

Texas Southern University
TERMS AND CONDITIONS

1. BIDDING REQUIREMENTS:

- 1.01. Bidders must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form. Respondent shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the contract. Agency reserves the right, in its sole discretion, to unilaterally amend the contract prior to award and throughout the term of the contract to incorporate any modifications necessary for Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.
- 1.02. Bids should be submitted on this form. Bidders must price per unit shown. Unit prices shall govern in the event of extension errors. If a price quotation is submitted as part of the bid, the quotation must be referenced on the bid document and signed by the bidder to establish formal linkage to the bid.
- 1.03. Bids must be received at the Texas Southern University (TSU) Purchasing Office on or before the hour and date specified for the bid opening.
- 1.04. Late and/or unsigned bids will not be considered under any circumstances. Person signing bid must have the authority to bind the Respondent in a contract.
- 1.05. Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 1.06. Bid prices are requested to be Respondent for TSU acceptance for 90days from bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts Proposed will be taken if earned.
- 1.07. Bidder should enter Texas Identification Number System (TINS) number, full Respondent name and address of bidder on the face of this form. Enter in the space provided, if not shown. Additionally, Respondent name should appear on each continuation page of a bid, in the block provided in the upper right hand corner.
- 1.08. Bid cannot be altered or amended after opening time. Alterations made before opening time should be initialed by bidder or his authorized agent. No bid can be withdrawn after opening time without approval by TSU based on an acceptable written reason.
- 1.09. Purchases made for TSU use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.
- 1.10. TSU reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of TSU and to reject any and all bid items at the sole discretion of TSU. TSU also reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of TSU. Any contract may also be extended up to three months at the sole discretion of TSU.
- 1.11. Consistent and continued tie bidding could cause rejection of bids by TSU and/or investigation for antitrust violations.
- 1.12. Inquiries pertaining to this solicitation must include the requisition number, class/item codes, and opening date.

2. SPECIFICATION:

- 2.01 Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality will be considered unless advertised under §2155.067, Texas Government Code (Gov't Code). If bidding on other than references, bid should show manufacturer, brand or trade name, and other description of product proposed. If other than brand(s) specified is proposed, illustrations and complete description of product proposed are requested to be made part of the bid. Failure to take exception to specifications or reference data will require bidder to furnish specified brand names, numbers, etc.
- 2.02 Unless otherwise specified, items shall be new and unused and of current production.
- 2.03 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 2.04 Samples, when requested, must be furnished free of expense to TSU. If not destroyed in examination, they will be returned to the bidder, on request, at bidder's expense. Each sample should be marked with bidder's name and address, and bid number. Do not enclose in or attach bid to sample.
- 2.05 TSU will not be bound by any oral statement or representation contrary to the written specifications of this solicitation.
- 2.06 Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation.

3. TIE BIDS: Awards will be made in accordance with 34 TAC Rules 20.36(b)(3) and 20.38 (Preferences).

4. DELIVERY:

- 4.01. Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates bidder to deliver in 14 calendar days. Unrealistic delivery promises may cause bid to be disregarded.
- 4.02. If delay is foreseen, bidder shall give written notice to TSU. Bidder must keep TSU advised at all times of status of order.
- 4.03. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes TSU to purchase the goods or services of this solicitation elsewhere and charge any increased costs for the goods or services, including the cost of rebidding, to the bidder.
- 4.04. No substitutions permitted without written approval of TSU.
- 4.05. Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency.

5. **INSPECTION AND TESTS:** All goods will be subject to inspection and test by TSU. Authorized TSU personnel shall have access to supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the bid or on samples taken from regular shipment. All costs shall be borne by the bidder in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the TSU's option, be returned to the bidder or held for disposition at bidder's expense. Latent defects may result in revocation of acceptance.
6. **AWARD OF CONTRACT:** A Offer to this solicitation is a Offer to contract based upon the terms, conditions, and specifications contained herein. Bids do not become contracts until they are accepted through a purchase order. The contract shall be governed, construed, and interpreted under the laws of the State of Texas. The factors listed in §§2155.074, 2155.144, 2156.007, and 2157.003, Gov't Code, shall also be considered in making an award when specified. Any legal actions must be filed in Harris County, Texas.
7. **PAYMENT:** Bidder shall submit 2 copies of an itemized invoice showing TSU purchase order number on all copies. TSU will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. Payment shall be made in accordance with Chapter 2251, Gov't Code.
8. **PATENTS, TRADEMARKS, COPYRIGHTS OR PUBLICATIONS:** Bidder agrees to defend and indemnify TSU and the State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the TSU's or the State's use of any good or service provided by the bidder as a result of this solicitation. Respondent understands and agrees that, where activities supported by the contract produce original books, manuals, films or other material (referred to in this contract as "the works"), respondent may copyright the works subject to the reservation by TSU of a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize use, and to authorize others to use, for state or political subdivision purposes:
 - The copyright in the works developed under contract, and
 - Any rights of copyright to which respondent purchases ownership with funding from the contract
 Respondent may publish, at its own expense, the results of contract performance with prior TSU review and approval of that publication. Any publication (written, visual, or sound) must include acknowledgment of the support received from TSU. Respondent must provide one copy of any such publication to TSU. TSU reserves the right to require additional copies before or after the initial review. Respondent must provide copies free of charge to TSU.
9. **BIDDER ASSIGNMENTS:** Bidder hereby assigns to the TSU any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. §1, *et seq.*, and the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code §15.01, *et seq.* Respondent hereby assigns to the Agency all of Respondent's rights, title and interest in and to all claims and causes of action Respondent may have under the antitrust laws of Texas or the United States for overcharges associated with the contract. Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Agency. Any attempted assignment in violation of this Section is void and without effect.
10. **BIDDER AFFIRMATIONS:** Signing this bid with a false statement is a material breach of contract and shall void the submitted bid and any resulting contracts, and the bidder shall be removed from all bid lists. By signature hereon affixed, the bidder hereby certifies that:
 - 10.01. The bidder has not given, proposed to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid. Violation of this requirement may result in the termination of the contract at TSU's discretion.
 - 10.02. Pursuant to 15 U.S.C. §1, *et seq.* and Tex. Bus. & Comm. Code §15.01, *et seq.* neither the bidder nor the Respondent, corporation, partnership, or institution represented by the bidder, or anyone acting for such a Respondent, 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. Respondent also represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has violated any provision of the Texas Free Enterprise and Antitrust Act, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, nor communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Respondent.
 - 10.03. Pursuant to §2155.004, Gov't Code, neither the bidder nor any person or entity which will participate financially in any contract resulting from this RFP received compensation for participation in the preparation of the specifications for this RFP.
 - 10.04. Pursuant to §231.006(d), Texas Family Code, regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate.
 - 10.05. Under §2155.004, Gov't Code, the bidder certifies that the individual or business entity named in this bid or any contract resulting from this solicitation is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.
 - 10.06. **TAXES CERTIFICATION:** As required by §2252.903, Gov't Code, bidder agrees that any payments due under a contract resulting from this RFP shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. Bidder shall comply with rules adopted by TSU under §§403.055, 403.0551, 2252.903, Gov't Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas. Respondent, by submitting its Offer, certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. If respondent is a qualifying business entity type per Texas Comptroller of Public Accounts guidelines and is not set up in the Texas Franchise Tax system, respondent must do so prior to contracting with the State of Texas.
 - 10.07. Pursuant to §669.003, Gov't Code, TSU may not enter into a contract with a person who employs a current or former executive head of TSU until four years has passed since that person was the executive head of TSU. By submitting a bid, the bidder certifies that it does not employ any person who was the executive head of TSU in the past four years. If bidder does employ a person who was the executive head of TSU, provide the following Offer:
 Name of Former Executive: _____
 Name of State Agency: _____
 Date of Separation from State Agency: _____
 Position with Bidder: _____
 Date of Employment with Bidder: _____
 - 10.08. In accordance with §2155.4441, Gov't Code, bidder agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

- 10.09. TSU is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents / vendors with the Federal General Services Administration's System of Award Management (SAM), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Bidder certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that bidder is in compliance with the State of Texas statutes and rules relating to procurement and that bidder is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>
- 10.10. Sections 2155.006 and 2261.053, Gov't Code, prohibit state agencies from awarding contracts to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005. Under §2155.006, Gov't Code, bidder certifies that the individual or business entity named in its bid is not ineligible to receive a contract and acknowledges that any contract resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
- 10.11. **PROHIBITION ON LOBBYING:** Respondent must comply with the provisions of a federal law known generally as the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq. By submitting a Offer, respondent certifies that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. 1352. It also certifies that respondent will disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.
- 10.12. Bidder represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to TSU under the RFP and any resulting contract; if any, and that bidder's provision of the requested items under the RFP and any resulting contract, if any, would not reasonably create an appearance of impropriety. The disclosure shall begin at the initial request for bids until the completed delivery of goods/services or until expiration of contract.
- 10.13. Respondent waives any claim against and releases TSU, its officers, employees, agents, and attorneys from liability with respect to disclosure of information provided under or in this contract or otherwise created, assembled, maintained, or held by respondent and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.
- 10.14. Respondent will promptly notify TSU in the event that any representations and warranties provided in the contract/solicitation are no longer true and correct. Respondent acknowledges that all of its representatives are warranties contained in any part of its Offer and this contract are material and have been relied upon by TSU in selecting the respondent for the award of the contract. Further, the respondent warrants and represents that all of the statements and representations made to TSU prior to being awarded the contract; and those made during the negotiation of this contract, are material, true and correct.
- 11. NOTE TO BIDDER:** If bidder takes any exceptions to any provisions of the solicitation, these exceptions must be specifically and clearly identified by section in bidder's bid in Offer to the solicitation and bidder's proposed alternative must also be provided in the bid. Bidders cannot take a 'blanket exception' to the entire RFP. If any bidder takes a 'blanket exception' to the entire RFP or does not provide proposed alternative language, the bidder's bid may be disqualified from further consideration.
- 12. PROTEST PROCEDURES:** Any actual or prospective bidder who is aggrieved in connection with this solicitation, evaluation, or award of any contract resulting from this solicitation may formally protest as provided in the TAC rules at 34 TAC Rule 20.384.
- 13. DISPUTE RESOLUTION:** The dispute resolution process provided for in Chapter 2260, Gov't Code must be used by TSU and the bidder to attempt to resolve any dispute arising under any contract resulting from this RFP.
- 14. NON-APPROPRIATION OF FUNDS:** Any contract resulting from this RFP is subject to termination or cancellation, without penalty to TSU, either in whole or in part, subject to the availability of state funds. TSU is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TSU becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TSU's or bidder's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TSU will not be liable to bidder for any damages, which are caused or associated with such termination, or cancellation and TSU will not be required to give prior notice.
- 15. TEXAS PUBLIC OFFER ACT:** Notwithstanding any provisions of this SOLICITATION to the contrary, bidder understands that TSU will comply with the Texas Public Offer Act (Chapter 552, Gov't Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Offer, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Offer Act. Within three (3) days of receipt, bidder will refer to TSU any third party requests, received directly by bidder, for Offer to which bidder has access as a result of or in the course of performance under any contract resulting from this solicitation. Any part of the solicitation Offer that is of a confidential or proprietary nature must be clearly and prominently marked as such by the bidder.
- 16. CONFLICT OF INTEREST:** Under §2155.003, Gov't Code, a TSU employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and bidders who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of TSU or purchasers of other state agencies.
- 17. FORCE MAJEURE:** Neither bidder nor TSU shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this solicitation caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.
- 18. INDEPENDENT CONTRACTOR:** Bidder is and shall remain an independent contractor in relationship to TSU. TSU shall not be responsible for withholding taxes from payments made under any contract resulting from this solicitation. Bidder shall have no claim against

TSU for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. Respondent acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Respondent and its personnel are not employees of the Agency or the State of Texas.

- 19. INDEMNIFICATION:** RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS AGENCY AND THE STATE OF TEXAS AGAINST CLAIMS OF PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHTS, VIOLATIONS, MISAPPROPRIATION OR INFRINGEMENT ARISING FROM AGENCY'S OR RESPONDENT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO AGENCY BY RESPONDENT OR OTHERWISE TO WHICH AGENCY HAS ACCESS AS A RESULT OF RESPONDENT'S PERFORMANCE UNDER THE CONTRACT, PROVIDED THAT AGENCY WILL NOTIFY RESPONDENT OF THE CLAIM WITHIN A REASONABLE TIME OF AGENCY'S RECEIVING NOTICE OF ANY SUCH CLAIM. IF RESPONDENT IS NOTIFIED OF ANY CLAIM SUBJECT TO THIS SECTION, RESPONDENT SHALL NOTIFY AGENCY OF THAT CLAIM WITHIN FIVE (5) BUSINESS DAYS OF SUCH NOTICE. RESPONDENT WILL MAKE NO SETTLEMENT OF ANY SUCH CLAIM WITHOUT AGENCY'S PRIOR WRITTEN APPROVAL. RESPONDENT WILL REIMBURSE AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF RESPONDENT OR IF AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND RESPONDENT WILL PAY ALL REASONABLE COSTS OF AGENCY'S COUNSEL.
- 20. RIGHT TO AUDIT:** In addition to and without limitation on the other audit provisions of this solicitation, pursuant to §2262.003, Texas Government Code, the state auditor may conduct an audit or investigation of the bidder or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the bidder or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative audit committee, the bidder or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any Offer the state auditor considers relevant to the investigation or audit. This solicitation or any contract resulting from this solicitation may be amended unilaterally by TSU to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.003, Texas Government Code. Bidder will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the bidder and the requirement to cooperate is included in any subcontract it awards. Respondent will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Respondent pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Agency and the State of Texas
- 21. ANTI-BOYCOTT ISRAEL VERIFICATION:** Pursuant to Section 2270.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.
- 22. ENVIRONMENTAL PROTECTION:** Respondent must comply with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. v7401 etseq.) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq.).
- 23. CERTIFICATION CONCERNING DEADLINGS WITH PUBLIC SERVANTS:** Respondent, by submitting its Offer, certifies that is has not given and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this transaction.
- 24. CERTIFICATION CONCERNING FINANCIAL PARTICIPATION:** Under Texas Govt Code 2155.004, respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the contract.
- 25. CERTIFICATION CONCERNING HURRICANE RELIEF:** A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that include proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Texas Govt Code 2261.053 respondent certifies that the individual or business entity named in this Offer or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Under Texas Govt Code 2155.006 respondent certifies that the individual or business entity named in this Offer or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 26. CERTIFICATION CONCERNING RESTRICTED EMPLOYMENT FOR FORMER STATE OFFICERS OR EMPLOYEES UNDER TEXAS GOVT CODE 572.069:** Respondent certifies that it has not employed and will not employ a former TSU or state officer who participated in a procurement of contract negotiation for TSU involving respondent within two years after the state officer or

employee left state agency employment or service. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

27. **AMERICAN'S WITH DISABILITIES ACT:** Respondent represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.
28. **BINDING EFFECT:** The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.
29. **DAMAGE TO GOVERNMENT PROPERTY:** Respondent shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Respondent shall notify the Agency in writing of any such damage within one (1) calendar day. Respondent is responsible for the removal of all debris resulting from work performed under the contract.
30. **DISCLOSURE OF INTERESTED PARTIES:** Respondent represents and warrants that if selected for award of a contract as a result of the Solicitation, Respondent will submit to Agency a Certificate of Interested Parties prior to contract award in accordance with Section 2252.908 of the Texas Government Code.
31. **DISCOUNTS:** If Respondent at any time during the term of the contract provides a discount on the final contract costs, Respondent will notify Agency in writing ten (10) calendar days prior to effective date of discount. Agency will generate a Purchase Order Change Notice and send a revised Purchase Order to Respondent.
32. **DRUG-FREE WORKPLACE:** Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 *et seq.*) and maintain a drug-free work environment.
33. **ELECTRICAL ITEMS:** All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
34. **FEDERAL OCCUPATIONAL SAFETY AND HEALTH LAW:** Respondent represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).
35. **GOVERNING LAW AND VENUE:** The contract shall be governed by and construed in accordance with the laws of the State of Texas, exclusive of conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Harris County, Texas.
36. **LEGAL AND REGULATORY ACTIONS:** Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., ending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. In addition, Respondent represents and warrants that it shall notify Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.
37. **IMMIGRATION:** Respondent represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.* and all subsequent immigration laws and amendments).
38. **LIMITATION ON AUTHORITY:** Respondent shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expenses, or liability of any kind on behalf of Agency or the State of Texas. The failure of a Party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.
39. **LOBBYING PROHIBITION:** Respondent represents and warrants that Agency's payments to Respondent and Respondent's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.
40. **MEDIA RELEASES:** Respondent shall not use Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without Agency's prior written approval. Agency does not endorse any vendor, commodity, or service. Respondent is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response or the services to which they relate without Agency's prior written consent, and then only in accordance with explicit written instructions from Agency.
41. **NO FELONY CRIMINAL CONVICTIONS:** Respondent represents that neither Respondent nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, has been convicted of a felony criminal offense or that if such a conviction has occurred Respondent has fully advised Agency of the facts and circumstances surrounding the convictions.
42. **NO QUANTITY GUARANTEES:** Agency makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract.
43. **NO THIRD-PARTY BENEFICIARIES:** The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise. Nothing contained in the contract, either

expressed or implied, is intended to confer on any person other than the Parties, or their respective permitted successors, assigns, transferees or delegates, any interests, rights, remedies, obligations or liabilities pursuant to, or by reason of, this contract.

- 44. PERMITS, CERTIFICATIONS AND LICENSES:** Respondent represents and warrants that it has determined what licenses, certifications and permits are required under the contract and has acquired all applicable licenses, certifications, and permits.
- 45. PROPERTY RIGHTS:** For purposes of the contract, the term “Work” is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the contract. Agency and Respondent intend this agreement to be a contract for the services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Respondent to be a work made for hire. Respondent and Respondent’s employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of Agency. Respondent acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of Agency. If for any reason the Work would not be considered a work-for-hire under applicable law, Respondent does hereby sell, assign, and transfer to Agency, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Respondent agrees to execute all papers and to perform such other property rights, as Agency may deem necessary to secure for Agency or its designee the rights herein assigned. In the event that Respondent has any rights in and to the Work that cannot be assigned to Agency, Respondent hereby grants to Agency an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon Agency’s request, Respondent shall deliver to Agency all completed, or partially completed, Work and any and all documentation or other products and results of the services. Failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of the contract. Respondent will not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of Agency.
- 46. REFUND:** Respondent will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by Agency which are not expressly authorized under the contract.
- 47. SECURE ERASURE OF HARD DISK CAPABILITY:** All equipment provided to Agency by Respondent that is equipped with hard disk drives (*i.e.*, computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment’s useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § 202.
- 48. SEVERABILITY:** If any provision of the contract is construed to be illegal, invalid or unenforceable, such construction will not affect the legality, validity or enforceability of any of its other provisions. It is the intent and agreement of the parties to this contract that that this contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this contract will continue in full force and effect.
- 49. SOVEREIGN IMMUNITY:** Nothing in the contract shall be construed as a waiver of the Agency’s or the State’s sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the Agency or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to Agency or the State of Texas under the contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Agency does not waive any privileges, rights, defenses, or immunities available to Agency by entering into the contract or by its conduct prior to or subsequent to entering into the contract.
- 50. SURVIVAL:** Expiration or termination of the contract for any reason does not release Respondent from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding indemnification and rights and remedies upon termination.
- 51. UNFAIR BUSINESS PRACTICES:** Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Respondent has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.
- 52. USE OF STATE PROPERTY:** Respondent is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, Agency’s office space, identification badges, Agency information technology equipment and networks (*e.g.*, laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Agency-issued software, and the Agency Virtual Private Network (VPN client)), and any other resources of Agency. Respondent shall not remove State Property from the continental United States. In addition, Respondent may not use any computing device to access Agency’s network or e-mail while outside of the continental United States. Respondent shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of

Respondent, Respondent shall be responsible for (i) all repair and replacement charges incurred by Agency that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Respondent's use of State Property that exceeds the contract scope. Respondent shall fully reimburse such charges to Agency within ten (10) calendar days of Respondent's receipt of Agency's notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to Agency under contract, at law, or in equity.

- 53. COMPUTER EQUIPMENT RECYCLING PROGRAM:** If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules, 30 TAC Chapter 328.
- 54. DISASTER RECOVERY:** In accordance with 13 TAC § 6.94(a)(9), Respondent shall provide to Agency the descriptions of its business continuity and disaster recovery plans.
- 55. DISCLOSURE OF PRIOR STATE EMPLOYMENT:** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by Agency or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Respondent has disclosed in its Response the following: (i) the nature of the previous employment with Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
- 56. E-VERIFY PROGRAM:** Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of: (1) all persons employed by Respondent to perform duties within Texas; and (2) all persons, including subcontractors, assigned by Respondent to perform work pursuant the contract within the United States of America.
- 57. EXECUTIVE HEAD OF A STATE AGENCY AFFIRMATION:** Under Section 669.003 of the Texas Government Code, relating to contracting with an executive head of a state agency, Respondent represents that no person who served as an executive of Agency, in the past four (4) years, was involved with or has any interest in the contract. If Respondent employs or has used the services of a former executive of Agency, then Respondent shall provide the following information in the Response: name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Respondent, and the date of employment with Respondent.
- 58. FALSE STATEMENTS:** Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true and accurate. Submitting the Response with a false statement is a material breach of contract and may void the submitted Response and any resulting contract.
- 59. FOREIGN TERRORIST ORGANIZATIONS:** Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code.
- 60. SIGNATURE AUTHORITY:** By submitting the Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract which may result from the submission of this Response.
- 61. TECHNOLOGY ACCESS CLAUSE:** Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Respondent represents and warrants to Agency that the technology provided to Agency for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
- providing equivalent access for effective use by both visual and non-visual means;
 - representing information, including prompts used for interactive communications, in formats intended for non-visual use; and
 - being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.
- For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.
- 62. TELEVISION EQUIPMENT RECYCLING PROGRAM:** If Respondent is submitting a Response for the purchase or lease of television equipment then, Respondent certifies that it is in compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.