) pages). Each Respondent shall provide a written description of the Respondent's recent account history within the last five (5) years for providing tourism public relations and marketing services. Descriptions should include accounts similar in nature and budget size to the OOG's. Information regarding any previous OOG account history may be submitted. Accounts included for comparable experience should include those that were serviced by the same office location that will provide public relations and marketing services to the OOG account. Account history should include the types of efforts developed, billing history (in United States dollars), types of goods and services provided, dates of service for past clients, and current success of clients.

**Description of Resources** (maximum six (6) pages). Each Respondent shall provide a detailed, written description of administrative, operational and management structure of its organization, including resources (e.g., staff, facilities, manpower, business equipment systems, accounting systems, internal auditing procedures, management and administration, legal services, creative services, financial stability, location) the Respondent possesses and that it will provide as part of the Monthly Service Fee in order to perform the services and provide the goods required to create, plan and conduct the OOG's tourism public relations and marketing efforts. The Respondent shall include the location, staff size, and resources of each office which will service the Contract. Any strategic partnerships, alliances, or joint ventures must also be specifically described.

#### **7.5.6. Tab 6 of the Proposal: Organizational Chart & Account Staff**

**Organizational Chart.** Provide an organizational chart showing the staffing and lines of authority for the specific personnel to be used on the OOG account. The relationship of the Account Manager to management and to support personnel should be clearly illustrated.

**Staff Qualifications and Experience.** This section shall also name each individual who will be assigned to this engagement throughout the duration of any contract awarded as a result of the RFP, including the Account Manager and other personnel. Provide a thorough description of the relevant experience (including years of experience) and skills that qualify each individual to perform the required services and provide the required goods. The information provided should include a brief bio and description of relevant staff experience on projects or similar scope, size and staffing level, if any. Each Respondent is expected to provide resumes or professional biographies for each member of the proposed account team and any other contracted staff to be assigned to this project (not including support staff), including length of time in the employ of Respondent. Information for all participants of a strategic partnership, alliance or other joint venture proposal who will be used to service the OOG's account should be listed, including the roles and extent of all partners' participation and written profiles for each. Proposals should demonstrate a commitment to maintain staff competency throughout the term of any contract awarded as a result of the RFP.

**Staffing Plan.** This section should include a staffing plan that describes how the Respondent's personnel will be organized to perform the assignments, including the responsibilities of each individual proposed for assignment to the OOG account team.

**Staff References.** Provide three (3) references for the Account Manager and each key member of the proposed OOG Account team. The references should consist of clients that these individuals have provided services and goods for that are similar to the activities required by this RFP. The references must include the name, organization, and telephone number of an individual who can comment on the ability of the individual to perform the services and goods required under a Contract (if any).

#### **7.5.7. Tab 7 of the Proposal: Plan of Action and Related Information**

Each Respondent shall provide a Plan of Action as defined in Section 1.29. Respondent should base the Plan of Action on a term of eleven (11) months, (October 2019 through August 2020) and a proposed budget of not to exceed **\$320,833.33 United States Dollars** for all Monthly Service Fees and Reimbursable(s) in that proposed term.

Tab 7 of the proposal must also include a market overview, and information relating to the conditions of the marketplace, as well as an estimated budget allocation for all Reimbursable(s) necessary to achieve the Plan of Action. **Do not include proposed Monthly Service Fees in this section.** Tab 7 of the proposal must also include the following:

1. an indication of how the Respondent's proposal ensures that funds are spent efficiently and effectively, with reasonable attention and effort given to requested activities;
2. specific goals, in addition to those identified in Section 4 of Part A of this RFP, for measurement of performance, which demonstrate the success of Respondent's planning, implementation and results achieved from the Plan of Action in meeting the objectives outlined in Section 4 of Part A of this RFP;
3. a staffing plan that describes how the Respondent's personnel will be organized to perform the assignments, including the responsibilities of each individual proposed for the account team; and
4. a timeline indicating when each aspect is expected to be completed.

#### **7.5.8. Tab 8 of the Proposal: Transition Plan**

This section should briefly describe any transition activities necessary for the Respondent to commence services under any contract awarded as a result of the RFP, including whether or not Respondent would be prepared to commence work immediately upon award, and if not, what steps, activities, or timeline it will need to take prior to commencing work. The transition plan should assume that the Respondent will commence all required services and providing all required goods by no later than October 14, 2019.

**7.5.9. Tab 9 of the Proposal: Respondent’s Cost Proposal**

Each Respondent shall completely fill in the Monthly Fee Schedule, which shall be submitted in the form set forth in Exhibit E and attached to this RFP, setting forth the Respondent’s proposed Monthly Service Fee for each Performance Period of the Contract Term. A Respondent shall not disclose its Cost Proposal or other cost information in the body of its written proposal. Including cost information in the written proposal may be cause for disqualification.

All Contractor's costs, with exception of Reimbursable(s) , shall be based on a fixed Monthly Service Fee. A detailed description of what is included in the Contractor’s Monthly Service Fee is required in the proposal. Failure to provide a detailed description may result in disqualification of the proposal. **Any services or goods not included in the fixed Monthly Service Fee must be listed separately.**

The OOG must be assured that funds are spent efficiently and effectively, with reasonable attention and effort given to requested projects. As a result, the OOG intends to more favorably consider those proposals that offer the best value to the OOG for the stated Monthly Service Fee.

NOTE: The OOG reserves the right to award the Contract without any Respondent negotiations. Each Respondent is strongly encouraged to provide its best value of services included in the Monthly Service Fee in its proposal because the OOG makes absolutely no guarantee that there will be any opportunity to negotiate or provide alternative pricing at any point during the RFP process.

**7.5.10. Tab 10 of the Proposal: Assumptions and Exceptions**

Each Respondent shall clearly state any assumptions it made in its proposal. Each Respondent shall also clearly identify any exceptions it takes to specific provisions of the RFP, including any proposed terms and conditions as set forth in RFP, noting the specific RFP part and section number. Each Respondent shall provide specific and detailed reasons for each exception, together with suggested alternative language. Vague and general exceptions are not acceptable. If there are no exceptions, the Respondent shall explicitly state that the Respondent takes no exception to any part of the RFP.

*NOTE: Many of the terms and conditions identified in Parts A and B of the RFP are non-negotiable due to state contracting policies and legal requirements imposed by Texas law. As a result, any exceptions taken by a Respondent may be considered by the OOG during the evaluation and may result in a proposal being disqualified and/or a contract not being awarded to the Respondent.*

The Respondent shall identify exceptions using the following format:

Section	Section Title	Exception	Proposed Language

**7.5.11. Tab 11 of the Proposal: The Conflict of Interest Disclosure**

The Respondent shall identify and disclose any and all relationships that might be a conflict of interest or cause an appearance of a conflict of interest in the format provided as Exhibit D.

**7.5.12. Tab 12 of the Proposal: HUB Subcontracting Plan**

The OOG has determined that subcontracting opportunities are possible under this RFP, and therefore the submission of a HUB Subcontracting Plan (“HSP”) is required as part of each proposal. The HSP, once accepted by the OOG, will become a part of the Contract (if any). The HSP shall be submitted in the format provided as Exhibit F, which includes additional information about HSP requirements and the CPA’s HSP form.

Even if a Respondent (as the prime vendor) can fulfill the entire Contract work specified in the RFP, the Respondent must complete and submit an HSP with its proposal. In the event the Respondent cannot provide the goods and services identified in the RFP with their own equipment, supplies, materials, and/or employees, then the Respondent may refer to the CMBL/HUB Search Directory maintained by the CPA to identify State of Texas certified HUBs that may be capable of performing the subcontracting opportunities identified in this RFP and any other subcontracting opportunities. The OOG does not endorse, recommend or attest to the capabilities of any company or individual listed within the CMBL/HUB Search Directory.

In preparing the HSP, if a Respondent determines that it will be subcontracting any portion of the work to provide the goods and services identified in the RFP, the Respondent must comply with the requirements of the CPA as set forth in 34 Texas Administrative Code § 20.285 relating to developing and submitting a subcontracting plan. That section further describes methods that a Respondent may demonstrate the “good faith effort” required for completion of the HSP.

The CPA’s HUB regulations are published in the Texas Register and are available at: [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=34&pt=1&ch=20&sch=D&div=1&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=D&div=1&rl=Y) Additional information is also available through the CPA’s website at: <https://comptroller.texas.gov/purchasing/vendor/hub/>. For inquiries relating to HUBs and the HSP, please direct inquiries to the point of contact identified in Section 6.4 of Part A of this RFP.

The OOG has identified the following potential subcontracting opportunities under this RFP:

**CLASS 915: COMMUNICATIONS AND MEDIA RELATED SERVICES**

Item Number and Commodity Descriptions:

915-03 Advertising and Public Relations, Including Skywriting

**CLASS 961: MISCELLANEOUS SERVICES, NO. 1 (NOT OTHERWISE CLASSIFIED)**

Item Number and Commodity Descriptions:

961-28 Economic Development, Domestic and Foreign

961-53 Marketing Service, Including Distribution, Public Opinion Surveys, Research, Sales Promotions, etc.

961-75 Translation Services, All Languages

**7.5.13. Tab 13 of the Proposal: Company References and Disclosure of Litigation**



**References:** The Respondent shall include a minimum of three (3) references from clients for whom similar services were performed or products were provided in the last five (5) years in the Target Market. The Respondent shall include project description, contact names, position, and company name and telephone number for each reference listed. The OOG reserves the right to contact references, and any information provided by references may be considered in the evaluation of proposals.

**Disclosure of Litigation:** The Respondent shall disclose and briefly describe any and all litigation that it has been involved in within the last three (3) years.

**7.5.14. Tab 14 of the Proposal – Miscellaneous Exhibits.** Each Respondent shall complete and include the following exhibits that are not otherwise included under another tab to its proposal. A complete listing of all required exhibits is as follows:

<b>Exhibits</b>	
<b>A</b>	Execution of Proposal (with certification) (Tab 1)
<b>B</b>	Respondent Information Form (Tab 1)
<b>C</b>	Identification of Bidder Preferences (Tab 14 if applicable)
<b>D</b>	Conflict of Interest Disclosure Form (Tab 11)
<b>E</b>	Monthly Service Fee Schedule (Tab 9)
<b>F</b>	HUB Subcontracting Plan (Tab 12)

**7.6. Submitting the Proposal**

**7.6.1. Submission of Proposals**

7.6.1.1. Proposals, including any and all hard copies, exhibits, attachments, electronic copies, and other supplemental or additional information a Respondent wishes to be considered as part of its proposal must be delivered to the Point of Contact at the address provided by the due date and time identified in the Calendar of Events in Section 6.3 of the RFP. **Proposals received after the due date and time will not be considered, and any proposal that is not complete upon submission may be disqualified.**

7.6.1.2. Each proposal shall be entitled “Proposal Submitted for RFP No. 301-9-0798.” and shall clearly state the due date and time.

7.6.1.3. The Respondent must submit one (1) original signed hard copy submission, five (5) hard copies for the evaluation team, and one (1) digital copy in a searchable PDF file format on a CD or USB drive. The original, copies, and any digital copy must be received no later than the deadline established in the Calendar of Events, in Section 6.3 of the RFP. If there is any disparity between the contents of the printed proposal and the contents of the proposal contained in electronic format, the contents of the printed proposal shall take precedence.

**ELECTRONIC OR SOFT COPY SUBMISSIONS OF PROPOSALS WILL NOT BE ACCEPTED IN LIEU OF THE SIGNED ORIGINAL AND HARD COPIES AS REQUIRED IN THIS SECTION.**

**PROPOSALS WILL NOT BE ACCEPTED BY EMAIL.**

The hard copy submissions must be bound in three-ring binders, in a 12 pt. or higher font, include a content page, organized and arranged to correspond directly with the numbered tabs as set forth herein, and all pages must be numbered.

A Respondent may include supplemental content that is in addition to all required elements of the RFP response. Please submit this information with the original hard copy submissions. No information beyond that specifically requested is required and Respondents are requested to keep their submission to the shortest length consistent with making a complete presentation of qualifications. Additional information, if any, should be submitted in a separate binder and/or on a CD or USB drive.

- 7.6.2. The proposal shall be sent to the OOG Financial Services Division at one of the following addresses:

By United States Mail:

Office of the Governor  
Financial Services Division  
Attention: Spencer Cummings  
P.O. Box 12878  
Austin, TX 78711-2878  
Hours – 8:00 AM to 5:00 PM CST

By Hand Delivery:

Office of the Governor  
Financial Services Division  
Attention: Spencer Cummings  
1100 San Jacinto Blvd.  
Austin, Texas 78701  
Hours – 8:00 AM to 5:00 PM CST

By Overnight/Express Mail:

Office of the Governor  
Financial Services Division  
Attention: Spencer Cummings  
1100 San Jacinto Blvd.  
Austin, Texas 78701  
Hours – 8:00 AM to 5:00 PM CST

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# **PART B: GENERAL TERMS AND CONDITIONS**

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## **GENERAL TERMS AND CONDITIONS**

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### **1. Introduction**

This section sets forth the basic terms and conditions that will become part of the final Contract awarded to the Contractor, in addition to those terms and conditions included in Part A of the RFP. The OOG reserves the right to negotiate or incorporate different or additional terms and conditions in the Contract if it is determined to be in the best interest of the State of Texas.

### **2. Contract Elements**

#### **2.1. Order of Precedence**

The Contract will follow a general format specified by the OOG. The contents of this RFP, as modified by published Addenda, any of the OOG's formal responses to questions and answers issued in conjunction with the RFP as published on the ESBD, and the Contractor's proposal including any clarifications or BAFO, may be incorporated into the Contract (except as to any confidential financial information of the Contractor contained in Tab 3, Financial Responsibility). In the event of conflicts or inconsistencies between the final executed Contract, this RFP, the Contractor's proposal, and any exhibits or attachments to the foregoing, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority, to the extent the documents are incorporated into the Contract:

- (1) the Contract including any exhibits thereto;
- (2) the RFP, as modified by published Addenda and any of the OOG's formal responses to questions and answers issued during the RFP process;
- (3) the Public Relations and Marketing Plan; and
- (4) the Contractor's proposal and any clarifications or BAFO.

#### **2.2. Amendments**

The Contract may be amended only upon written agreement signed by both parties to the Contract. The parties stipulate and agree that any act, oral statements, or representation by either party, their agents or employees that purports to increase the liability of the OOG or modify the Contractor's Service Requirements in Section 4 of Part A of the RFP is voidable by the OOG, unless the Contract is amended in writing.

The OOG reserves the right to amend the Contract through execution of a unilateral amendment provided to the Contractor under the following circumstances: (i) to correct an obvious clerical error in the Contract; (ii) to incorporate new or revised federal or state laws, regulations, rules, or policies that are required to be included as part of the Contract; (iii) to change the designated OOG contact person or mailing address for the Contract; or (iv) to change the designated Contractor's contact person or mailing address for the Contract.

### **3. No Assignment**

## **PART B: GENERAL TERMS AND CONDITIONS**

No right or obligation under this Contract may be assigned without the prior written approval of the OOG; any attempted assignment made in violation of this provision shall be voidable by the OOG. Effective September 1, 2019, the OOG may notify the Legislative Budget Board of a proposed assignment at least fourteen (14) calendar days prior to rejecting or approving a proposed assignment if, among other things, the Contract involves storing, receiving, processing, transmitting, disposing of, or accessing sensitive personal information in a foreign country.

### **4. No Third Party Beneficiary Rights**

The Contract is not intended to and shall not be construed to give any third party any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement, subcontract, or provision contained herein or contemplated hereby.

### **5. Change of Name/Merger**

The Contractor shall promptly notify the OOG of any change of name, merger, consolidation, restructuring, sale, or other such change in the identification or designation of the proper legal entity in which it holds the Contract. In such an event, an amendment to the Contract shall be required, and shall specifically state that no other terms, condition, or obligations of the Contract are thereby changed. The Contractor shall not assign the Contract pursuant to this Section.

### **6. Default, Remedies and Opportunity to Cure**

#### **6.1. Notice of Possible Default**

The OOG, in its sole discretion and based on information from Contract monitoring, audit, or other verifiable sources, will determine whether the Contractor has acted or failed to act in such a manner that gives rise to an act of possible default under the Contract. The OOG shall give written notice to the Contractor setting out the circumstances that support the OOG's determination of possible default.

#### **6.2. OOG Remedies in the Event of Default**

Upon the OOG's determination of possible default, the OOG, in its sole discretion, may terminate the Contract for cause or take other actions, including, but not limited to:

6.2.1. Giving the Contractor at least ten (10) calendar days to cure the possible default and to provide the OOG with sufficient information that supports a finding of cure by the OOG;

6.2.2. Requiring the Contractor to take specific corrective actions in order to achieve or remain in compliance with any contractual term;

6.2.3. Withholding or recouping payments made to the Contractor or imposing other sanctions based on specific violations of Contract requirements;

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6.2.4. Suspending and/or limiting any services and/or goods and placing conditions on any such suspensions and/or limitations of services and/or goods;

6.2.5. Requiring the removal of any employee of the Contractor or any subcontractor from the provision of services and/or goods under the Contract;

6.2.6. Imposing special conditions on the Contractor as deemed appropriate by the OOG to ensure strict compliance with Contract terms, including, but not limited to, the imposition of additional procedures to ensure the proper delivery of services and goods or to support payments to the Contractor, or the suspension, abeyance, or removal of any contractual rights of the Contractor.

### **6.3. Cure**

If the OOG is satisfied that the Contractor has cured the possible default event, the OOG will give written notice to the Contractor. The OOG will exercise good faith and reasonableness in determining, in the sole discretion of the OOG, whether the Contractor has cured the possible default.

### **6.4. Default**

If the OOG is not satisfied that the Contractor has cured the possible default, the Contractor shall be in default hereunder, and the OOG shall give written notice to the Contractor declaring such default.

### **6.5. Repeated Acts of Possible Default**

If the Contractor commits more than two (2) independent acts of possible default, even if each possible default was cured, the OOG may declare the Contractor to be in default of the Contract.

## **7. Termination**

### **7.1. Convenience of the State**

The OOG may, in its sole discretion and at its sole option, terminate the Contract, in whole or in part, without recourse or penalty, by notifying the Contractor in writing of such termination. Such notification of termination shall state the effective date of such termination and if no effective date is specified, the termination shall be effective upon the date of the notification.

### **7.2. Agreed Termination**

The OOG and Contractor may mutually agree to terminate the Contract.

### **7.3. Cause or Default**

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In the event Contractor fails to perform or comply with an obligation or a term, condition or provision of the Contract, or if the Contractor is in default and has failed to cure such default after having received notice and an opportunity to cure, the OOG may, upon written notice to the Contractor, terminate all or any part of the Contract for cause. If the Contractor's breach is based on repeated acts of default or is of a nature such that it cannot be cured within thirty (30) calendar days, then the OOG may terminate all or any part of the Contract immediately without further notice or opportunity to cure. Such notification of termination shall state the effective date of such termination, and if no effective date is specified, the termination shall be effective upon the date of the notification.

Notwithstanding any other provision of the Contract, the OOG is not required to give the Contractor any notice of default or an opportunity to cure in order to exercise the OOG's right to termination for cause.

### 7.4. Rights Upon Termination or Expiration

7.4.1. **Cessation of Work.** Upon receipt of written notice to terminate or upon final expiration of the Contract, the Contractor shall immediately discontinue all services affected and cease providing all goods as of the effective date of termination or expiration, unless the OOG directs otherwise.

7.4.2. **Liability for Payments.** The OOG shall be liable for payment of Monthly Service Fees and Reimbursable(s) only to the portion of work authorized by OOG in writing, completed prior to the effective date of termination, and accepted by the OOG. The OOG shall not be liable for any damages, claims, losses, or any other amounts arising from or related to any such termination or expiration, or for any work performed that: (i) is not accepted by the OOG; (ii) does not meet Contract requirements; (iii) was performed after the effective date of termination; and/or (iv) after the OOG rescinded its approval or acceptance.

7.4.3. **Return and Ownership of Works and Materials.** Subject to any service requirements of the Contractor to provide end of Contract transition services, the Contractor shall promptly deliver or otherwise make available to the OOG at the Contractor's expense, all Works and such other information and materials as may have been accumulated by the Contractor in performing services and providing goods under the Contract, whether completed or in process. Upon termination or expiration, the OOG may take over the goods and services prescribed by the Contract and pursue the same to completion by contracting with another party or otherwise. All Works, including goods and services, produced by the Contractor and paid for by the OOG shall become and/or remain the property of the OOG as further described in the Contract.

7.4.4. **Remedies.** Notwithstanding any exercise by the OOG of its rights of early termination pursuant to this section, the Contractor shall not be relieved of any liability to the OOG for damages due to the OOG by virtue of any breach of the Contract by the Contractor or for amounts otherwise due the OOG by the Contractor. Termination is



## **PART B: GENERAL TERMS AND CONDITIONS**

not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract to enforce the terms of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The Contractor shall remain liable for all covenants and indemnities under the Contract and for all costs and expenses, including court costs, incurred by the OOG with respect to the enforcement of any of the remedies listed in the Contract.

### **8. Dispute Resolution**

- 8.1. Informal Meetings.** The parties' representatives will meet as needed to implement the terms of the Contract and will make a good faith effort to informally resolve any disputes.
- 8.2. Dispute Resolution.** If Chapter 2260 of the Texas Government Code is applicable, it shall be used as the sole and exclusive process to resolve any claim for breach of Contract made by the Contractor. Neither the execution of the Contract nor any other conduct of or statements by the OOG relating to the Contract shall be considered a waiver of sovereign immunity.
- 8.3. Continued Performance.** The Contractor shall not be excused from performance during any pending dispute(s), unless approved in writing by the OOG.

### **9. Subcontractors**

- 9.1.** Any routine use of subcontractors for the provision of in-house services that are to be included in the Contractor's Monthly Service Fee shall be disclosed and clearly identified in each Respondent's proposal and Plan of Action.
- 9.2.** The Contractor, in subcontracting for any goods and services specified in the Contract, expressly understands and agrees that the OOG shall not be liable in any manner to the Contractor's subcontractor(s). In no event shall the OOG's approval of Contractor's use of subcontractors, nor the conduct or statement of any person, nor any other provision of the Contract, be construed as relieving the Contractor of the responsibility for ensuring that all goods and services provided under the Contract, and any subcontracts thereto, are rendered in compliance with all of the terms of the Contract.
- 9.3.** In the event that the Contractor should determine that it is necessary or expedient to subcontract for any of the goods and services provided for in the Contract at any time during a Performance Period, the following conditions will apply:
  - 9.3.1.** The Contractor shall (i) submit cost estimates; (ii) submit a copy of the proposed subcontract to the OOG if requested; and (iii) obtain the written approval from the OOG before subcontracting for the subject goods or services.
  - 9.3.2.** The Contractor, in subcontracting for any performances, expressly

## **PART B: GENERAL TERMS AND CONDITIONS**

understands and agrees that the OOG shall not be liable in any manner to the Contractor's subcontractor(s). The Contractor may identify the OOG as the intended beneficiary of a subcontract, but Contractor is not authorized to execute any contract directly obligating the OOG to the payment for goods or services or otherwise identifying the OOG as a party to any subcontract.

9.3.3. In no event shall this section or any other provision of the Contract be construed as relieving the Contractor of the responsibility for ensuring that all goods and services provided under the Contract, and any subcontracts thereto, shall be rendered in compliance with all of the terms of the Contract.

9.3.4. The Contractor will be the sole point of contact for the OOG with respect to any performances to be provided by the subcontractor, and/or any payments due to the subcontractor. The Contractor will identify a designated point of contact who shall be responsible for the coordination of all communications with the subcontractor.

9.3.5. The Contractor shall be solely and exclusively responsible for any payments and other claims due to subcontractors for work performed under this Contract. Any and all reimbursement to the Contractor for the actual, reasonable and necessary expenses relating to the use of subcontractors is subject to the Contractor's compliance with the terms and conditions of this Contract, including, but not limited to, any terms and conditions governing the payment of Reimbursable(s). No mark-up will be allowed for any subcontract expenses.

9.3.6. In accordance with the Texas Prompt Payment Act, the Contractor shall, upon receipt of payment from the OOG, pay a subcontractor the appropriate share of the payment not later than ten (10) calendar days after the date the Contractor receives the payment. Upon request of the OOG, Contractor shall promptly provide documentation in a form acceptable to the OOG to support confirmation of payments made by Contractor to subcontractors. Any failure to promptly pay subcontractors as required by this section may result in termination of the Contract.

9.3.7. The Contractor shall include a term in any subcontracts that places subcontractors on notice that the subcontract is subject to certain terms and conditions of the Contract and holds that the event of any conflict between the terms of the subcontract and the Contract, the Contract shall prevail.

### **10. Applicable Law and Venue**

The Contract is made and entered into in the State of Texas. The Contract and all disputes arising out of or relating thereto shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

Venue for any Contractor-initiated action, suit or litigation arising out of or in any way relating to the Contract shall be exclusively in the Travis County District Court or the United States District Court, Western District of Texas - Austin Division. Venue for any action, suit or litigation initiated

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by the OOG arising out of or in any way relating to this Contract may be in a Texas state district court or a United States District Court in Texas selected by the OOG in its sole discretion.

The Contractor hereby irrevocably and unconditionally consents to the jurisdiction of the courts referenced above for the purpose of prosecuting and/or defending any such litigation. The Contractor hereby waives and agrees not to assert as a defense, or otherwise, in any suit, action or proceeding, any claim that the Contractor is not subject to the jurisdiction of the above-named courts; the suit, action or proceeding is brought in an inconvenient forum; and/or the venue is otherwise improper.

### **11. No Waiver of Immunity**

The OOG is immune from suit and from liability. No part of the Contract, nor the conduct or statement of any person, will be construed as a waiver of sovereign immunity or official immunity, or of any of the privileges, rights, defenses, remedies, or immunities available to the OOG, and/or the State of Texas, or their officers, employees, or agents as provided by law.

### **12. Independent Contractor**

The Contractor shall render the goods and services as required under the Contract as an independent contractor. Employees and contractors of the Contractor are not employees of the OOG or the State of Texas by virtue of the Contract or otherwise within the meaning of any international, federal, state, or local law, ordinance, or regulation. The Contractor agrees it is entirely responsible for the payment of the Contractor's and the Contractor's employees' taxes, unemployment and workers' compensation insurance, and the Contractor agrees to comply with all international, state, local, and federal laws, ordinances, or regulations applicable to any such persons.

### **13. Delinquent Child Support Obligations**

The Contractor certifies that the individual or business entity named in the Contract is not ineligible to receive any payment under Section 231.006 of the Texas Family Code and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. If applicable, the Contractor has provided the name and social security number of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25% ownership in the Contractor (business entity).

### **14. Prohibited Bids and Contracts**

Under Section 2155.004 of the Texas Government Code (relating to prohibited bids and contracts), the Contractor certifies that the individual or business entity named in the Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

### **15. Buy Texas**

## **PART B: GENERAL TERMS AND CONDITIONS**

To the extent reasonably applicable, the Contractor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials as required by Section 2155.444 of the Texas Government Code.

### **16. Gift to Public Servant**

The Contractor warrants that it has not given, offered to give, nor does it intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the RFP or the award of the Contract (if any).

### **17. No Claims**

The Contractor certifies that the Contractor does not have any potential or existing claims against or unresolved audit exceptions with the State of Texas or any agency of the State of Texas.

### **18. Certification of Good Standing; Delinquent Taxes**

The Contractor certifies that it is in good standing under the laws of the jurisdiction in which it is formed or organized, and if requested, will provide the OOG with confirming documentation. The Contractor certifies that it owes no delinquent taxes to any taxing unit of this state at the start date of the Contract. The Contractor agrees to remain in good standing with the Texas Secretary of State, the CPA, the United States government, and other governmental jurisdiction(s) applicable to the goods and services required under the Contract, related to the Contractor's right to conduct its business during the Contract Term.

### **19. Debt to State**

The Contractor acknowledges and agrees that, to the extent the Contractor owes or incurs any debt (child support or other obligation) or delinquent taxes to the State of Texas, any payments the Contractor is owed under the Contract during the term of the Contract may be applied by the CPA toward any debt or delinquent taxes the Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.

### **20. Compensation, RFP Specifications**

The Contractor certifies that neither the Contractor nor any person or entity which will participate financially in the Contract has received compensation for participation in the preparation of the specifications, preparation, or production of the RFP.

### **21. Conflicts of Interest; Disclosure of Conflicts; Disclosure of Interested Parties**

The Contractor represents and warrants that it has no actual or potential conflicts of interest in

## **PART B: GENERAL TERMS AND CONDITIONS**

providing the requested goods and services to the OOG under the Contract, and that the Contractor's provision of the requested goods and services would not reasonably create an appearance of impropriety. The Contractor has a continual and ongoing obligation to immediately notify the OOG in writing, upon discovery of any actual or potential conflict.

In addition, Section 2252.908, Texas Government Code and the administrative rules of the Texas Ethics Commission ("TEC") at Title I, Chapter 46 of the Texas Administrative Code, require certain vendors to file a Disclosure of Interested Parties Form 1295 ("Form 1295") with the TEC and the OOG. The OOG may require the Contractor to complete and file the Form 1295 at the time of Contract execution and/or prior to the execution of an amendment of the Contract.

### **22. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion**

The OOG will adhere to the directions provided in U.S. Presidential Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

The Contractor certifies that it and its principals are eligible to participate in the Contract and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that the Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>. The Contractor further certifies that it will not knowingly enter into any subcontract with an entity who is, or whose principals are, on the specially designated nationals list or debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. The Contractor will ensure that this section regarding debarment, suspension, ineligibility, and voluntary exclusion, and the specially designated nationals list is included without modification in any subcontracts or solicitations for subcontracts.

### **23. Hurricane Relief**

The Contractor certifies that it has not, in the past five (5) years, been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004, Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053, Texas Government Code, the Contractor certifies that it is not ineligible to enter into the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate or false.

### **24. Former Executive Head, State Officer and Employees of the Agency**

## **PART B: GENERAL TERMS AND CONDITIONS**

The Contractor certifies the Contract is compliant, and will remain in compliance during the Contract Term, with Section 669.003 (Contracting with Executive Head of State Agency), Section 2252.901 (Contracts with Former or Retired Agency Employees) and Section 572.069 (Certain Employment for Former State Officers and Employees Restricted) of the Texas Government Code.

### **25. Terminated Contracts**

By submitting a proposal, the Contractor certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If the Contractor does have such a terminated contract, the Contractor shall identify the contract and provide an explanation for the termination.

### **26. Deceptive Trade Practices; Unfair Business Practices**

The Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that the Contractor has not been found to be liable for such practices in such proceedings. The Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings. The Contractor shall notify the OOG in writing within five (5) calendar days if the Contractor or any of its officers are subject to allegations of Deceptive Trade Practices or are the subject of alleged violations of any unfair business practices in an administrative hearing or court suit, and the Contractor or officers have been found liable for such practices in such proceedings.

### **27. Antitrust and Assignment of Claims**

Pursuant to 15 U.S.C. Section 1, *et seq.*, and Chapter 15 of the Texas Business and Commerce Code, neither the Contractor nor the firm, corporation, partnership, or institution represented by the Contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. The Contractor hereby assigns to the State of Texas all of the Contractor's rights, title, and interest in and to all claims and causes of action the Contractor may have under the antitrust laws of Texas of the United States for overcharges associated with the Contract.

### **28. Entities that Boycott Israel**

If the Contractor is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, the Contractor certifies that the Contractor does not boycott Israel and will not boycott Israel during the term of the Contract. If the Contractor does not make that certification, the Contractor must indicate that in its proposal and state why the certification is not required. The

## **PART B: GENERAL TERMS AND CONDITIONS**

term “boycott Israel” as used in this paragraph has the meaning assigned by Section 808.001 of the Texas Government Code.

### **29. Iran, Sudan, or Foreign Terrorist Organization**

The Contractor represents that neither the Contractor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of such Contractor is an entity listed by the CPA under Sections 2270.0201 or 2252.153 of the Texas Government Code. The terms “foreign terrorist organization” and “designated foreign terrorist organization” have the meanings assigned to them in Sections 2252.151 and 2270.0001 of the Texas Government Code, respectively.

### **30. Immigration**

The Contractor shall not permit any employees, nor any employee of its subcontractors, to perform any work on behalf of, or for the benefit of, the OOG in the United States without first ensuring said employee’s authorization to lawfully work in the United States. The Contractor represents and warrants that it shall comply with all applicable United States immigration laws with respect to the employment of any individual who will perform labor or services in the United States under the Contract, and that it shall require that all employees provide proof of identity and employment eligibility before they can work in the United States.

### **31. United States Department of Homeland Security’s E-Verify System**

The Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of the Contract, the United States Department of Homeland Security’s E-Verify system to determine the eligibility of: (i) all persons employed to perform duties within the United States, during the term of the Contract; and (ii) all persons (including subcontractors) assigned by the Contractor to perform work under the Contract, within the United States. If this certification is falsely made, the Contract may be terminated, at the discretion of the OOG and at no fault to the OOG, with no prior notification.

### **32. Felony Criminal Convictions**

The Contractor represents and warrants that it and its employees providing goods and services under the Contract have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, the Contractor has fully advised the OOG as to the facts and circumstances surrounding the conviction.

### **33. Resident Bidder**

By submitting a bid, the Contractor certifies that if a Texas address is shown as the address of the Contractor, then the Contractor qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code and described in Texas Administrative Code, Title 34, Part 1, Chapter 20.

## **PART B: GENERAL TERMS AND CONDITIONS**

### **34. False Statements; Breach of Representations**

By acceptance of funds under the Contract, the Contractor represents and warrants that it is not making any false statements, representations, certifications, affirmations, warranties or guarantees regarding the Contract. If any of the statements, representations, certifications, affirmations, warranties or guarantees are false or if the Contractor signs the Contract with a false statement or it is subsequently determined that the Contractor has violated any of the statements, representations, certifications, affirmations, warranties or guarantees included in the Contract, the Contractor shall be in default under the Contract and the OOG may terminate or void the Contract for cause and pursue other remedies available to the OOG under the Contract and applicable law.

### **35. Fraud, Waste and Abuse**

The Contractor understands that the OOG does not tolerate any type of fraud, waste, or misuse of funds received from the OOG. The OOG's policy is to promote consistent, legal, and ethical organizational behavior, by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, policies of the OOG, or standards of ethical conduct will be investigated, and appropriate actions will be taken. In the event of a formal allegation or a finding of fraud, waste, or misuse of funds received from the OOG is made against the Contractor, the Contractor is required to immediately notify the OOG of said finding. The Contractor is also obliged to inform the OOG of the status of any on-going investigations. The Contractor is expected to report any possible fraudulent or dishonest acts, waste, or abuse to the OOG's Fraud Coordinator or Ethics Advisor at (512) 463-1788 or in writing to: Ethics Advisor, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

### **36. Licenses, Permits and Compliance with Laws**

The Contractor warrants and covenants that it has or will obtain all permits, approvals, certifications, authorizations, licenses, or other legal approvals necessary for its lawful performance of its obligations under the Contract at the Contractor's expense, and shall maintain such permits, approvals, certifications, authorizations, licenses, or other legal approvals during the term of the Contract without additional expense to the OOG. The Contractor shall comply with any applicable United States or international, federal, state, county, local (including, but not limited to municipal) laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations, in connection with the work required by the Contract at the Contractor's expense.

### **37. Political Activity**

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

### **38. Americans with Disabilities Act**



## **PART B: GENERAL TERMS AND CONDITIONS**

To extent required by law, the Contractor shall provide reasonable accessibility for persons with disabilities in compliance with the Americans with Disabilities Act, where applicable.

### **39. Media Releases or Pronouncements**

The Contractor understands that the OOG does not endorse any vendor, good, or service. Except as authorized by the OOG to fulfill the Contractor's goods and service requirements under the Contract, the Contractor, its employees, representatives, subcontractors or other agents may not make any news releases, public announcements, or public disclosures, or engage in any conversations with representatives of the Media, pertaining to the Contract, without the prior written approval of the OOG, and then only in accordance with explicit written instructions from the OOG. The Contractor must not use the name of the State of Texas, Travel Texas, or the OOG in any advertisement, promotion, or otherwise for any purpose regarding the Contract without the OOG's prior written approval. The Contractor shall not affix its company name, label, logo, or any other similar identifying information to or on any products, equipment or any other goods provided under the Contract.

### **40. Confidentiality**

The Contractor agrees that all information, documents, and communications between the Contractor and the OOG (1) shall be treated as confidential; (2) shall not be used or disclosed by the Contractor for any purpose other than providing the goods and services within the scope of the Contract; and (3) shall not be disclosed to any third-party for any purpose unless the disclosure is required by law or the OOG expressly consents in writing in advance of each disclosure. The Contractor agrees that it will not use any information, documents, and communications between the Contractor and the OOG to the detriment of the OOG or any officer or agency of the State of Texas.

### **41. Texas Public Information Act**

The Contractor agrees that the State of Texas, the OOG, and the Contract are subject to the Act. The Contractor agrees that all information created or exchanged in connection with the Contract is subject to the Act. The Contractor will cooperate with the OOG in the production of documents or information responsive to a request for information. Information provided by the Contractor in connection with the Contract that the Contractor considers proprietary, financial, or trade secret information (collectively "Confidential Information") shall be designated as such when it is provided to the OOG. The OOG will notify the Contractor if all or part of the Confidential Information is requested under the Act. Failure of the Contractor to timely respond to such notification may result in the release of all or part of the Confidential Information as public information. It is the Contractor's obligation to timely submit briefing to the Office of the Attorney General of Texas in accordance with the Act, setting forth the legal basis upon which the requested information should remain confidential. The OOG assumes no responsibility for asserting legal arguments to the Office of the Attorney General of Texas on behalf of a Contractor.

## **PART B: GENERAL TERMS AND CONDITIONS**

The Contractor will notify OOG within twenty-four (24) hours of receipt of any third party requests for information that was provided to the Contractor by the OOG or the State of Texas. The Contractor agrees that information not otherwise excepted from disclosure under the Act, will be available in PDF, Microsoft Word, Microsoft Power Point or Microsoft Excel formats(s) at no additional charge to OOG or the State of Texas.

### **42. Information Security/Privacy**

The Contractor shall employ and maintain appropriate information security procedures to protect against the unauthorized acquisition, use, or disclosure of any personal information under applicable laws (including Personal Identifying Information or Sensitive Personal Information as those terms are defined in Texas Business and Commerce Code, Chapter 521) that it receives, compiles, or creates as a result of the Contract to ensure compliance with any agency requirements of the OOG and/or any applicable international, federal, state, or local laws, regulations, and ordinances. Unless required by law to disclose, the Contractor agrees to maintain the confidentiality of information received from the OOG or the State of Texas during the performance of the Contract, including, but not limited to, Sensitive Personal Information, Personally Identifying Information, personal financial information, financial account numbers, account access information, computer passwords, social security numbers or information that is confidential by law or otherwise subject to a lawful exception from disclosure. In the event of an unauthorized acquisition, use, or disclosure of the OOG's information by the Contractor, its employees, representatives, subcontractors or other agents in the performance of the Contractor's duties, the Contractor shall: (i) immediately notify the OOG in writing; (ii) assume and comply with any applicable remedial requirements required by law; (iii) bear all costs of such compliance and remediation; and (iv) provide the OOG with information regarding the breach and the progress of any remedial efforts if requested. The obligations of the Contractor under this section will survive the Contract and must be included in all subcontracts in which the subcontractor may have access to personal information.

The Contractor shall endorse the OOG's requirements and adhere to the State of Texas' and the OOG's Information Technology Security Standards. From time-to-time and on the request of the OOG, the Contractor may be required to execute written information security or non-disclosure agreements as deemed necessary by the OOG to strictly comply with any applicable confidentiality or information security requirements or applicable laws, regulations, and protective orders. The Contractor is required to assess risks, ensure data integrity, and determine the level of accessibility that must be maintained. Specific activities may include, but are not limited to identification of security, privacy, legal, and other organizational requirements for recovery of institutional resources such as data, software, hardware, configurations, and licenses at the termination of the Contract. In addition, the OOG may periodically assess the Contractor's privacy and security services provisioned to providing the goods and services under the Contract to ensure all Contract obligations are being met and to manage and mitigate risk.

### **43. Intellectual Property Rights**

#### **43.1. Ownership**

## **PART B: GENERAL TERMS AND CONDITIONS**

As between the Contractor and the OOG, the Works and Intellectual Property Rights in the Works are and shall be owned exclusively by the OOG, and not the Contractor. The Contractor specifically agrees that all Works shall be considered "works made for hire" and that the Works shall, upon creation, be owned exclusively by the OOG. To the extent that the Works, under applicable law, may not be considered "works made for hire," the Contractor hereby agrees that the Contract transfers, grants, conveys, assigns, and relinquishes exclusively to the OOG all right, title and interest in and to the Works, and all Intellectual Property Rights in the Works, without the necessity of any further consideration, and the OOG shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works, subject to any exceptions with Contractor. All property and tangible or intangible items, including the Intellectual Property Rights therein, that were created, developed or owned by the OOG prior to execution of this Contract (e.g., copyrights, trademarks, etc.) shall continue to be exclusively owned by the OOG, and the Contractor shall have no ownership thereof, and no rights thereto, other than the limited, non-exclusive right to use such property or tangible and intangible items solely for the purposes set forth in the Contract and only for the Contract Term.

The Works may not be used by the Contractor without prior written approval of the OOG.

### **43.2. Ownership of Prior Rights by the Contractor**

All property and tangible or intangible items, including the Intellectual Property Rights therein, that were created, developed or owned by the Contractor prior to the execution of the Contract shall continue to be exclusively owned by the Contractor, and the OOG shall have no ownership thereof, and no rights thereto, other than the limited, non-exclusive right to use such property or tangible or intangible items solely for the purposes set forth in the Contract. All intellectual property relating to the goods and/or services set forth herein or under the Contract, including the Intellectual Property Rights in those goods and/or services, that was created, developed or licensed by the Contractor prior to the execution of the Contract, or during the Contract Term, to the extent such intellectual property is not considered "Works," shall be, and is, licensed to the OOG on a non-exclusive, perpetual, irrevocable, royalty-free, worldwide basis, to allow the OOG or its designees to provide, and continue to provide, the goods and services set forth herein or under the Contract, including after the expiration or termination of the Contract.

### **43.3. Further Actions**

The Contractor, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by the OOG to evidence more fully the transfer of ownership of all Works to the OOG to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by the OOG. In the event the OOG shall be unable for any reason to obtain the Contractor's signature on any document necessary for any purpose set forth in the foregoing sentence, the Contractor hereby irrevocably designates and appoints the OOG and its duly authorized officers and agents as the Contractor's agent and the Contractor's attorney-in-fact to act for and in the Contractor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by the Contractor.

## **PART B: GENERAL TERMS AND CONDITIONS**

### **43.4. Waiver of Moral Rights**

The Contractor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Works which the Contractor may now have or which may accrue to the Contractor's benefit under United States or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Works and the right to object to any modification, translation or use of the Works, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a Moral Right.

### **43.5. Injunctive Relief**

The Contract is intended to protect the OOG's proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the OOG's business. Therefore, the Contractor acknowledges and stipulates that a court of competent jurisdiction should immediately enjoin any material breach of the intellectual property, licensing, and confidentiality provisions of the Contract, upon a request by the OOG, without requiring proof of irreparable injury as same should be presumed.

### **43.6. Pre-Existing and Third Party Rights**

To the extent that any pre-existing rights and/or third party rights or limitations are embodied, reserved or reflected in the Works, the Contractor shall either (a) secure for the OOG an irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing or third-party rights and any derivative works thereof, or (b) where the obtaining of an irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license is not reasonably practical or feasible, provide written notice to the OOG of such pre-existing or third party rights or limitations, and if approved by the OOG, obtain a limited right and license to use such pre-existing or third party rights on such terms as may be reasonably negotiated.

### **43.7. Return of Works**

Upon the request of the OOG, but in any event upon expiration or termination of the Contract, the Contractor shall surrender to the OOG all documents and things pertaining to the Works, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by the Contractor or furnished by the OOG to the Contractor, including all materials embodying the Works, any OOG confidential information, or Intellectual Property Rights, regardless of whether complete or incomplete. This section is intended to apply to all Works made or compiled by the Contractor, as well as to all documents and things furnished to the Contractor by the OOG or by anyone else that pertains to the Works.

## **44. Bankruptcy**

## **PART B: GENERAL TERMS AND CONDITIONS**

Contractor shall notify the OOG in writing within ten (10) calendar days should the Contractor become subject to any proceedings for bankruptcy, insolvency, reorganization, arrangement, reorganization arrangement, winding-up, or composition or adjustment of debts, whether such proceedings are instituted by or against the Contractor. In the event of such proceedings involving the Contractor, the OOG may terminate the Contract for cause in its sole discretion.

### **45. Force Majeure**

Except as otherwise provided in the Contract, neither the Contractor nor the OOG shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract resulting from or caused by force majeure. The existence of such causes of delay or failure shall extend the Performance Period until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, with three (3) Business Days of the existence of such force majeure, and exercise due diligence to overcome such force majeure, or otherwise waive this right as a defense. If non-performance under this section continues for more than thirty (30) calendar days, the OOG may terminate the Contract with no further notice to the Contractor.

### **46. Unlawful Employment Practices**

The Contractor represents and warrants that it shall not engage in unlawful employment discrimination, disparagement, harassment, retaliation, prejudice and/or violent behavior toward any group of people for any reason.

### **47. Indemnification**

#### **47.1. Acts or Omissions**

**THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THE OOG, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DAMAGES, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST**

## **PART B: GENERAL TERMS AND CONDITIONS**

**OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS. THE CONTRACTOR AND THE OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

### **47.2. Infringements**

**THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THE OOG, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF THE CONTRACTOR PURSUANT TO THE CONTRACT. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS AND EXPENSES OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS. THE CONTRACTOR AND THE OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**THE CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (I) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (II) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT THE CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO OOG'S SPECIFIC INSTRUCTIONS, (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO THE OOG, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY THE OOG THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.**

**IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR THE OOG PROVIDES THE CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, THE CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST THE OOG, SHALL), AT THE CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR THE OOG THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (II) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT THE OOG'S USE IS NON-INFRINGEMENT.**

### **47.3. Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

## **PART B: GENERAL TERMS AND CONDITIONS**

Employees and any subcontractors furnished by the Contractor shall not be considered employees of the OOG or the State of Texas.

**THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THE CONTRACT, THE CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF THE CONTRACTOR'S AND THE CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THE CONTRACT. THE CONTRACTOR AGREES TO COMPLY WITH ALL APPLICABLE LAWS RELATING TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND OCCUPATIONAL ACCIDENT INSURANCE (WORKERS' COMPENSATION). THE OOG AND/OR THE STATE OF TEXAS SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR OCCUPATIONAL ACCIDENT INSURANCE (WORKERS' COMPENSATION) OR ANY BENEFIT AVAILABLE TO A STATE OF TEXAS EMPLOYEE OR EMPLOYEE OF THE OOG.**

**THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THE OOG, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, VENDORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR OCCUPATIONAL ACCIDENT INSURANCE (WORKERS' COMPENSATION) IN ITS PERFORMANCE UNDER THE CONTRACT. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS. THE CONTRACTOR AND THE OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

### **48. Liability for Damage to Government Property**

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

### **49. Compliance with Applicable Laws**

## PART B: GENERAL TERMS AND CONDITIONS

The Contractor must comply with all applicable United States and international (including, but not limited to, federal, state, or local) laws (including, but not limited to, statutes), regulations, and ordinances at all times, including, without limitation, the following: (i) the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1, et seq.; (ii) Sections 36.02 or 36.03 of the Texas Penal Code, prohibiting bribery or coercion of public officials; (iii) Section 36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; and (iv) Section 2155.003 of the Texas Government Code, which prohibits an employee of the OOG from having an interest in a contract or bid for a purchase of goods or services by an agency of the State of Texas, or awarded anything of value or a promise, obligation, or contract for future reward or compensation.

The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract, if any. Except where otherwise expressly required by applicable laws and regulations, the OOG shall not be responsible for monitoring the Contractor's compliance. If the Contractor performs any work knowing or having reason to know that it is contrary to laws or regulations, the Contractor shall bear all claims, costs, losses, and damages caused by, arising out of, or resulting there from. The OOG is entering into the Contract in reliance on the accuracy of the representations and the warranties contained in this section. The Contractor acknowledges that, in addition to any other remedies the OOG may have, breach of this section constitutes grounds for the OOG to terminate this Contract immediately. In such event, Contractor agrees and acknowledges that Contractor shall lose any right to receive reimbursements, commissions, fees, or other compensation under this Contract, whether already earned or not. Upon request of the OOG during the Contract Term, the Contractor agrees to sign and deliver further certifications to OOG in the form required by Exhibit G (Certification of Contractor Compliance).

### 50. Insurance and Other Security

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

- 50.1. Workers Compensation Insurance.** Occupational Accident Insurance: The Contractor must maintain occupational accident insurance coverage, workers' compensation insurance, or its equivalency in accordance with applicable laws of the Contractor's home country for all its employee personnel who will provide services to the OOG under the Contract.
- 50.2. Liability Insurance.** The Contractor must maintain Commercial General Liability Insurance, including personal injury and advertising injury insurance, and commercial crime insurance with third-party and employee dishonesty or "Client Property" endorsement/coverage, with a waiver of subrogation in favor of the OOG and proposed coverage limits of:

Bodily Injury and Property Damage	
Each occurrence limit:	\$1,000,000
Aggregate limit:	\$2,000,000



## PART B: GENERAL TERMS AND CONDITIONS

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

The Contractor is not required to cover the employees of subcontractors. However, the Contractor must require its subcontractors to maintain the required coverage. To the extent that the Contractor's subcontractor does not have or maintain insurance or does not have or maintain sufficient insurance as required by the Contract, the Contractor acknowledges and agrees that the Contractor will be solely responsible for any losses or damages related to or caused by the subcontractor. The OOG will have no obligation to reimburse or otherwise pay the Contractor or its subcontractor for any costs incurred related to any such losses or damages.

The Contractor represents and warrants that all policies, to the extent possible, shall contain endorsements prohibiting cancellation except upon at least thirty (30) calendar days prior written notice to the OOG. The Contractor represents and warrants that it shall maintain the above insurance coverage during the term of the Contract, and shall provide the OOG with acceptable proof of insurance within seven (7) calendar days of the OOG's written request.

### 51. Technology Accessibility

To the extent applicable, the Contractor will comply with the applicable State of Texas Accessibility standards for Electronic and Information Resources established for state agencies by the Texas Department of Information Resources ("DIR"), including as set forth in Title 1, Chapters 206 and 213 of the Texas Administrative Code (including as may be amended during the term of the Contract) when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. This includes, but is not limited to, any website redesign or redevelopment services in support of the OOG's websites. Such sites shall comply with WCAG 2.0 level AA and applicable accessibility standards. Likewise, if applicable, the Contractor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). A Contractor not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

### 52. Cybersecurity Training Program

To the extent the Contractor has access to any state computer system or database, the OOG will require the Contractor to complete a cybersecurity training program certified under Section 2054.519 of the Texas Government Code, as selected by the OOG. The cybersecurity training program must be completed by the Contractor during the primary term of the Contract, as described in Section 2.3.1 of Part A of the RFP, and again during the renewal period, if any, described in Section 2.3.2 of Part A of the RFP. The Contractor shall verify completion of the program to the

## **PART B: GENERAL TERMS AND CONDITIONS**

OOG in writing upon completion of the program.

### **53. Vendor Performance**

Pursuant to Texas Government Code, Section 2155.089 and 34 TAC Section 20.115, after the Contract is completed or otherwise terminated, the OOG is required to review and report on the Contractor's performance using the Vendor Performance Tracking System ("VPTS") established by the CPA. More information about the VPTS is available at:

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

### **54. Survival of Terms**

Expiration or termination of the Contract for any reason does not release the Contractor from any provision set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding Maximum Contract Amount, acceptance of work performed, invoicing and payment, return of funds, audit rights, rights upon termination, dispute resolution, subcontractors, transition, Media releases or pronouncements, confidentiality, Texas Public Information Act, information security/privacy, Intellectual Property Rights, return and ownership of Works, records retention, indemnification, limitations of liability, dispute resolution, applicable law and venue, and sovereign immunity.

### **55. Non-Waiver of Rights**

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

### **56. Severability/Interpretation**

If any provision of the Contract is held to be void or unenforceable, this shall have no effect on the remaining provisions of the Contract, which shall continue in full force and effect. In case any one or more of the provisions contained in the Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and the resulting Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Any vague, ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Contract.

### **57. Entirety**

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## **PART B: GENERAL TERMS AND CONDITIONS**

The Contract is intended as a full and complete expression of and constitutes the entire agreement between the parties to it with respect to the subject matter in it and all prior and contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written, are superseded and replaced by the Contract.

**RFP No. 301-9-0798**  
**EXHIBIT A**  
**EXECUTION OF PROPOSAL**  
**Page 1 of 2**

**FAILURE TO COMPLETE, SIGN AND SUBMIT THIS EXECUTION OF PROPOSAL FORM  
WITH RESPONDENT'S PROPOSAL MAY RESULT IN DISQUALIFICATION**

Respondents presenting proposals to this agency **shall provide** the following, as applicable:

Federal Employer ID#: \_\_\_\_\_

Entity Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Secretary of State Charter No. \_\_\_\_\_

Texas Franchise Tax No. \_\_\_\_\_

DUNS No. (if applicable): \_\_\_\_\_

Telephone Number (area code & number): \_\_\_\_\_

FAX Number (area code & number, if applicable): \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Respondents must include names of each person with at least 25% ownership of the business entity submitting the response:

Name	Title or Description of Ownership Interest
_____	_____
_____	_____
_____	_____
_____	_____

**RESPONDENT ACKNOWLEDGMENT**

The Respondent does hereby acknowledge that it can meet all requirements as stated and also acknowledges the receipt, review, and acceptance of the Request for Proposals identified in its Proposal. Any exceptions to the statement of work, terms, requirements, and conditions have been explicitly set forth in the Respondent's Proposal. Failure to sign and submit this form with its Proposal may disqualify the Proposal.

By signing this Execution of Proposal, Respondent:

- 1) Certifies that if a Texas address is shown as the address of the Respondent, the Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code and Texas Administrative Code, Title 34, Part 1, Chapter 20;
- 2) Certifies and warrants that it has read, understands, and is currently compliant with the contractor certification requirements as described in the RFP, and that Respondent shall remain in compliance with such certifications during the term of any contract awarded as the result of this RFP.

**RFP No. 301-9-0798**  
**EXHIBIT A**  
**EXECUTION OF PROPOSAL**  
**Page 2 of 2**

**FAILURE TO COMPLETE, SIGN AND SUBMIT THIS EXECUTION OF PROPOSAL FORM  
WITH RESPONDENT'S PROPOSAL MAY RESULT IN DISQUALIFICATION**

- 3) Acknowledges that its proposal and subsequent documents submitted to the OOG are subject to the Texas Public Information Act and that Respondent is solely responsible for specifically identifying information it contends to be confidential or proprietary in accordance with RFP instructions.
- 4) Grants a royalty-free, non-revocable limited perpetual license to reproduce any copyrighted portions of the proposal and subsequent documents to comply with Legislative Budget Board reporting requirements, Public Information Act disclosures, or any other reporting requirements mandated by law or statute.
- 5) Respondent's proposal will remain in effect for 180 days after the Proposal Due Date

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**Signature - Authorized Bidder Representative**

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**Printed Name**

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**Date**

**RFP No. 301-9-0798**  
**EXHIBIT B**  
**RESPONDENT INFORMATION FORM**

**Respondents must complete and submit this form with the Proposal.**

(Respondent Name)	(Texas or Federal Employer Identification Number)
(Mailing Address)	
(Physical Address)	(City/State/Zip)
(Telephone Number)	(Facsimile Number)

Provide an address for receipt of a Purchase Order (if different from above)

(Mailing Address)	
(City/State/Zip)	(Facsimile Number)

Complete this section with contact information for an Executive representative for your organization.

(Name)	(Title)
(Phone)	(E-mail)

Complete this section with contact information for a Program/Contract Manager for your organization.

(Name)	(Title)
(Phone)	(E-mail)

Complete this section with the contact information of a person who can answer questions regarding your Proposal.

(Name)	(Title)
(Phone)	(E-mail)

Complete this section with contact information for Customer Service

(Name)	(Title)
(Phone)	(E-mail)

Complete this section with Website URL:

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**RFP No. 301-9-0798**  
**EXHIBIT C**  
**IDENTIFICATION OF BIDDER PREFERENCES**

**For more information on bidding preferences, please see the following references:**

**Texas Administrative Code, Title 34, Section 20.306**

[http://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=34&pt=1&ch=20&rl=306](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=306)

**State of Texas Procurement and Contract Management Guide, at p. 77-78 (“Preferences” and “Tie Bids”)**

<https://comptroller.texas.gov/purchasing/docs/96-1809.pdf>

**Identify the bidder preferences for which you qualify (check all that apply):**

- Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
  - Agricultural products grown in Texas
  - Agricultural products offered by a Texas bidder
  - Services offered by a Texas bidder that is 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
  - Texas Vegetation Native to the Region
  - USA produced supplies, materials or equipment
  - Products of persons with mental or physical disabilities
  - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
  - Energy Efficient Products
  - Rubberized asphalt paving material
  - Recycled motor oil and lubricants
  - Products produced at facilities located on formerly contaminated property
  - Products and services from economically depressed or blighted areas
  - Vendors that meet or exceed air quality standards
  - Recycled or Reused Computer Equipment of Other Manufacturers
  - Foods of Higher Nutritional Value
  - Paper containing the highest proportion of recycled fibers for all purposes for which paper with recycled fibers may be used and to the extent the paper is available at a reasonable price through normal commercial sources, unless the average price of paper with recycled fibers exceeds by more than 10 percent the price of comparable nonrecycled paper
  - Travel agents residing in Texas
  - Other (must include description and citation to applicable Texas law or regulation establishing the bidder preference) \_\_\_\_\_
-

**RFP No. 301-9-0798**  
**EXHIBIT D**  
**CONFLICT OF INTEREST**  
**DISCLOSURE**

**FAILURE TO COMPLETE, SIGN AND SUBMIT THIS EXECUTION OF PROPOSAL FORM  
WITH RESPONDENT'S PROPOSAL MAY RESULT IN DISQUALIFICATION**

**RESPONDENT CONFLICT OF INTEREST DISCLOSURE AND CERTIFICATION**

By signing this Conflict of Interest Disclosure and Certification, Respondent certifies and affirms the following:

- 1) Respondent has read and understands the various conflict of interests contract provisions, contract certifications, and conflict of interest statutes cited in the RFP, including, but not limited to, those contained in RFP Part B, Sections 15 (Prohibited Bids and Contracts), 17 (Gift to Public Servant), 22 (Conflicts of Interest), and 50 (Compliance with Applicable Laws).
- 2) Except as otherwise disclosed in this Conflict of Interest Disclosure and Certification, Respondent, Respondents' employees, and Respondents' subcontractors do not have, nor shall they knowingly acquire, any interest that would create a conflict of interest, create the appearance of a conflict of interest, or be adverse to or conflict in any manner with the performance of Respondent's obligations under any contract that may be awarded as a result of this RFP.
- 3) Complete only one the following check boxes as applicable:

Respondent discloses the following information that may present an actual or potential conflict of interest:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Respondent does not have any actual or potential conflicts of interest to disclose.

- 4) Respondent is compliant, and will remain in compliance during the term of any contract that may be awarded as the result of this RFP, with the following Sections of the Texas Government Code: Section 669.003 (Restriction on Contracting with Executive Head of State Agency); Section 572.069 (Prohibiting employment of state officers and employees who participated in the procurement of services); and Section 2252.901 (Contracts with Former or Retired Agency Employees). If any of these statutes apply, the Respondent shall complete the following information in order for its proposal to be evaluated:

Name of Former Executive or Employee: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of separation from State Agency: \_\_\_\_\_

Date of employment with Respondent: \_\_\_\_\_

- 5) If the circumstances of the disclosures certified by Respondent change or additional information is obtained subsequent to the submission of Proposals, Respondent agrees that it is under a continuing duty to supplement its response under this provision, and Respondent shall submit updated information as soon as reasonably possible upon learning of any change to information contained in this disclosure and certification.

\_\_\_\_\_  
**Signature - Authorized Bidder Representative**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Date**



**RFP No. 301-9-0798**  
**Exhibit E**  
**Monthly Fee Schedule**

**RESPONDENT NAME:** \_\_\_\_\_

**AUTHORIZED RESPONDED SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

<b>MONTHLY SERVICE FEES</b>	<b>QUANTITY</b>	<b>UNIT</b>	<b>UNIT PRICE Per Month</b>	<b>TOTAL (Total for Contract Term)</b>
<b>PRIMARY CONTRACT TERM</b> 10/14/19 (or date of execution of the Contract, whichever is later) through 8/31/2020	<b>11<sup>1</sup></b>	<b>MO</b>	<b>\$</b>	<b>\$</b>
<b>CONTRACT RENEWAL OPTION 1</b> 9/1/2020 through 8/31/2021	<b>12</b>	<b>MO</b>	<b>\$</b>	<b>\$</b>
<b>CONTRACT RENEWAL OPTION 2</b> 9/1/2021 through 8/31/2022	<b>12</b>	<b>MO</b>	<b>\$</b>	<b>\$</b>
<b>CONTRACT RENEWAL OPTION 3</b> 9/1/2022 through 8/31/2023	<b>12</b>	<b>MO</b>	<b>\$</b>	<b>\$</b>
<b>OPTIONAL CONTRACT EXTENSION</b> 9/1/2023 through 2/29/2024	<b>6</b>	<b>MO</b>	<b>\$</b>	<b>\$</b>

<sup>1</sup> The Monthly Service Fee will be pro-rated for the first month of the Contract (if any) in an amount based on the effective date of the Contract (if any). See RFP, Part A, Section 5.10.7.1.

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**RFP NO. 301-9-0798**

**Exhibit F**

**HUB Subcontracting Plan**



# HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
  - Section 2 c. - Yes
  - Section 4 - Affirmation
  - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. - No
  - Section 2 d. - Yes
  - Section 4 - Affirmation
  - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. - No
  - Section 2 d. - No
  - Section 4 - Affirmation
  - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
  - Section 3 - Self Performing Justification
  - Section 4 - Affirmation

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



# HUB Subcontracting Plan (HSP)

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

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

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

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

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

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent does not have a continuous contract\* in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

**SECTION 1: RESPONDENT AND REQUISITION INFORMATION**

a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_

b. Is your company a State of Texas certified HUB?  - Yes  - No

c. Requisition #: \_\_\_\_\_ Bid Open Date: \_\_\_\_\_  
(mm/dd/yyyy)

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including contracted staffing, goods and services will be subcontracted. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)
- *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract</u> * in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
<b>Aggregate percentages of the contract expected to be subcontracted:</b>		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you do not have a continuous contract\* in place with for more than five (5) years, meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a "continuous contract" in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a "continuous contract" in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
<b>Aggregate percentages of the contract expected to be subcontracted:</b>		%	%	%

*\*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 3: SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below explain how your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

[Empty box for justification text]

**SECTION 4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date <small>(mm/dd/yyyy)</small>

**Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

# HSP Good Faith Effort - Method A (Attachment A)

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

**IMPORTANT:** If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>

### SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

### SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mvcoa.cpa.state.tx.us/passcmlbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
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	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
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	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
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	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



# HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**IMPORTANT:** If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs **at least seven (7) working days** to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.
- b. List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers **in Texas** to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers **at least seven (7) working days** prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

- d. List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

# HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION B-4: SUBCONTRACTOR SELECTION**

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



# HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

<b>SECTION A: PRIME CONTRACTOR'S INFORMATION</b>	
Company Name: _____	State of Texas VID #: _____
Point-of-Contact: _____	Phone #: _____
E-mail Address: _____	Fax #: _____

<b>SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION</b>	
Agency Name: _____	Phone #: _____
Point-of-Contact: _____	Bid Open Date: _____
Requisition #: _____	(mm/dd/yyyy)

<b>SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION</b>
<b>1. Potential Subcontractor's Bid Response Due Date:</b>
If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than _____ on _____.
Central Time <span style="margin-left: 100px;">Date (mm/dd/yyyy)</span>
<small>In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).</small>
<small>(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</small>

<b>2. Subcontracting Opportunity Scope of Work:</b>

<b>3. Required Qualifications:</b>	<input type="checkbox"/> - Not Applicable

<b>4. Bonding/Insurance Requirements:</b>	<input type="checkbox"/> - Not Applicable

<b>5. Location to review plans/specifications:</b>	<input type="checkbox"/> - Not Applicable

## EXHIBIT G CERTIFICATION OF COMPLIANCE

In addition to the requirements set forth under the Contract, the Contractor must comply with the following additional compliance terms and conditions. In the event of any conflict between the Contract and this Certification, the more stringent terms and conditions shall control.

**1. Definitions.** As used in this Certification, the following terms have the meanings assigned:

**a. "Government Official" includes:**

- i. Any director, officer, or employee of any government, or any department, agency, instrumentality, or entity owned or controlled by a government outside the U.S. (e.g., a state-owned utility company);
- ii. Any person acting in an official capacity for or on behalf of any such government, department, agency, instrumentality, or entity;
- iii. Any officer or employee of any political party or faction outside the U.S.;
- iv. Any candidate for political office outside the U.S.; or
- v. Any director, officer, or employee of any public international organization, like the World Bank.

**b. "Representative" includes the Contractor's affiliates, employees, contractors and subcontractors, and representatives.**

**2. Compliance with Anti-Corruption Laws.** The Contractor represents, warrants, and agrees that it has knowledge of applicable anti-corruption laws, including the United States Foreign Corrupt Practices Act ("FCPA"), and other applicable anti-bribery and anti-corruption laws and regulations. The Contractor represents, warrants, and agrees that neither it nor any of its employees, agents, or other Representatives will directly or indirectly take any action that would constitute a violation of applicable anti-corruption laws with respect to any activities performed by the Contractor related to the OOG's business.

**3. Prohibition on Improper Payments.**

The Contractor represents, warrants, and agrees that, in connection with the services to be performed for the OOG, neither it nor any of its employees, agents, or other Representatives has or will pay, offer, promise to pay, or authorize the payment, or offer or promise to pay, directly or indirectly, any monies or anything else of value to any current or former Government Official (defined below), for the purposes of:

- a. influencing any act, inaction, or decision of, such persons in their official capacity; or
- b. securing any improper advantage from such persons; or
- c. inducing any such persons to use their influence with a government, or agency or instrumentality thereof, to affect or influence any act or decision of such government, or agency or instrumentality thereof;

**4. Additional Payments.** The Contractor agrees that it will not pay, or offer, or agree to pay:

- a. Any foreign political contribution or charitable donation in respect of any business for which it provides services to the OOG.
- b. Any facilitation payment or "grease" payment in respect of any business for which it provides services to the OOG.

**5. Accuracy of Representations and Information.** The Contractor represents and warrants that all representations, warranties, and covenants set forth in this Certification are truthful and accurate. The Contractor shall notify the OOG in writing immediately upon the occurrence of any event that would render the representations, warranties, and covenants contained herein incorrect.

As a duly appointed representative of the Contractor, I warrant that I am authorized to sign this Certification for and on behalf of the Contractor.

Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

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