



**STATE OF TEXAS
OFFICE OF THE GOVERNOR
TEXAS ECONOMIC DEVELOPMENT & TOURISM OFFICE**

REQUEST FOR PROPOSALS

for

**TOURISM PUBLIC RELATIONS & MARKETING SERVICES IN THE
UNITED MEXICAN STATES SERVICE REGION**

Solicitation No. 301-26-06599

NIGP CLASS ITEMS

915-03	915-22	961-28	961-53

Response Date and Due Time: July 01, 2026 No later than 2:00 pm CT

Point of Contact

Michael White, CTCD, CTCM
CTCD/CTCM 1900023968
Procurement and Contracts Specialist
Office of the Governor of Texas
Financial Services Division
P.O. Box 12428
Austin, TX 78711-2878
512-463-0394
michael.white@gov.texas.gov

PART A: SPECIFIC TERMS AND CONDITIONS

1. STRUCTURE OF SOLICITATION

- 1.1. This Solicitation is composed of three parts:**
Part A: Specific Terms and Conditions, including exhibits and other attachments and appendices, if any;
Part B: Standard Terms and Conditions; and
Part C: Provisions Governing the Solicitation Process.
- 1.2. Resolution of Conflicting Provisions.** In the event an instruction or term in Part A conflicts with an instruction or term in Part B or Part C, the instruction or term in Part A prevails. Any addenda or amendment to Part A, Part B, or Part C control over their original versions, respectively.

2. GLOSSARY OF TERMS

This Glossary assigns definitions to the listed terms. The definition given to a term listed in this Glossary applies whenever the term appears in any Part of or Exhibit to this Solicitation and in any response to this Solicitation.

2.1. Advertising Value Equivalency

Value of earned media if media had been purchased in an advertising buy or the equivalent advertising value of earned media.

2.2. Convention and Visitors Bureau (“CVB”)

A local organization supported by hotel 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.

2.3. Cooperative Marketing

Marketing or promotional activity in which Travel Texas and one or more other Texas Partners pool resources to provide effective and attractive marketing and promotional opportunities that enhance and extend awareness of the Texas vacation message.

2.4. Destination Marketing Organization (“DMO”)

A state, provincial or regional tourism office, CVB, chamber of commerce, or similar entity that promotes a city, region, or state as a travel destination.

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2.5. Feature Brief

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

2.6. Media

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

2.7. 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 travel experiences to encourage and generate positive Media coverage about travel to Texas and may involve the use of a Motor Coach. Media FAM Tours can last up to seven calendar days and usually, but not always, include travel to multiple Texas cities. Media FAM Tours may be individual or group tours.

2.8. 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 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.

2.9. Monthly Service Fee

The firm fixed monthly fee that will be charged by the Contractor to fully compensate the Contractor and, if applicable, supporting subcontractors, for the costs of all of the Contractor’s in-house services, 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, and blog posts; development and use of specialized Media and Travel Trade contacts, regularly scheduled client meetings, and 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

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Relations and Marketing Plan and required monthly and quarterly reporting; facilities; and equipment necessary to meet 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 Reimbursables.

2.10. News Release

A one- or two-page printed or electronic document (with or without photographs and captions) or videos describing aspects of 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, or satellite broadcast. A News Release may also be referred to as a Press Release.

2.11. Performance Period

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

2.12. Plan of Action

The comprehensive, annual plan to be proposed by the Contractor, 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 Markets consistent with the requirements of the Solicitation, including the goals and objectives identified in Section 5 of Part A of the Solicitation. Subject to 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.

2.13. Public Relations and Marketing Plan

The Plan of Action, approved by the OOG, that is to be implemented and maintained by the Contractor.

2.14. Proactive Contact

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

2.15. Product Launch

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

2.16. Promotions

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

2.17. Reimbursables

Purchases made and expenses incurred by the Contractor on behalf of the OOG for services, goods, local travel associated with coordinating 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 Reimbursables must be pre-approved in writing by the OOG.

2.18. Sales Mission

A concentrated marketing effort consisting of special events, one-on-one sales contacts, and other promotional activities undertaken by the Contractor's account team, OOG representatives, and Texas Partners with 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.

2.19. Suppliers

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

2.20. Target Market(s)

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The primary market for this solicitation is the United Mexican States (Mexico), with additional secondary markets to be identified and designated as needed.

2.21. Texas Partners

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

2.22. Travel Texas

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

2.23. Travel Trade

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

2.24. 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, accommodations, 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 or expand travel packages to Texas. Travel Trade FAM Tours usually last between four and seven calendar days and usually include multiple Texas cities. Travel Trade FAM Tours may be individual or group tours.

3. GENERAL INFORMATION

3.1. Purpose of Procurement.

The Texas Economic Development and Tourism Office within the Office of the Governor (“OOG”) seeks written proposals from qualified Respondents in accordance with the specifications contained in this Solicitation for Tourism Public Relations and Marketing Services in the Target Markets.

Respondents must demonstrate the ability to provide the Deliverables specified in this Solicitation and shall fully understand the Travel Texas program, organization, mission, and targeted audience. Respondents are encouraged to review the information located at <https://travel.texas.gov> and <https://www.traveltexas.com>. Respondents are invited to submit written proposals for a

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comprehensive, innovative, and strategic tourism public relations and marketing campaign that fully integrates consumer Travel Trade and Media activities. The campaign shall create a responsible, accurate, and positive image of Texas, while effectively marketing and promoting the state as a premier travel destination in the Target Markets. The Contractor will implement, oversee, and measure all activities within the Target Markets.

3.2. 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. The OOG has been delegated authority to contract for these Deliverables by the Texas Comptroller's Statewide Procurement Division under Texas Government Code, Section 2155.131.

3.3. Term of Contract

3.3.1. Primary Term

The primary term of any Contract awarded as the result of this Solicitation shall commence on date of last signature ("Effective Date"), and shall terminate on August 31, 2027, 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."

3.3.2. Renewal Term

The OOG shall have the right to renew the term of the Contract for up to three additional twelve month periods through August 31, 2030 with consideration to Contractor performance. The OOG shall provide the Contractor with written notice of its intention to renew the term of the Contract in writing at least thirty days prior to the Contract termination date.

3.3.3. 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 a period of six months if the OOG determines that an extension is necessary to facilitate a transition 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 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.

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- 3.4. Office of the Governor’s Point of Contact Information.** The mailing address of the OOG for all notices is:

Michael White, CTCD, CTCM
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Office of the Governor of Texas
Financial Services Division
P.O. Box 12428
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512-463-0394
michael.white@gov.texas.gov

- 3.5. Captions and Headings**

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

4. OVERVIEW

4.1. Economic Impact of Tourism

Tourism benefits Texans. Travel and tourism continue to be some of the largest industries in the state; for example, in 2024, total direct travel spending was \$97.5 billion and travel expenditures generated a projected \$9.2 billion in state and local taxes. Moreover, travel and tourism supported 1.3 million jobs and \$79.7 billion in earnings.

4.2. Mission

It is the Mission of Travel Texas 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 and creating revenue and jobs.

4.3. Program Organization

Travel Texas is organized into three interrelated functional areas: Travel Research and Development, 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 and Development program provides data and information that identifies key consumer travel patterns and trends that drive EDT’s tourism marketing activities, determining overall marketing strategies and key messages, advertising content and placement, selection of

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markets, and the development and evaluation of advertising and marketing programs. The Travel Research and Development section also directs important tourism development outreach services, including the Tourism Friendly Texas Certified Community program, 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 Travel Texas' 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, Travel Texas 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. EDT also uses the "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 program also manages the Travel Texas 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 program 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 and multiple Travel Texas activities to encourage in-state

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travel by Texans to the state's scenic, historical, cultural, natural, agricultural, educational, recreational, and other attractions.

The Public Relations and Marketing program includes Cooperative Marketing opportunities that enable the state's travel industry Suppliers to jointly market their destinations and products with the state in the Travel Texas 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.

4.4. 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 used domestically and internationally, where it applies, 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 as 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 through 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 is 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.

4.5. Current Marketing Plan

A copy of the Travel Texas current tourism marketing plan can be obtained at www.travel.texas.gov. The plan includes briefings on each of the primary Target Markets and identifies key target audiences.

4.6. Travel Research Information

The Travel Texas travel research reports and information can be obtained at www.travel.texas.gov.

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5. STATEMENT OF WORK – SERVICE REQUIREMENTS

5.1. Deliverables

Deliverables shall include but are not limited to the requirements contained in this Solicitation. Deliverables set forth that contain the words “must” or “shall” are mandatory and must be provided as specified with no alteration, modification, or exception. Deliverables set forth that contain the words “may” or “can” allow Respondents to offer alternatives to the manner in which the Deliverables are provided.

5.2. Public Relations and Marketing Requirements

Travel Texas strives to use the most innovative, creative, and cost-effective marketing and public relations programs to raise awareness of Texas as a premier travel destination. The scope of work for Deliverables sought by Travel Texas in the Target Markets includes a primary focus on public relations and marketing strategies targeting consumers, Media, and Travel Trade. The Contractor must have the following goals while providing public relations and marketing services for Travel Texas to raise awareness of Texas as a premier travel destination:

- 5.2.1.** Generate maximum positive press coverage of the Travel Texas product while
- 5.2.2.** Expanding perceptions of the diverse travel experiences Texas offers visitors;
- 5.2.3.** Develop and implement a robust social media strategy that successfully promotes the Travel Texas product;
- 5.2.4.** Conduct high-profile integrated consumer promotions;
- 5.2.5.** Lead efforts in promoting and marketing Texas as a premier travel destination to Travel Trade as directed;
- 5.2.6.** Create effective cooperative public relations and marketing programs that provide for maximum partner participation; and
- 5.2.7.** Generate measurable results from public relations and marketing efforts.

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

- 5.2.8.** Leading industry standard measures for traditional and digital media activities and
- 5.2.9.** Placements including, but not limited to, Advertising Value Equivalency;
- 5.2.10.** Leading industry standard measures for results of social media strategy and

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activities;

- 5.2.11. Creative integrated consumer promotions which incorporate Media, Travel Trade, and other appropriate partners to generate maximum consumer awareness of the Travel Texas product;
- 5.2.12. Successful completion of agreed upon marketing activities; and
- 5.2.13. Generating and maintaining Texas travel packages in Target Markets.

5.3. Public Relations and Marketing Initiatives

To meet the Travel Texas tourism Mission, as described in Section 4 of this Solicitation, and to fulfill the Public Relations and Marketing Requirements, as further described in this Section, the OOG is seeking an agency that is capable of providing the following Deliverables:

5.3.1. Media Relations

5.3.1.1. Conducting 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.

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

5.3.1.3. Concentrating public relations activities during key travel planning seasons that provide the greatest potential to enhance the effectiveness and extend the reach of Travel Texas's planned advertising activities.

5.3.1.4. Engaging in Media relations activities including, but not limited to:

- a. Proactive Media outreach and pitching;
- b. Organizing, planning, executing and attending:
 - 1. Media FAM Tours;
 - 2. Media Missions;
 - 3. Media and public relations events;
 - 4. Media appointments;
 - 5. press conferences; and
 - 6. interviews and presentations;
- c. 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 Travel Texas upon request;
- d. Preparing and distributing regular Press Releases and Media pitches to generate Media impressions in both traditional and non-traditional Media outlets;

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- e. Responding to Media and influencer inquiries;
- f. Assembling and fulfilling traditional and electronic press kits as needed and developing, maintaining, and fulfilling an evergreen press kit;
- g. Producing, storing, and fulfilling of collateral and promotional materials;
- h. Translating materials as needed;
- i. Clippings and media monitoring services; and
- j. Contracting necessary venues, transportations, and other similar goods or services to accomplish the activities listed above.

5.3.1.5. Monitoring editorial calendars of Target Market outlets for travel story opportunities and create an annual editorial calendar for Travel Texas. Proactively pitching story ideas to Media in Target Market via phone, email, or in-person meetings.

5.3.1.6. Identifying and recommending travel influencers and executing agreements with said influencers to spread awareness of the Travel Texas product and experiences via social media channels.

5.3.2. Social Media. The Contractor shall develop and implement a strategic plan for Travel Texas social media efforts to reach the Target Markets. Social media content calendars shall be delivered at a cadence agreed upon by Travel Texas. 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 shall reflect leading industry standard measurements for all social media activity.

5.3.3. Consumer Promotions. The Contractor shall 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.

5.4. 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 Travel Texas and proposed by the Contractor, including Advertising Value Equivalency, 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.

5.5. Travel Trade Relations

The Contractor must propose strategies and lead efforts, with the assistance of Travel Texas, to promote and market Texas as a premier travel destination to key Travel Trade industry representatives as directed.

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Travel Trade activities include, but are 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.

5.6. 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 Markets.

5.7. Creative Services

The Contractor shall be responsible for coordinating the production of presentation, promotional, and collateral materials, including but not limited to: Press Releases, 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.

5.8. Plan of Action

On or before the first day of July 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 Deliverables 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 shall be conducted and provided in order to determine the most effective, innovative, 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 that demonstrate the success of the Plan of Action in meeting or exceeding the objectives outlined in Section 5 of Part A of this Solicitation.

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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 Travel Texas prior to implementation, at which point it becomes the Public Relations and Marketing Plan for the Fiscal Year as further described in Section 5.9 of Part A of this Solicitation.

A Plan of Action submitted to Travel Texas during the Contract Term becomes property of the OOG. Travel Texas approval of the Contractor's Plan of Action is not a guarantee the Contract Term set forth in Section 3.3 of this Solicitation will be extended to encompass the fiscal year for which the Plan of Action was developed.

5.9. Public Relations and Marketing Plan

Upon Travel Texas' 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. To the extent the OOG extends the Contract Term set forth in Section 3.3 of Part A of this Solicitation to encompass the fiscal year for which the Plan of Action was developed, 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 Travel 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.

5.10. Coordination of Efforts

When appropriate, and as required by the OOG, the Contractor shall coordinate activities with other of Travel Texas 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 Deliverables provided under the Contract.

5.11. Crisis Management

The Contractor shall provide ongoing crisis management in relation to the services the Contractor provides. Services shall include, but are not limited to, the identification and monitoring of domestic and international crisis situations that may impact 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 counsel and service shall facilitate the ability of the Travel Texas to promptly cancel or modify existing marketing promotions in response to a domestic or international crisis situation. The Contractor shall coordinate such efforts with Travel Texas and other of the OOG's vendors as necessary (e.g., advertising, public relations and marketing, or research).

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5.12. Timelines

Travel Texas 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 Travel Texas in a timely manner to allow for editing and approval of the materials before established deadlines. Travel Texas, in its sole discretion, shall determine whether required services and deliverables were timely submitted.

5.13. Required Reports and Status Calls

The Contractor's account team, in coordination with the Travel Texas designated representative, must compile, maintain, and provide certain required reports to, and participate in status calls with Travel Texas. 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 Travel Texas solely through portal access to the Contractor's information systems or project management applications. Reports must be provided in Microsoft Word, Microsoft Power Point, Microsoft Excel, or other formats approved by the OOG. Reports may be, but are not required to be, delivered electronically to Travel Texas, such as via email, USB flash drive, or through a State of Texas secure file transfer. These reports and status calls shall include:

5.13.1. Regularly-Scheduled Status Calls. The Contractor will be required to participate in regularly-scheduled status calls and provide a written summary status report in electronic form for each such call relating to Works in progress at the time of the particular Regularly-Scheduled call, and, if available and requested by Travel Texas, physical copies of such Works in draft or final form.

5.13.2. Monthly Reports. The Contractor must deliver to Travel Texas no later than the 15th Business Day of each month a report that includes the following:

5.13.2.1. Response Tracking Report. A log sheet that records all monthly Media placements generated during the prior month and provides measurements agreed upon by Travel Texas 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 the article/program. Copies of all Media generated listed on the log sheet shall be included with the report;

5.13.2.2. 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, 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

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produced shall be included with the report; and

5.13.2.3. Accounting Report. A monthly accounting of the prior month's expenditures, including the Monthly Service Fee and the amount of all Reimbursables 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.

5.13.3. Quarterly Report. The Contractor must deliver to Travel Texas no later than 30 calendar days following the close of each quarter a report of the Contractor's work and activities during that quarter. The quarterly report shall include:

5.13.3.1. Log of Proactive Media Contacts. A log sheet of all quarterly and annual proactive Media contacts made during the prior quarter;

5.13.3.2. Response Tracking Report. A log sheet which records all quarterly and annual Media placements generated during the prior quarter, including all required Media clippings specified in Section 5.3.1.4(i) of Part A of this Solicitation;

5.13.3.3. Subcontracting Report. A report of all subcontracts awarded during the quarter, including a listing of each subcontract made with a HUB (including certification number) 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;

5.13.3.4. Performance Update. A report, including all relevant figures, on the Contractor's progress during the prior 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. the number of consumers reached via promotions generated by the Contractor;
- d. the number of proactive and reactive Media contacts, including resulting Media placements, impressions, or Media FAM tours generated; and
- e. the number of completed Travel Trade activities assisted including, but not limited to, Travel Trade shows, missions and FAM tours.

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5.13.3.5. 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, including any necessary plan revisions, and a copy of the revised plan, if applicable; and

5.13.3.6. Contractor's Evaluations and Recommendations. The Contractor's evaluation on all Deliverables 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.

5.13.4. 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 Deliverables, including, but not limited to, a review of all activities, major accomplishments, performance summaries (including all performance measures), and industry awards received.

5.14. 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 5.13 and 5.14 of Part A of this Solicitation 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 may provide the Contractor 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:

5.14.1. 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 Contractor;

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- 5.14.2.** 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 Part B of this Solicitation 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.

has the option and 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 15 calendar days following receipt of written notice of the amount due. The Contractor has the burden of proof that the delay or other failure is attributable to someone or something other than the Contractor.

The Contractor must meet the reporting requirements specified in Sections 5.13 and 5.14 of Part A of the Solicitation on the dates specified in those Sections. The reporting requirements specified in Sections 5.13 and 5.14 of Part A of the Solicitation 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 Regularly Scheduled, Monthly, Quarterly, or Annual Report is due but is not provided.

5.15. Contractor’s Relationship to Travel Texas and the OOG

Travel Texas within the OOG is a part of the executive branch of Texas state government and does not relinquish control over decisions related to the Deliverables specified in Part A of this Solicitation to the Contractor. Rather, the Contractor shall provide all Deliverables under the Contract with OOG’s prior approval.¹

5.16. Contracted Account Staff

The Contractor must 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 Travel Texas account in the Target Markets. 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 Travel Texas’ 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 Travel Texas tourism account. Key account team members must be proficient in the Spanish and English languages and

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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 DMO accounts, and in working on accounts similar in nature and budget size to Travel Texas account, unless otherwise agreed to by Travel Texas. Travel Texas reserves the right to approve and accept key personnel, including the Account Manager. The Contractor must notify Travel Texas in writing if key personnel cannot continue on the account, and Travel Texas must approve replacement personnel.

5.17. Assumption of Existing Contracts, Subcontracts, and Programs

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

5.18. Physical Offices

The Contractor shall maintain a fully operational physical office located within the primary Target Market. 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 Travel Texas account. Unless otherwise agreed to by Travel Texas, key members of the Contractor's Travel Texas account staff, as further described in Section 5.16 of Part A of this Solicitation, shall be located at, and provide day-to-day operations from, the Contractor's office.

5.19. Research

Appropriate market research and planning shall 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 Travel Texas and shall incorporate such research into campaign strategies. Travel Texas' travel research reports are available at <https://travel.texas.gov/>.

5.20. Pre-Contract Account Familiarization and Transition

The Contractor shall work cooperatively with Travel Texas and other vendors of Travel Texas 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.

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5.21. End of Contract Transition

Upon any termination of the Contract, beginning at a time determined solely by the OOG, the OOG may require the Contractor to provide all necessary Deliverables to ensure account transition, account familiarization, and transfer of work to any new vendor of the OOG. The OOG may, in its sole discretion, maintain concurrent contracts for a limited period in order to facilitate this transition.

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6.1. Maximum Contract Amount

The OOG’s maximum liability to the Contractor, 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 Solicitation, shall not exceed **THREE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$300,000.00)** (“Maximum Contract Amount”) for the initial Performance Period beginning Effective Date. The Contractor will not be compensated for Deliverables provided before the Effective Date of the Contract. The Contractor shall have no entitlement to payment of the Maximum Contract Amount.

7. TIMELINE FOR SOLICITATION

7.1. Calendar of Events

Time is of the essence in the providing the Deliverables required by the Contract. Travel Texas may require the Contractor to provide Deliverables according to a date-sensitive schedule.

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.gov/esbd>.

Event	Date
Solicitation Posting Date	May 22, 2026
Deadline for Respondent Submission of Questions	June 01, 2026
The OOG’s Response to Questions Posted on the ESBD	June 08, 2026
Deadline for Respondent HSP Courtesy Review Request	June 12, 2026
OOG Provides HSP Courtesy Review	June 17, 2026
Deadline for Respondent Submission of Response	July 01, 2026
Anticipated Start Date	September 01, 2026

PART A: SPECIFIC TERMS AND CONDITIONS

8. EVALUATION SCORING CRITERIA

8.1. Weighted Evaluation Scoring Criteria. The OOG will evaluate Responses using the following weighted scoring criteria, subject to overall best value considerations as authorized by law. The evaluation process and criteria are further described in-depth in Part C of the Solicitation.

<u>Criteria</u>	<u>Weight</u>
<u>Phase I</u>	
Company Information and Financial Responsibility	5%
Experience, Qualifications, and References	15%
Response Content and Responsiveness	20%
Proposed Solution	40%
Compensation Sought	20%
Total	100%
<u>Phase II</u>	
Strategy and Planning	40%
Creative Presentation	45%
Oral Presentation	15%
Total	100%
<u>Phase III</u>	
Best and Final Offer (BAFO)	100%

8.2. Phase I Criteria Detail – Evaluation of Written Proposals

8.2.1. Evaluation of Company Information. All proposals will be evaluated based on company information and Financial Responsibility (as provided in Tab 3 of Part C of the Solicitation), including a review of the Respondent’s demonstrated financial capacity to carry out its Plan of Action.

8.2.2. 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 Markets as required by Travel Texas (as provided in Tabs 4, 5, and 6 of Part C of the Solicitation). 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 2.6 of Part C of the Solicitation, and each Respondent’s resources and capability to provide the required Deliverables.

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- 8.2.3. Evaluation of Proposal Content and Responsiveness.** Responsive proposals will be evaluated based on their quality and response to the specifications in Part A of the Solicitation. This includes, but is not limited to, the comprehensiveness of the proposal and the extent to which the proposal addresses the Service Requirements specified in Part 5 of Part A of the Solicitation.
- 8.2.4. 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 (as provided in Tab 7 of Part C of this Solicitation) in meeting the Service Requirements specified in Section 5 of Part A of this Solicitation and the financial and time feasibility of the Plan of Action.
- 8.2.5. 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 (as provided in Tab 9 of Part C of this Solicitation). The OOG will more favorably consider those proposals that offer best value to the State of Texas for the Monthly Service Fee.

8.3. Phase II Process

Based on the requirements set forth in Section 2.3.2 of Part C and criteria detailed in Sections 8.1 of Part A of this Solicitation, the OOG may determine which Respondents, if any, will be invited to make oral presentations. Unless the OOG determines no Phase II evaluation is required and it will immediately commence Phase III evaluations, Respondents that are not invited to participate in Phase II evaluations will not be given further consideration in the evaluation process.

Respondents invited to make Phase II presentations shall present their strategy to meet the Service Requirements to the evaluation team in Austin, Texas or via videoconference. The purpose of the oral presentation is for the selected Respondents 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 Target Markets.

Each Respondent will present its Plan of Action and recommendations at the Respondent's scheduled presentation time or the Respondent's proposal will be disqualified.

Presentations will be limited to 1.5 hours, followed by a 30-minute opportunity for questions and answers. Attendees of the presentation will be limited to the evaluation team and the Respondent making the presentation.

If requested to present in Austin, Texas, members of the Respondent's proposed

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account team must be physically present during the presentation and must remain available to answer questions from the evaluation team members. If requested to present via videoconference, members of the Respondent's proposed account team must all be available during a scheduled videoconference time. 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 videoconference and members of the evaluation team will score the presentation. The Respondents will be required to submit all presentation materials for review by evaluation team.

8.4. Phase II Criteria Detail

- 8.4.1. 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 5 of Part A of this Solicitation and the financial and time feasibility of the proposed Plan of Action.
- 8.4.2. 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.
- 8.4.3. 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.

8.5. Phase III – Discussions, Negotiations and BAFOs

The OOG will determine, in its sole discretion, if discussions, negotiations, and BAFOs are necessary, but the OOG may award a Contract without Phase II or Phase III evaluations, further 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

PART A: SPECIFIC TERMS AND CONDITIONS

will include specific instructions about the items each respective Respondent must address. After consideration of any clarifications, negotiations, or BAFOs, the OOG will evaluate any finalists and make a final recommendation for award.

9. PROPOSAL CONTENT REQUIREMENTS

9.1.1. Tab 7 of the Response: Solicitation Response

In addition to the requirements provided in Section 3.5.7 of Part C of the Solicitation, Respondents shall identify how they intend to meet the criteria in this RFP. Respondent shall base the Plan of Action on a twelve (12) month term beginning September 1, 2026, through August 31, 2027, and a proposed budget not to exceed the Maximum Contract Amount of \$300,000 for all Monthly Service Fees and Reimbursable(s) for the 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 (Tab 9) in this section.*

The Respondent shall state how its Response ensures that funds are spent efficiently and effectively, with reasonable attention and effort given to providing the required Deliverables and meets or exceeds the requirements of the Solicitation.

If applicable, Tab 7 of the Response must also include the following:

9.1.1.1. An indication of how the Response ensures that funds are spent efficiently and effectively, with reasonable attention and effort given to providing the Deliverables;

9.1.1.2. Specific goals for measurement of performance that demonstrate the success of Respondent's planning, implementation, and results achieved in meeting the objectives outlined in the Service Requirements of Part A of this Solicitation; and

9.1.1.3. A timeline indicating when each aspect of the Respondents plan is expected to be completed.

10. HUB SUBCONTRACTING

10.1. In addition to the information pertaining to HUBs in Part C of this Solicitation, the OOG has identified potential subcontracting opportunities under this Solicitation:

CLASS 915: COMMUNICATIONS AND MEDIA RELATED SERVICES

915-03: Advertising and Public Relations, Including Skywriting

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915-22: Communications Marketing Services

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

961-28: Economic Development, Domestic and Foreign

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

PART B: STANDARD TERMS AND CONDITIONS

1. INTRODUCTION

1.1. Introduction

Part B sets forth the standard definitions and 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 Solicitation. 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.

1.2. Contract Elements

1.2.1. Order of Precedence

The Contract will follow a general format specified by the OOG. The contents of this Solicitation, as modified by any published addenda and OOG responses to questions and answers issued in conjunction with the Solicitation as published on the ESBD, to the extent such addenda and responses were issued (the "Solicitation"); and the Contractor's Response, excluding any terms and conditions the Contractor may include in its Response and including any clarifications or BAFO, to the extent any clarifications or BAFOs are submitted, 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 conflicts or inconsistencies between the final executed Contract arise, this Solicitation, the Contractor's Response, 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 Solicitation;
- (3) the Contractor's Response, excluding any terms and conditions the Contractor may include in its Response, and any clarifications or BAFO, if any.

1.3. Parts Incorporated

All attachments or exhibits referenced in this Solicitation are incorporated into and expressly made a part of this Solicitation.

2. GLOSSARY

2.1. Account Manager

The individual who oversees and provides direction for and manages all activities under the Contract including, but not limited to, all activities and Deliverables provided under the Contract, including responsibility for the management, accounting for the entire Contract, billing, and reporting.

PART B: STANDARD TERMS AND CONDITIONS

2.2. Acceptable Quality Level

The level of quality of requested Deliverables, based entirely on the judgment of the OOG staff, below which the Contract will not be paid, and/or Contractor may be required to re-perform or provide reimbursement to the OOG.

2.3. Ad Hoc Deliverables

If applicable, deliverables requested and approved by the OOG that are in addition to required Deliverables conducted on an as-needed basis and provided in as-needed quantities. Such Deliverables are in addition to the Statement of Work specified in Part A of the Solicitation, but which fall within the scope of the Contract.

2.4. Addendum

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

2.5. 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>).

2.6. Contract

A contract awarded as a result of the Solicitation, and all exhibits thereto, as described in Section 1.2 of this Part.

2.7. Contractor

A Respondent that is awarded a Contract as a result of the Solicitation.

2.8. Contractor Project Manager

The individual who oversees and provides direction for and manages all activities under the Contract including, but not limited to, all activities and Deliverables provided under the Contract, including responsibility for the management, accounting for the entire Contract, billing, and reporting.

2.9. CPA

The Texas Comptroller of Public Accounts.

PART B: STANDARD TERMS AND CONDITIONS

2.10. Deliverable

A good, service, commodity, or other item sought by the OOG in the Solicitation and proposed to be provided by the Respondent in response to the Solicitation.

2.11. ESBD

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

2.12. Fiscal Year

The fiscal year is the period beginning September 1 and ending 12 months later on August 31.

2.13. Generally Accepted Accounting Principles (“GAAP”)

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

2.14. Historically Underutilized Business (“HUB”)

A business certified by the CPA that is a historically underutilized business as defined by Title 10, Subtitle D, Chapter 2161, Texas Government Code. For further explanation, see the CPA administrative rules at Title 34, Chapter 20, Subchapter D, Division 1, Texas Administrative Code, and <https://comptroller.texas.gov/purchasing/vendor/hub/>.

2.15. International Accounting Standards (“IAS”)

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

2.16. 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.

2.17. OOG

The Office of the Governor of Texas.

PART B: STANDARD TERMS AND CONDITIONS

2.18. OOG Project Manager

The OOG staff member responsible for day-to-day coordination with the Contractor.

2.19. Party/Parties

The OOG and/or the Contractor, separately or collectively.

2.20. Respondent

An entity submitting a response to the Solicitation.

2.21. Response

The final document submitted by a Respondent in response to the Solicitation that details the Deliverables, plans, goods, or services the Respondent can provide or that specifies the Respondent's qualifications and abilities.

2.22. Solicitation

The document and any Addenda or attachments issued by the OOG for the purpose of seeking Deliverables from a vendor through a competitive procurement method, including Invitations for Bids (IFB), Requests for Proposals (RFP), Requests for Offers (RFO), or Request for Qualifications (RFQ). The type of Solicitation at issue in this document is specified on the first page of Part A of the Solicitation.

2.23. 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, data, data compilations, and other collateral prepared, developed, supplied, commissioned, gathered, or generated by the Contractor in the performance of its obligations under the Contract, or provided by the OOG or any other person or entity to the Contractor in order that it may provide the Deliverables required under the Contract.

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3.1. Increase in the Maximum Contract Amount

The Contractor shall monitor all fees 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 calendar days advance notice to the OOG in the event that the cost of providing the Deliverables is anticipated to exceed the Maximum Contract Amount for the Performance Period. Any increases in the Contract amount for a given Performance Period as a result of any renewals or extensions shall

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require a written amendment to the Contract executed by the Parties that specifies the new Maximum Contract Amount for the Performance Period. The total of any and all such increases should not exceed 25% of the original amount determined for that Performance Period.

3.2. Costs

The Contractor shall not be paid for any mark-up, overhead costs, or other expenses.

3.3. Invoicing and Payment

3.3.1. Timely Invoices. All invoices for Deliverables 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 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.

3.3.2. Texas Identification Number Required. 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). 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 TIN System with the CPA.

3.3.3. Required Invoice Contents. 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 Deliverables provided under the Contract; (v) description of each Deliverable and the dollar amount attributable to each; and (vi) the name of the entity or individual to which each Deliverable is attributable. The OOG's receipt and acceptance of an acceptable invoice is required under this Section.

3.3.4. Itemized Invoicing Required. Unless otherwise specified, the Contractor shall submit itemized monthly invoices once every thirty calendar days for all Deliverables 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 or with the wire transfer instructions indicated in the Contract.

PART B: STANDARD TERMS AND CONDITIONS

- 3.3.5. Invoicing Contact Information.** Invoices and payment inquiries shall be submitted to:

ap@gov.texas.gov

or by mail to:

Office of the Governor
Accounts Payable
P.O. Box 12878
Austin, Texas 78711-2878

- 3.3.6. Review and Approval of Invoices.** Each invoice is subject to review and approval by the OOG before payment. The OOG will review invoices and notify the Contractor of any errors in its invoice in accordance with the timeframe specified in Chapter 2251, 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 calendar days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice.

- 3.3.7. Reimbursables.**

Unless specifically authorized in Part A of the Solicitation, the OOG will not reimburse any expenses.

If Reimbursables are authorized, they shall be limited as specified in Part A of the Solicitation. All Reimbursables incurred by the Contractor on the OOG's behalf, including those made by the Contractor's subcontractors, shall be billed at actual costs. The OOG will make payment only to the Contractor for such Reimbursables that OOG has pre-approved in writing. All purchases of Reimbursables 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 Deliverables 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, or require the Contractor 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.

PART B: STANDARD TERMS AND CONDITIONS

The Contractor's invoices for Reimbursables 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 Reimbursables 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 Reimbursables; and (iv) proper bid documentation, when applicable.

If the Contractor's actual costs for Reimbursables 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 amount indicated in the cost estimate approved by the OOG.

Only Deliverables that have been approved, completed, and received by the OOG during the invoice period may be invoiced, unless the OOG has provided prior written approval to authorize an advance payment to the Contractor for approved Reimbursables.

- 3.3.8. Billing Subject to Maximum Contract Amount; Prorating.** The Contractor shall bill subject to the Maximum Contract Amount set forth in the Contract, in accordance with its fee schedule for Deliverables. The OOG, subject to the Maximum Contract Amount set forth in the Contract, and in consideration of full and satisfactory performance of required Deliverables, will make payment to the Contractor for fees for Deliverables provided in accordance with the requirements of the Contract. Invoices for partial month's Deliverables shall be prorated and paid based upon a thirty calendar day work period/month.
- 3.3.9. Presumed Warranties Upon Submission of Invoices.** By submission of the invoices, the Contractor is warranting the following: (i) its invoices have been carefully reviewed to ensure that all invoiced Deliverables have been performed and provided in compliance with all terms of the Contract; (ii) the charges shown on the invoice are allowable costs that are reasonable and necessary, and where applicable, do not exceed the amounts provided for in the Contract; (iii) the amount of each new invoice added together with all previous invoices do not exceed the Maximum Contract Amount as referenced in the Contract; and (iv) all supporting documentation is attached.
- 3.3.10. Payment of Invoices.** Upon satisfactory provision by the Contractor of the Deliverables 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 Deliverables in accordance with the payment terms outlined in the Contract. The Contractor understands and agrees that determination of satisfactory completion is 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

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Contractor or any subcontractors for claims arising from the OOG's enforcement of the requirements of this Section.

3.4. 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 the Contract is subject to the actual receipt by the OOG of funds appropriated to the OOG or otherwise available from federal funding sources. The Contractor agrees that any funds 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, as well as any applicable conditions of federal funding. 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 applicable federal funding, or if the funds appropriated to the OOG or applicable federal funding 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.

3.5. Purchase of Services/Utilization

To the extent this Solicitation involves the purchase of Deliverables without a particular level, quantity, or utilization, the OOG does not guarantee the purchase of particular level, quantity, or utilization of any Deliverable during any Contract Term. All quantities of Deliverables will 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 Deliverable is provided until the Contractor receives such written notice from the OOG in accordance with the terms of the Contract.

4. OTHER TERMS AND CONDITIONS

4.1. Amendments

Except as stated herein, the Contract may be amended only upon written agreement signed by both Parties to the Contract. The Parties stipulate and agree that any other acts, oral statements, or representations by either Party, their agents or employees that purport to amend the Contract, including increasing the liability of the OOG or modifying the Statement of Work specified in Part A of the Solicitation, is voidable by the OOG, unless the Contract is amended in writing to increase the liability of the OOG or modify the Statement of Work specified in Part A of the Solicitation.

Notwithstanding the paragraph above, if any of the following circumstances arises, the OOG reserves the right to amend the Contract through execution of a unilateral amendment, which the OOG will provide to the Contractor: (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.

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4.2. 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 provided in the Contract. Any notice required or permitted to be given under the Contract may be given by regular first class mail 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 Part A of this Solicitation. 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.

4.3. No Assignment

No right or obligation under the 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. The OOG is required to notify the Legislative Budget Board of a proposed assignment at least fourteen 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.

4.4. Contract Issuance

The OOG shall issue an executed Contract, or amendment as applicable, as written notice for all Contract, Contract renewal or extensions, Contract modifications, including but not limited to modifications to scope, schedule and pricing, and authorizations for the purchase of services specified in the Statement of Work specified in Part A of this Solicitation. No authorization for the purchase of any services 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.

4.5. Delivery

All deliveries of the Deliverables contemplated in the Contract shall be made in accordance with the Scope of Work specified in Part A of this Contract. 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 Deliverables 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 reasons 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 services elsewhere and to charge to the defaulting Contractor the full amount of any increase in costs associated with

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procuring replacement Deliverables. Default in the Contractor's delivery may result in termination of the Contract for reason of default.

4.6. 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. The OOG will not pay for work that does not meet the Acceptable Quality Level or fails to fully comply with Contract requirements. Should the OOG determine, in its sole discretion, that the Contractor's work is not of Acceptable Quality Level or was not provided in a manner that complies with Contract requirements, the OOG may require the Contractor to promptly re-perform the work 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 Acceptable Quality Level. Failure to perform work in compliance with all Contract requirements may result in termination of the Contract for reason of default.

4.7. Accounting Systems

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

4.8. Contract Monitoring

The OOG will monitor the Contractor's performance as work is performed to ensure the work is compliant with the terms and conditions of the Contract. Monitoring activities may include, but are not limited to:

- 4.8.1.** Inspection prior to acceptance to ensure Contract compliance;
- 4.8.2.** Invoice review to ensure compliance with all applicable Contract terms and conditions;
- 4.8.3.** 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
- 4.8.4.** 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 the OOG's goals, review key Contract requirements and service documentation, review fiscal records, and observe operations with respect to the OOG's account.

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4.9. Audit, Access to Records, Records Retention

- 4.9.1. Inspections.** Throughout the Contract Term, all 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 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 or 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 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 Deliverables purchased under the Contract may result in revocation of acceptance of any service and may result in the Contractor being required to refund or offset related Contract payments.
- 4.9.2. 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 provided under the Contract or billed to the OOG. The Contractor will remedy within thirty calendar days 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.
- 4.9.3. Access to Records.** The OOG, through any of its 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 purposes of audit, review, inspection, copying, and audit. This right of access applies to 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.
- 4.9.4. 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 years from date of final payment by the

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OOG for the services provided under the Contract; or (ii) seven 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.

- 4.9.5. State Auditor.** In addition to, and without limitation on other audit provisions of the Contract, pursuant to Section 2262.154, 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.

4.10. 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.

4.11. Change of Name or 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, conditions, or obligations of the Contract are thereby changed. The Contractor shall not assign the Contract pursuant to this Section.

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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 Deliverables.

If any Deliverables are not provided in accordance with the applicable Statement of Work approved by the OOG, the Contractor will remedy, in a timely manner, any such errors, oversights, deficiencies, Contract noncompliance, or audit exceptions. A “timely manner” is not longer than thirty calendar days, although this time period may be reduced in the OOG’s sole discretion depending on the circumstances. Such remedies 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 and 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. Default, Remedies, and Opportunity to Cure

4.13.1. 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 and specify the time period by which the Contractor must cure the possible default.

4.13.2. Remedies in the Event of Possible 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 the OOG determines are necessary to remedy the possible default, including, but not limited to:

4.13.2.1. Requiring the Contractor to cure the possible default within a reasonable time period specified by the OOG and to provide the OOG with sufficient information that supports a finding of cure by the OOG;

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

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

4.13.2.4. Suspending or limiting the receipt of any Deliverables and placing conditions on any such suspensions or limitations;

4.13.2.5. Requiring the removal of any employee of the Contractor or any subcontractor from providing Deliverables under the Contract; and

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4.13.2.6. Imposing special conditions on the Contractor to ensure strict compliance with Contract terms, including, but not limited to, the imposition of additional procedures to ensure the proper delivery of Deliverables or to support payments to the Contractor, or the suspension, abeyance, or removal of any contractual rights of the Contractor.

4.13.3. Cure

If the OOG is satisfied the Contractor has cured the possible default within the time period specified in the written notice provided by the OOG in accordance with Section 4.13.1, the OOG will provide 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.

4.13.4. Repeated Acts of Possible Default

If the Contractor commits more than two 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.

4.13.5. Default

If the OOG is not satisfied that the Contractor has cured a possible default within the time period specified by the OOG, or that the Contractor has committed repeated acts of possible default, as specified in Section 4.13.4, the Contractor shall be in default hereunder, and the OOG shall give written notice to the Contractor declaring such default.

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 terminate for cause.

4.14. Termination

4.14.1. 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.

4.14.2. Agreed Termination

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

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4.14.3. Cause or Default

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 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 calendar days, then the OOG may terminate all or any part of the Contract immediately without opportunity to cure. In either case, the OOG will notify the Contractor of the default. 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 the notification was sent.

4.14.4. Termination Relating to Statewide Procurement Division Award

The Contract may be terminated with thirty days' written notice by the OOG upon award by the Statewide Procurement Division of the Texas Comptroller of Public Accounts of a statewide contract for the same or similar good or service.

4.14.5. Rights Upon Termination or Expiration

4.14.5.1. Cessation of Work. Upon receipt of written notice to terminate or upon final expiration of the Contract, the Contractor shall immediately discontinue providing the specified Deliverables as of the effective date of termination or expiration, unless the OOG directs otherwise.

4.14.5.2. Liability for Payments. The OOG shall be liable for payment only to the portion of work authorized by the OOG in writing, completed prior to the effective date of termination or expiration, 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; or (iv) after the OOG rescinded its approval or acceptance.

4.14.5.3. Return and Ownership of Works and Materials. Subject to any 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 providing Deliverables under the Contract, whether completed or in process. Upon termination or expiration, the OOG may take over the Deliverables prescribed by the Contract and pursue the same to completion by contracting with another party or otherwise. All Works, including Deliverables, 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.

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4.14.5.4. 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 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.

4.15. Dispute Resolution

4.15.1. 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.

4.15.2. Dispute Resolution. If Chapter 2260 of the Texas Government Code is applicable, disputes arising under the contract shall be resolved in accordance with the dispute resolution process provided therein.

4.15.3. Continued Performance. The Contractor shall not be excused from performance during any pending dispute, unless approved in writing by the OOG.

4.16. Subcontractors

4.16.1. The Contractor, in subcontracting for the provision of any Deliverables, expressly understands and agrees that the OOG shall not be liable in any manner or at any time to the Contractor's subcontractors. In no event shall the OOG's approval of the 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 Deliverables provided under the Contract, and any subcontracts thereto, are rendered in compliance with all of the terms of the Contract.

4.16.2. In the event that the Contractor determines it is necessary or expedient to subcontract for any of the Deliverables provided for in the Contract at any time during a Performance Period, the following conditions will apply:

4.16.2.1. 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 Deliverables.

4.16.2.2. The Contractor may identify the OOG as the intended beneficiary of a subcontract, but the Contractor is not authorized to execute any contract directly obligating the OOG to the payment for Deliverables or otherwise identifying the OOG

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as a party to any subcontract.

4.16.2.3. 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 Deliverables provided under the Contract, and any subcontracts thereto, shall be rendered in compliance with all of the terms of the Contract.

4.16.2.4. The Contractor will be the sole point of contact for the OOG with respect to any performances to be provided by the subcontractor, and 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.

4.16.2.5. The Contractor shall be solely and exclusively responsible for any payments and other claims due to subcontractors for work performed under the 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 the Contract, including, but not limited to, any terms and conditions governing the payment of Reimbursables, if any. No mark-up will be allowed for any subcontract expenses.

4.16.2.6. 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 calendar days after the date the Contractor receives the payment. Upon request of the OOG, the Contractor shall promptly provide documentation in a form acceptable to the OOG to support confirmation of payments made by the Contractor to subcontractors. Any failure to promptly pay subcontractors as required by this Section may result in termination of the Contract for cause.

4.16.2.7. 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.

4.17. 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 by the OOG arising out of or in any way relating to the 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.

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The Contractor hereby irrevocably and unconditionally consents to the jurisdiction of the courts referenced above for the purpose of prosecuting and 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.

4.18. 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.

4.19. Independent Contractor

The Contractor shall provide the Deliverables 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.

4.20. 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, Texas Family Code, and acknowledges that the 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).

4.21. Financial Participation Prohibited

Under Section 2155.004, Texas Government Code, 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.

4.22. Buy Texas

To the extent reasonably applicable, the Contractor represents and warrants that it will buy Texas products and materials for use in providing the Deliverables 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, Texas Government Code.

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4.23. Dealings With Public Servants Affirmation

The Contractor affirms that it has not given, offered 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 Solicitation.

4.24. 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.

4.25. 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 jurisdictions applicable to the provision of the Deliverables required under the Contract, related to the Contractor's right to conduct its business during the Contract Term.

4.26. Debt to State

The Contractor acknowledges and agrees that, to the extent the Contractor owes or incurs any debt, child support, delinquent taxes, or other obligation 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.

4.27. 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 providing the requested Deliverables to the OOG under the Contract, and that the Contractor's provision of the requested Deliverables 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 1, Chapter 46, 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.

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4.28. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

The OOG will adhere to the directions provided in U.S. Presidential Executive Order 13224, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.

The Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the CPA and the System for Award Management (SAM) maintained by the General Services Administration. 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.

4.29. Prior Disaster Relief Contract Violation

The Contractor certifies that it has not, in the past five 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.

4.30. Disaster Recovery Plan

To the extent the Contractor maintains any of the OOG's vital state records, upon request from the OOG, the Contractor shall provide to the OOG the descriptions of its business continuity and disaster recovery plans.

4.31. Human Trafficking Prohibition

Under Section 2155.0061, Texas Government Code, the Contractor certifies that the individual or business entity named in the Response or 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.

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4.32. Former Executive Head, State Officer and Employees of the Agency

To the extent applicable, the Contractor certifies a Contract entered into as a result of this Solicitation will be compliant, and will remain in compliance during the Contract Term, with Sections 669.003 (Contracting with Executive Head of State Agency), 2252.901 (Contracts with Former or Retired Agency Employees) and 572.069 (Certain Employment for Former State Officers and Employees Restricted), Texas Government Code.

4.33. Terminated Contracts

By submitting a Response, 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 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.

4.34. 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, 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 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.

4.35. Antitrust and Assignment of Claims

Pursuant to 15 U.S.C. Section 1, *et seq.*, and Chapter 15, 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.

4.36. Entities that Boycott Israel

If the Contractor is required to make a certification pursuant to Section 2271.002, Texas Government Code, the Contractor certifies that the Contractor does not boycott Israel and will not

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boycott Israel during the term of the Contract. If the Contractor does not make that certification, the Contractor must state why the certification is not required. The term “boycott Israel” as used in this paragraph has the meaning assigned by Section 808.001, Texas Government Code.

4.37. 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 the Contractor, (i) is an entity listed by the Texas Comptroller of Public Accounts under Section 2252.153 or 2270.0201, Texas Government Code; (ii) constitutes a “scrutinized company” as defined by Section 2270.0001(9), Texas Government Code; or (iii) has contracts with, provides supplies or services to, or is otherwise engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, 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, Texas Government Code, respectively.

4.38. Critical Infrastructure

If the Contractor is required to access or control the state’s critical infrastructure as defined in Section 2275.0101 and 2275.0102, Texas Government Code, the Contractor certifies, pursuant to Section 2275.0102, Texas Government Code, neither it nor its parent company, nor any affiliate of the Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2275.0103, Texas Government Code, or (2) headquartered in any of those countries.

4.39. Foreign Adversary Check.

Contractor certifies that neither Contractor nor any of its holding companies or subsidiaries are: (1) listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); (2) listed in Section 1260H of the 2021 NDAA; (3) owned by the government of a country on the U.S. Department of Commerce’s foreign adversaries list under 15 C.F.R. § 791.4; or (4) controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce’s foreign adversaries list under 15 C.F.R. § 791.4.

4.40. Entities that Boycott Energy Companies

If the Contractor is required to make a certification pursuant to Section 2276.002, Texas Government Code, the Contractor certifies that the Contractor does not boycott energy companies and will not boycott energy companies during the term of the Contract. If the Contractor does not make that certification, the Contractor must explain why the certification is not required.

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4.41. Entities that Discriminate Against a Firearm Entity or Firearm Trade Association

If the Contractor is required to make a certification pursuant to Section 2274.002, Texas Government Code, the Contractor certifies that the Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the Contract against a firearm entity or firearm trade association. If the Contractor does not make that certification, the Contractor must indicate and explain why the certification is not required.

4.42. Vaccine Passport

To the extent applicable, the Contractor certifies that, pursuant to Section 161.0085, Texas Health and Safety Code, it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business in Texas. The Contractor acknowledges that such a vaccine or recovery requirement in Texas would make the Contractor ineligible for to enter into a contract payable with state funds.

4.43. 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.

4.44. 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 OOG, in its sole discretion, may terminate the Contract with no prior notification and with no fault to the OOG.

4.45. Felony Criminal Convictions

The Contractor represents and warrants that it and its employees providing Deliverables 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.

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4.46. 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), Texas Government Code, and described in Title 34, Chapter 20, Texas Administrative Code.

4.47. False Statements; Breach of Representations

By accepting 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.

4.48. 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.

4.49. Licenses, Permits

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.

4.50. 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.

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4.51. Americans with Disabilities Act

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

4.52. 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 requirements and duties 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, the OOG, or any other trustee program or other program associated with 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 Deliverables provided under the Contract.

4.53. Confidentiality

The Contractor agrees that all information, documents, and communications between the Contractor and the OOG (i) shall be treated as confidential; (ii) shall not be used or disclosed by the Contractor for any purpose other than providing the Deliverables within the scope of the Contract; and (iii) 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 or documents, or any communications between the Contractor and the OOG, to the detriment of the OOG or any officer or agency of the State of Texas.

4.54. Texas Public Information Act

The Contractor acknowledges that the State of Texas, the OOG, and the Contract are subject to the Texas Public Information Act (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

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assumes no responsibility for asserting legal arguments to the Office of the Attorney General of Texas on behalf of a Contractor.

The Contractor will notify the OOG within twenty-four 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 at no additional charge to the OOG or the State of Texas.

4.55. Contracting Information Responsibilities. If applicable, the Contractor represents and warrants that it will comply with the requirements of Section 552.372(a), Government Code. Except as provided by Section 552.374(c), Texas Government Code, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the Contract and the Contractor agrees that the Contract may be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

4.56. Information Security and Privacy

The Contractor must maintain and protect any information it receives, compiles, or creates as a result of the Contract in accordance with any applicable federal, state, or local laws and regulations. The Contractor agrees that all information, documents, and communications between the Contractor and the OOG (i) shall be treated as confidential; (ii) shall not be used or disclosed by the Contractor for any purpose other than providing the Deliverables within the scope of the Contract; and (iii) 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 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 Chapter 521, Texas Business and Commerce Code, 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.

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The Contractor shall endorse the OOG's requirements and adhere to the Information Technology Security Standards of the State of Texas and the OOG. 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 related to providing the Deliverables under the Contract to ensure all Contract obligations are being met and to manage and mitigate risk.

To the extent applicable, if the Contractor is authorized to access, transmit, use, or store data for the OOG, the Contractor must meet the security controls the OOG determines are proportionate with the OOG's risk under the Contract based on the sensitivity of the OOG's data. If the Contractor is providing cloud computing services to the OOG, pursuant to Section 2063.408, Texas Government Code, the Contractor must truthfully represent and warrant that it complies with the requirements of the state risk and authorization management program (TX-RAMP) and the Contractor agrees that throughout the term of the Contract it shall maintain its certifications and comply with TX-RAMP program requirements in the performance of the Contract. Upon request, the Contractor must provide to the OOG evidence that the Contractor meets required security controls and maintains a TX-RAMP certification.

4.57. Intellectual Property

4.57.1. Intellectual Property Licenses and Releases

If applicable, the Contractor shall be responsible for securing the Intellectual Property Rights for all Works 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.

4.57.2. Ownership

To the extent Deliverables constitute Works, 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

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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 the Contract, such as copyrights and trademarks, 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.

4.57.3. 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 Deliverables set forth herein or under the Contract, including the Intellectual Property Rights in those Deliverables, 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 Deliverables set forth herein or under the Contract, including after the expiration or termination of the Contract.

4.57.4. 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 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 documents in a form determined by the OOG. In the event the OOG is unable for any reason to obtain the Contractor’s signature on any document necessary for any purpose set forth in this provision, 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.

4.57.5. 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” means 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

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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.

4.57.6. 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.

4.57.7. Pre-Existing and Third-Party Rights

To the extent that any pre-existing rights or third-party rights or limitations are embodied, reserved or reflected in the Works, the Contractor shall either (i) 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 (ii) 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.

4.57.8. 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 confidential information belonging to the OOG, 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.

4.58. Bankruptcy

Contractor shall notify the OOG in writing within ten calendar days if the Contractor becomes 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, in its sole discretion, may terminate the Contract for cause.

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4.59. 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 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 calendar days, the OOG may terminate the Contract with no further notice to the Contractor.

4.60. 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.

4.61. Indemnification

4.61.1. Acts or Omissions

THE CONTRACTOR SHALL INDEMNIFY, DEFEND, 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 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.

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4.61.2. Infringements

THE CONTRACTOR SHALL INDEMNIFY, DEFEND, 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 BY THE OOG FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (II) ANY MODIFICATION BY THE OOG MADE TO THE PRODUCT WITHOUT THE CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO THE OOG'S SPECIFIC INSTRUCTIONS, OR (IV) 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.

4.61.3. Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

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

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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, DEFEND, 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.

4.62. 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 in writing of any such damage within one calendar day.

4.63. Compliance with Applicable Laws

The Contractor must comply with all applicable international, federal, state, and 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, Texas Penal Code, prohibiting bribery or coercion of public

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officials; (iii) Section 36.09, Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; and (iv) Section 2155.003, 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 required notices and comply with all laws and regulations applicable to furnishing and performance of the Contract. Except where otherwise expressly required by applicable laws and regulations, 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 the Contract immediately. In such event, the Contractor agrees and acknowledges that the Contractor shall lose any right to receive reimbursements, commissions, fees, or other compensation under the 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 the OOG in the form required by Solicitation Exhibit G (Certification of Contractor Compliance).

4.64. 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:

4.64.1. Workers Compensation 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.

4.64.2. 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
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

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- 4.64.3. Rating of Insurance Companies.** The coverage required by Section 4.62.2 must be with companies licensed in the State of Texas, with an “A” rating from A.M. Best, and authorized to provide the corresponding coverage.
- 4.64.4. Insurance of Subcontractor.** The Contractor is not required to cover the subcontractor or employees of subcontractors, but the Contractor must require its subcontractors to maintain the required coverage. To the extent 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 has no obligation to reimburse or otherwise pay the Contractor or its subcontractor for any costs incurred related to any such losses or damages.
- 4.64.5. Insurance Cancellation Without Notice Prohibited.** The Contractor represents and warrants that all policies, to the extent possible, shall contain endorsements prohibiting cancellation except upon at least thirty calendar days prior written notice to the OOG. The Contractor represents and warrants that it shall maintain the insurance coverage specified in this Section during the term of the Contract and shall provide the OOG with acceptable proof of insurance within seven calendar days after the OOG’s written request.

4.65. 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, Texas Administrative Code, when such products are available in the commercial marketplace or when such products are developed for the OOG. 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 the most current WCAG 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 or indicate that the product or service accessibility information is available from the General Services Administration “*Buy Accessible Wizard*,” accessible at <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/>.

4.66. Cybersecurity Training Program

To the extent the Contractor has access to any state computer system or database, the Contractor represents and warrants that it will comply with the requirements of Section 2063.104, Texas Government Code, relating to cybersecurity training and required verification of completion of the

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training program.

4.67. Vendor Performance

Pursuant to Section 2155.089, Texas Government Code, and Title 34, Section 21.115, Texas Administrative Code, 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/>.

4.68. 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.

4.69. 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.

4.70. Severability and Interpretation

If any provision of the Contract is held to be void or unenforceable, such construction 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.

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4.71. Entirety

The final executed 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 final executed Contract.

PART C.2: PROVISIONS GOVERNING THE SOLICITATION PROCESS

1. GENERAL RESPONSE PROCESS INFORMATION

1.1. Respondent Responsibility to Understand the Solicitation

The Respondent is solely responsible for thoroughly understanding the Solicitation and its attachments, exhibits, and forms. By submitting a Response to this Solicitation, the OOG has a right to assume that the Respondent fully understands the Solicitation specifications and will abide by all terms and conditions of the Solicitation. Respondents shall have no right to cancellation or relief without penalty from the Contract awarded as the result of this Solicitation, if any, based on any purported misunderstanding or lack of information.

1.2. Solicitation Addenda

Any revisions or additions to the information in the Solicitation will be made in the form of an Addendum and will be posted on the ESBD. Any Addenda so-issued are part of the specifications of the Solicitation. If a Respondent fails to monitor the ESBD for any revisions or additions to the Solicitation, such failure will not relieve the Respondent of its obligation to fulfill the requirements as posted.

1.3. 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 Solicitation.

The only exceptions to the Point of Contact identified in this Solicitation are the HUB Coordinator (Warren Collier), or, if expressly directed by the Point of Contact, another designated OOG representative, e.g., during contract negotiations, if any. Should Respondents have questions regarding proper completion of the HUB Subcontracting Plan, the HUB Coordinator may be contacted at Warren.Collier@gov.texas.gov with a copy to the Point of Contact listed in Part A of the Solicitation.

Any attempt to influence any of the participants, whether that attempt is oral or written, formal or informal, direct or indirect, outside of this Solicitation 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.

1.4. Respondents Questions

- 1.4.1. The OOG will accept written questions from Respondents concerning this Solicitation, and will post responses to the ESBD in accordance with the deadlines established in the Calendar of Events in Part A of this Solicitation (“Calendar of Events”).

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1.4.2. The Respondent must direct any questions concerning this Solicitation to the Point of Contact identified in Part A of this Solicitation. The OOG can, but is not required to, respond to Respondent inquiries that are received after the Deadline for Respondent Submission of Solicitation Questions.

1.4.3. Prior to submitting a Response, a Respondent shall identify in writing and seek clarification of any ambiguity, conflict, discrepancy, exclusionary specification, omission or error in this Solicitation (collectively, “errors”). In no event shall a Respondent be entitled to additional compensation, relief, or additional time for preparing its Response by reason of any alleged errors, Addenda, or corrections to the Solicitation. A Respondent submits a Response at its own risk; a Respondent’s failure to identify and seek written clarification of an error or possible error waives any claim the Respondent may have to contest the OOG’s interpretation thereof.

1.5. Obligation to Update Information Supporting Response

Following the submission of a Response and prior to signing 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 Response that might reasonably be expected to affect the OOG’s consideration of the Response. Nothing in this Section shall be interpreted to permit the unilateral modification by a Respondent of its commitment to provide any Deliverables described in its Response as submitted for the cost stated therein.

1.6. Multiple Responses Prohibited

Each Respondent may submit only one Response. If a Respondent submits more than one Response, the OOG may reject all Responses from that Respondent.

1.7. Ownership of Responses

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

1.8. Responses Subject to Disclosure under the Public Information Act

The OOG is subject to the Texas Public Information Act (the “Act”), Chapter 552, Texas Government Code. Accordingly, all Responses, offers and other information submitted by a

PART C.2: PROVISIONS GOVERNING THE SOLICITATION PROCESS

Respondent to the OOG are subject to disclosure under the Act. However, before release, a Respondent may have an opportunity to demonstrate that portions of its information are excepted from disclosure. Respondents may consult with their legal counsel concerning disclosure issues resulting from this procurement process in order 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 Response, that particular information should be clearly identified. The Respondent should specify the confidential information by marking "Confidential" on each page or by each paragraph containing such information prior to submitting the Response to the OOG. Respondents are further encouraged to identify the specific legal exception that applies to each item marked "Confidential." Vague and general claims of confidentiality, such as marking an entire Response as "Confidential" or "Copyrighted," are generally ineffective methods to demonstrate information is excepted from disclosure.

If a Respondent indicates all or some of its Response is not subject to disclosure, the OOG will notify the Respondent its information 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 Response. 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 any legal arguments on behalf of Respondents.

1.9. Rejection of Responses and Cancellation of Solicitation

Issuance of this Solicitation or receipt of Responses does not constitute a commitment on the part of the OOG to award a Contract. The OOG may accept or reject any or all Responses or cancel this Solicitation, re-issue a subsequent solicitation, or remedy technical errors in the Solicitation 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 is final.

1.10. Responses Not Binding on OOG

No terms or conditions attached to the Response by Respondent that are purported to be binding on the OOG are binding on the OOG in any manner. Inclusion of purportedly-binding terms and conditions may result in the Respondent's disqualification.

1.11. Costs Incurred

The Respondent is wholly and singly responsible for any expense related to the preparation and submission of its Response, which may include travel costs associated with an in-person presentation to the OOG in Austin, Texas. Costs of developing Responses, 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. If applicable, costs incurred by a Respondent in preparation for, or participation in, an oral presentation or site visit to the Respondent's place of business are also entirely the responsibility of the Respondent, and will not be reimbursed in any manner by the OOG.

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1.12. Response Tenure

A Respondent may, in a signed writing, withdraw its Response at any time prior to the date and time set for receipt of Responses. The OOG considers any Response submitted and not withdrawn prior to the date and time set for receipt of Responses to be a valid offer. All Responses shall be valid for a period of at least one hundred and eighty calendar days after the deadline for submitting Responses.

1.13. No Obligation of the OOG for Discussion of Responses with Respondents

The OOG reserves the right to select one or more qualified Respondents without providing any Respondent with an opportunity to present or discuss its Response.

1.14. The OOG's Right to Obtain Additional Information

By submitting a Response, 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 Deliverables, and to fulfill requirements under this Solicitation, and the past history, practices, conduct, ability and eligibility of any director, officer or key employee of Respondents. By submitting a Response, 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 Responses.

1.15. Changes, Modifications and Cancellation

The OOG reserves the right to make changes to or cancel this Solicitation 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 ESB.

It is the responsibility of the Respondent to check the ESB for any additional information regarding this Solicitation. If a Respondent fails to monitor the ESB for any changes or modifications to the Solicitation, such failure will not relieve the Respondent of its obligation to fulfill the requirements as posted.

2. RESPONSE EVALUATION PROCESS

2.1. Initial Screening of Responses

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

2.2. Evaluation Committee

The OOG will conduct a fair, comprehensive, and impartial evaluation of all Responses received in response to this Solicitation using an evaluation committee selected by the OOG's Financial

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Services Division. The evaluation committee may consist of employees of the OOG or outside individuals with relevant expertise. 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 advisory, non-voting members of the evaluation committee.

Each member of the evaluation committee will independently score each properly-submitted Response. Evaluation committee members may obtain and consider the opinions of other committee members or subject matter experts, including OOG staff, staff from other Texas agencies, and consultants retained by the OOG when evaluating and independently scoring particular portions of the Responses.

The evaluation committee may request clarification of information or representations in a Response before completing its 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 established in Part A of this Solicitation.

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

2.3. Evaluation Phases

2.3.1. Phase I: All Respondents

2.3.1.1. The OOG will evaluate all Responses based upon the Phase I Evaluation Criteria detailed in Part A of this Solicitation.

2.3.1.2. If the OOG determines, in its sole discretion, that no further evaluation of the submitted Responses is required, the OOG will choose one or more Respondents with which the OOG will commence Contract negotiations. But, if the OOG determines that further evaluation of the Responses is required, then the OOG may invite certain Respondents to participate in Phase II or, as specified in Part C.2 of this Solicitation, Phase III evaluations.

2.3.2. Phase II: Top-scoring Respondents from Phase I

2.3.2.3. If the OOG determines Phase II evaluations are necessary, then the OOG will review invited Respondents' proposed solutions, plans, or qualifications during a required oral presentation and score the presentations in accordance with the Phase II Evaluation Criteria detailed in Part A of this Solicitation.

2.3.2.4. Except as otherwise provided by this Section, only Respondents with up to the three highest total scores from the Phase I evaluation may be invited to participate in the Phase II evaluation. If two or more Respondents are tied for any of the top three highest-ranking positions, then all tied Respondents in that rank may be invited to

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proceed to Phase II in addition to the Respondents in the remaining top-ranked positions. If any of the Respondents in the top-ranking positions is not tied with any other Respondent and is disqualified or withdrawn from the evaluation process, then the next-highest scoring Respondent may be eligible for the Phase II evaluation. Any Respondent invited to participate in Phase II of the evaluation, must have received a minimum combined percentage score of 60% in the OOG's Phase I evaluation.

2.3.2.5. Respondents invited to make Phase II presentations shall present their strategy to meet the Service Requirements of Part A of this Solicitation to the evaluation team in-person at the OOG's offices or other suitable location in Austin, Texas, or via videoconference.

2.3.2.6. Each Respondent must present its Proposed Solution and recommendations at the Respondent's scheduled presentation time or the Respondent's Response will be disqualified.

2.3.2.7. Presentations are limited to 1.5 hours, followed by a 30 minute opportunity for questions and answers. Presentation attendees will be limited to the evaluation team and the staff of the Respondent making the presentation.

2.3.2.8. If requested to present in Austin, Texas, 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. If requested to present via videoconference, members of the Respondent's proposed account team must all be available during a scheduled videoconference time. Former OOG employees will NOT be permitted to participate in the presentations on behalf of any Respondent. Upon completion of each presentation, members of the evaluation team will score the presentation out of the presence of the Respondents. The Respondents will be required to submit all presentation materials for review by the evaluation team.

2.3.2.9. The OOG, in its sole discretion, may determine that the Phase III evaluation stage is not necessary and will choose one or more Respondents with which the OOG will commence Contract negotiations. If the OOG determines that further evaluation of the Responses is required, then the OOG will invite selected Respondents to participate in Phase III.

2.3.2.10. **The OOG, in its sole discretion, may opt to forego Phase II and proceed directly to inviting Respondents who would otherwise qualify for Phase II, as specified in this Section, to participate in Phase III.**

2.3.3. Phase III: Top-scoring Respondents From Prior Reviews

2.3.3.1. If the OOG determines that Phase III evaluations are required, then the OOG may invite selected Respondents to discuss and submit revisions to their Responses by submission of a Best and Final Offer ("BAFO"). The OOG, in its sole discretion, may limit the opportunity to provide a BAFO to one or more top-scoring Respondents.

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2.3.3.2. The OOG will notify all invited Respondents of the deadline by which the Respondents must submit their BAFOs to the OOG, including instructions on the specific details to be included in a BAFO.

2.3.3.3. The OOG will conduct Phase III evaluations based on the content of each BAFO. The OOG's written request for BAFOs will include specific instructions about the items each respective Respondent must address. After consideration of any clarifications, negotiations, or BAFOs, the OOG will evaluate any finalists and make a final recommendation for award.

2.3.3.4. After consideration of all BAFO responses, the OOG may choose one or more Respondents with which the OOG will commence final Contract negotiations.

2.4. Discussions and Negotiations

The OOG may determine, at any time and in its sole discretion, whether discussions, negotiations, or BAFOs are necessary, but a Contract 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 Responses and the OOG may request revisions to Responses through the BAFO process outlined in Section 2.3.3 of this Part.

2.5. Overall Best Value Considerations

In all cases, the OOG will 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 Sections 2155.074, 2155.075, and 2156.125, Texas Government Code, and as required by the CPA's Administrative Rules, Title 34, Sections 20.208 and 20.217, Texas Administrative Code, and the latest version of the CPA's State of Texas Procurement and Contract Management Guide.

Best value factors that may be considered by the evaluation committee in evaluating Responses may include: (i) the Respondent's price to provide the requested Deliverables; (ii) the probable quality and reliability of the offered Deliverables; (iii) the OOG's evaluation of the likelihood of the Response 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 Deliverables; and (vii) the OOG's evaluation of the likely financial capacity of the Respondent to perform the requested Deliverables.

2.6. Past Performance, Including Reference Checks

A Respondent's past performance will be measured based upon pass/fail criteria. Respondents may fail this selection criterion for any of the following conditions:

- A score of less than a C or Legacy Unsatisfactory in the Vendor Performance System,

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- Currently under a Corrective Action Plan through the CPA,
- Having repeated negative Vendor Performance Reports for the same reason,
- Having a record of repeated non-responsiveness to Vendor Performance issues, or
- Having purchase orders that have been cancelled in the previous 12 months for non-performance (late delivery, etc.).

Contractor performance information is located on the CPA website at: <https://www.comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>.

The OOG may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System, the OOG may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Such sources of vendor performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, the OOG may initiate such examinations of vendor performance based upon media reports. Any such investigations shall be at the sole discretion of the OOG, and any negative findings, as determined by the OOG, may result in non-award to the Respondent.

2.7. Site Visits

The OOG, in its sole discretion and election, reserves the right to conduct site visits to selected Respondents' places of business 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. The OOG may consider such visits when evaluating Responses.

Respondents will be notified in writing and will be provided with equal advance notification of site visits 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 Response. 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.

2.8. Response to the OOG's Requests for Information

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

2.9. Complete Responses Required

Each Respondent is required to propose a complete solution to fulfill the Solicitation requirements and must fully address how it will provide the Deliverables and meet other requirements described in the Solicitation.

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Any items not specifically requested but integral to the requested Deliverables shall be included in the Response and identified in the appropriate sections thereof. 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 Solicitation requirements.

The OOG is not required to consider incomplete or partial Responses.

2.10. Acceptance, Rejection, and Modification to Responses

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

2.11. Award

The OOG, in its sole discretion, may reject any or all Responses. The OOG may also take as much time as it deems necessary to properly evaluate Responses.

An award may be made to a Respondent who provides the best value to the OOG and the State of Texas based on information submitted with the Response and any BAFO. The OOG may award Contracts to multiple Respondents if the OOG determines multiple Contractors will provide the best value to the OOG. 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.

2.12. Protest Procedure

Any protest shall be governed in a manner consistent with Title 34, Section 20.535, Texas Administrative Code.

3. RESPONSE CONTENT REQUIREMENTS

3.1. Due Date of Responses

Each Respondent seeking consideration of its Response must submit its completed Response to the OOG at the location specified in Section 3.6 in this Part of the Solicitation by no later than 2:00 pm CT on the date specified in the Deadline for Respondent Submission of Responses in the Calendar of Events in Part A of this Solicitation. The OOG is not required to consider Responses received after the due date and time.

3.2. Purpose

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

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3.3. Responsive Information

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

3.4. Content of the Response

Each Respondent is solely responsible for its Response and all documentation submitted. Each Respondent is solely responsible for thoroughly understanding the Solicitation and its attachments, exhibits, and forms. Each Respondent must demonstrate its understanding of the Service Requirements of Part A of this Solicitation and all other aspects of this Solicitation, and must address specifically, in writing, its approach to providing each requirement of this Solicitation. Respondents are cautioned to pay particular attention to the clarity and completeness of their Responses and must demonstrate the qualifications, competence, and capacity of proposed staff to fulfill the requirements of the Solicitation.

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 Response may be considered by the OOG's evaluators. Additional information, if any, should be submitted in a separate binder. This separation of information will facilitate OOG's review of the requested material.

Any additional contractual terms and conditions attached to the Response will not be considered unless specifically referred to in this Solicitation. The OOG may disqualify the Response of a Respondent that includes any Contract terms the Respondent asserts are mandatory or that may require Contract negotiations.

3.5. Response Format and Organization

The Response shall include all information required in this Solicitation; failure to include all required information may result in the Response being deemed non-responsive or may result in a Contract not being awarded to the Respondent. The Response shall be in the format required and must be organized in the manner described in this Section.

Respondents should avoid cross-referencing other sections, and instead incorporate the relevant text of those sections to address required sections of Responses where possible.

3.5.1. Tab 1 of the Response: The Transmittal Letter and Respondent Information Form

Each Respondent must submit a Transmittal Letter that identifies the entity submitting the Response and includes a commitment by that entity to provide the Deliverables required by the OOG in the Solicitation. The Transmittal Letter must state that the Response is valid for at least 180 calendar days from the day after the deadline for submitting Responses. Any Response containing a term of validity of less than 180 calendar days may be rejected as non-responsive. The Transmittal Letter must be

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signed by a person legally authorized to bind the Respondent to the representations in the Response.

The Transmittal Letter must 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) for the purpose of the Respondent's qualification as a resident bidder, whether and to what extent the Respondent has established a physical presence in the State of Texas, including relevant timeframes; and (vi) name, title, address, telephone number, email address, and, if applicable, facsimile number of Respondent's primary contact and, if different, the individual with the authority to negotiate and execute the Contract, if awarded.

The Transmittal Letter must also include a statement of acceptance of the terms and conditions set forth in Parts A, B, and C.2 of the Solicitation, including any relevant Exhibits and appendices, as these terms and conditions will be incorporated without substantial changes into any awarded Contract.

If the Respondent takes exception to any of the proposed terms and conditions in the Solicitation, the Respondent must indicate its objections in the Transmittal Letter, and any exceptions must be noted separately in Tab 10 of the Response as indicated herein.

If any material that is included with Response 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 Response sections and pages so marked in accordance with the guidance provided under Section 1.8 of this Part of the Solicitation.

Tab 1 should also include completed and executed copies of Exhibit A (Execution of Response) and Exhibit B (Respondent Information Form) of Part A of this Solicitation.

3.5.2. Tab 2 of the Response: Executive Summary

Each Respondent shall provide an Executive Summary that thoroughly describes its understanding of the Solicitation's goals and objectives, its capacity to meet the OOG's requirements for the specified Deliverables, and a short narrative that provides a synopsis of the Respondent's approach to providing the specified Deliverables. The Executive Summary should represent a full and concise summary of the contents of the Response. Each Respondent's Executive Summary should also indicate why it believes it is the most qualified Respondent to provide the Deliverables requested in the Solicitation.

If a Respondent is proposing to provide deliverables beyond that which is specifically requested in the Solicitation, those deliverables must be identified in the Executive

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Summary. If a Response is offering deliverables that do not meet the specific requirements of this Solicitation, but in the opinion of the Respondent are equivalent to those specifically requested, any such differences must be noted in the Executive Summary. The Respondent is advised, however, that any Response that fails to offer Deliverables as specifically requested in the Solicitation may be deemed as non-responsive.

Maximum length: five pages.

3.5.3. Tab 3 of the Response: Financial Responsibility

Each Respondent must provide evidence, in United States dollars, of financial responsibility and stability for performance of a Contract and must demonstrate its ability to financially support providing the Deliverables 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 any awarded Contract.

3.5.3.1. Audited Financials or Bonds and Financial Guarantees. A Respondent should 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, its latest audited annual financial report showing its ability to finance the required Deliverables 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, its most recent audited Annual Financial report for both the Respondent and the parent corporation;
3. for a privately and solely-owned business where audited financial reports are not required, its unaudited financials;
4. if the Respondent is a joint venture or a group of affiliated companies, its most recent audited Annual Financial Report for each member or affiliate of such joint venture or group, as applicable;
5. if the Respondent does not have a most recent audited Annual Financial Report, acceptable evidence of financial responsibility, to include, but not limited to, the Respondent's most recent annual financial report, income statement, or current balance sheet reports that have been attested to by either an independent certified public accountant or a certified accounting firm; or
6. if a Respondent is unable to provide the evidence of financial responsibility required by this Section, a performance bond or financial guarantees or

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assurances that demonstrate its ability to financially support providing the Deliverables described in its submission. The OOG may disqualify a Response for failure to provide a performance bond or other financial guarantees or assurances.

3.5.3.2. Financial Rating. If requested by the OOG, the Respondent must submit a copy of at least one rating from organizations such as Dun & Bradstreet Business Information Report or Fitch Ratings. The report must include the Respondent's Viability Score and the Portfolio Comparison Score or similar ratings. Failure to submit copies of the required financial ratings will result in disqualification.

3.5.3.3. Additional Information. The OOG may require a Respondent to provide any additional information necessary to determine the financial responsibility and stability of the Respondent.

3.5.3.4. Notification of Substantial Changes. Each Respondent must notify the OOG of any substantial 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 a Contract, 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 is sufficient grounds for rejecting the Response or terminating a Contract with the Respondent. For the purposes of this Section, examples of a substantial change include, but are not limited to, merger, acquisition, insolvency, bankruptcy, or receivership.

3.5.4. Tab 4 of the Response: 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 length: six pages.

3.5.5. Tab 5 of the Response: Experience and Qualifications

Comparable Experience. Each Respondent shall provide a written description of its recent account history within the last five years for providing relevant Deliverables. Demonstrated experience shall include providing Deliverables similar in scope to those identified in the Solicitation. Experience may include work done for either public, private, or non-profit entities. The Respondent must have documented experience indicating its capability to complete activities described in its Response.

Maximum length: eight pages.

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Description of Resources. Each Respondent shall provide a detailed, written description of administrative, operational, and management structure of its organization. The Respondent must include resources it possesses—such as facilities, business equipment and accounting systems, internal auditing procedures, management and administration, legal services, and creative services—that it will supply as part of the fees detailed in its Cost Proposal. The Respondent shall also include the location, staff size, and specific resources of each office that will service the Contract. Each Respondent must also describe any of its strategic partnerships, alliances, or joint ventures, including the roles and extent of their respective participation. All participants of a strategic partnership, alliance, subcontract, or other joint venture proposal should be listed, including all personnel who will be used to provide Deliverables, and a primary contractor must be identified.

Maximum length: six pages.

3.5.6. Tab 6 of the Response: Organizational Chart & Account Staff

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

Staff Qualifications and Experience. The Contractor is expected to assign staff at appropriate levels to provide the Deliverables. This section shall name each individual who will be assigned to this engagement throughout the duration of any Contract awarded as a result of the Solicitation, including the Account Manager and other personnel. Provide a brief description of the relevant skills and experience, including years of experience, that qualify key personnel to provide the required Deliverables. 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. Information for all participants of a strategic partnership, alliance, or other joint venture 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. Responses should demonstrate a commitment to maintain staff competency for the Contract term.

Staffing Plan. Provide 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. If applicable, provide three 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 Deliverables that are similar to the activities required by this Solicitation. The references must include the name, organization, and telephone number of an individual who can comment on the ability of the individual to provide any required Deliverables.

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3.5.7. Tab 7 of the Response: Solicitation Response

The Respondent shall provide information on the following:

- (1) how Respondent's Response ensures that funds are spent efficiently and effectively, with reasonable attention and effort given to providing the required Deliverables and meets or exceeds the requirements of the Solicitation;
- (2) if applicable, specific goals for measurement of performance that demonstrate the success of Respondent's planning, implementation, and results achieved in meeting the objectives outlined in the Service Requirements of Part A of this Solicitation; and
- (3) a timeline indicating when each aspect of the Respondents plan is expected to be completed.

3.5.8. Tab 8 of the Response: Transition Plan

If applicable, this section should briefly describe any transition activities necessary for the Respondent to commence providing the Deliverables under any Contract awarded as a result of the Solicitation, including whether or not Respondent would be prepared to commence work immediately upon award, and if not, what steps or activities it must undertake prior to commencing work. The transition plan should assume that the Respondent will commence providing all required Deliverables by no later than the Contract's anticipated start date.

3.5.9. Tab 9 of the Response: Compensation

Each Respondent shall submit a Cost Proposal, completed in the form set forth in Exhibit E of Part A of this Solicitation, setting forth the Respondent's proposed fees for the Contract Term. **A Respondent shall not disclose its Cost Proposal or other cost information in the body of its written Response. Including cost information in the written Response may be cause for disqualification.**

The amounts stated in the Respondent's Cost Proposal shall be a firm fixed dollar amount for providing the Deliverables to fully-compensate the Contractor, and, if applicable, supporting subcontractors, for the costs of all Deliverables and administrative expenses required to complete work under the Contract. A detailed description of what is included in the Cost Proposal is required in the Response; the OOG may disqualify a Response that fails to provide a detailed description. The Cost Proposal shall also include costs of any proposed "Ad Hoc Deliverables" that are in addition to the Deliverables specifically outlined in the Service Requirements specified in Part A of this Solicitation but that fall within the scope of the required Deliverables and are recommended by the Contractor. Such Deliverables may be purchased at OOG's option, on an "as-needed" basis, in "as-needed" quantities, as determined by OOG in response to specific events or opportunities.

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No specific amount of compensation is guaranteed to a Respondent under any contract resulting from this Solicitation.

As noted in Section 3.5.7 of this Part of the Solicitation, 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 Responses that offer the best value to the OOG.

NOTE: The OOG is able to award the Contract without any negotiations. Each Respondent is encouraged to provide its best value in its Cost 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 solicitation process.

3.5.10. Tab 10 of the Response: Assumptions and Exceptions

Each Respondent shall clearly state any assumptions it made in its Response. Each Respondent shall also clearly identify any exceptions it takes to specific provisions of the Solicitation, including any proposed terms and conditions as set forth in the Solicitation, noting the specific Solicitation 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 a Respondent has no exceptions, it shall explicitly state that the Respondent takes no exception to any part of the Solicitation.

NOTE: Many of the terms and conditions identified in the Solicitation 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 Response being disqualified or a contract not being awarded to the Respondent.

The Respondent shall identify exceptions using the following format:

Section	Section Title	Exception	Proposed Language

3.5.11. Tab 11 of the Response: 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 of Part A of this Solicitation.

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3.5.12. Tab 12 of the Response: HUB Subcontracting Plan

Unless otherwise specified, Respondents are required to submit a HUB Subcontracting Plan (“HSP”) as part of its Response. The NIGP codes for HSP opportunities are identified in Part A of this Solicitation.

The HSP, once accepted by the OOG, will become a part of the Contract. The HSP shall be submitted in the format provided as Exhibit F of Part A of this Solicitation, 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 Solicitation, the Respondent must complete and submit an HSP with its Response.

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

The CPA’s current HUB regulations are available at: <https://comptroller.texas.gov/purchasing/docs/final-emergency-rule.pdf>.

Additional information is also available through the CPA’s website at: <https://comptroller.texas.gov/purchasing/vendor/hub/>.

To assist vendors in submitting a compliant HSP, the OOG will offer a courtesy review of the HSP.

A courtesy review of a Respondent’s completed HSP is optional and is available upon request to assist in providing a compliant and responsive HSP. This courtesy review may only identify possible deficiencies, but a final compliant determination cannot be provided until the Solicitation Response is submitted. **The OOG’s courtesy review is not legal advice and may not be relied upon as such.**

To request a courtesy review, submit a PDF of the completed HSP, including all supporting documentation, by e-mail to the Point of Contact identified in Part A of this Solicitation on or before the HSP Courtesy Review Request Deadline in the Calendar of Events. The email to the Point of Contact must include the following in its subject line: “HSP Courtesy Review, No. 301-26-06599.” The body of the email must include the due date from the Calendar of Events.

The OOG will not process an HSP courtesy review request received after deadline in the Calendar of Events. The OOG will provide a response regarding the HSP on or

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before the 10th business day before the Solicitation Response deadline in the Calendar of Events, allowing enough time to rectify any potential deficiencies for the final HSP submission. Notwithstanding whether a Respondent participates in the courtesy HSP review, the final HSP is to be submitted with the Solicitation Response by the deadline in the Calendar of Events. Solicitation Responses that do not include a completed HUB Subcontracting Plan may be rejected due to material failure to comply with Texas Government Code Section 2161.252(b).

For any inquiries relating to HUBs and the HSP, please direct inquiries to the Point of Contact identified in Part A of this Solicitation.

3.5.13. Tab 13 of the Response: Company References and Disclosure of Litigation

References: The Respondent shall include a minimum of three references from clients for whom similar Deliverables were provided in the last five years. **The Respondent shall not list any current OOG staff as a reference.** 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 Responses.

Disclosure of Litigation: The Respondent shall disclose and briefly describe any litigation in which it has been involved in within the last three years.

3.5.14. Tab 14 of the Response – Miscellaneous Exhibits

Each Respondent shall complete and include the following exhibits that are not otherwise included under another tab to its Response. A complete listing of all required exhibits is as follows:

Exhibits	
A	Execution of Response (with certification) [Tab 1]
B	Respondent Information Form [Tab 1]
C	Identification of Bidder Preferences [Tab 14, if applicable]
D	Conflict of Interest Disclosure Form [Tab 11]
E	Cost Proposal Fee Schedule [Tab 9]
F	HUB Subcontracting Plan [Tab 12]
G	FCPA Contractor Certification

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3.6. Submission of Responses

- 3.6.1.** Unless otherwise specified in writing by the OOG, Responses, including all hard copies, exhibits, attachments, electronic copies, and other supplemental or additional information a Respondent seeks to have considered as part of its Response 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 Part A of the Solicitation. The OOG is not required to consider Responses received after the due date and time, and any Response that is not complete upon submission may be disqualified.
- 3.6.2.** Each Response shall indicate it is a Response submitted in connection with the Solicitation number listed on the cover page of Part A and shall clearly state the due date and time.
- 3.6.3.** The Respondent must submit one original signed hard copy submission, three hard copies for the evaluation team, and one digital copy in a searchable PDF file format on a USB drive. The original, copies, and any digital copy must be received no later than the deadline established in the Calendar of Events in Part A of the Solicitation. If there is any disparity between the contents of the printed Response and the contents of the Response contained in electronic format, the contents of the printed Response shall take precedence.

UNLESS OTHERWISE SPECIFIED BY THE OOG, ELECTRONIC OR SOFT COPY SUBMISSIONS OF RESPONSES WILL NOT BE ACCEPTED IN LIEU OF THE SIGNED ORIGINAL AND HARD COPIES AS REQUIRED IN THIS SECTION.

RESPONSES WILL NOT BE ACCEPTED BY EMAIL.

The hard copy submissions must be bound in three-ring binders (or something comparable if three-ring binders are not available in your region). Responses must use a 12 point 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 Solicitation 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 or on a USB drive.

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3.6.4. The Response 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: Purchasing
P.O. Box 12878
Austin, Texas 78711-2878
Hours: 8:00 AM to 5:00 PM CT

By Overnight/Express Mail:

Office of the Governor
Financial Services Division
Attention: Purchasing
400 West 15th Street
Floor 12 Suite 12.408F
Austin, Texas 78701

By Hand Delivery:

Office of the Governor
Financial Services Division
Attention: Purchasing
400 West 15th Street
Floor 12, Suite 12.408F
Austin, Texas 78701
Hours: 8:00 AM to 5:00 PM CT