

**TEXAS SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED (TSBVI)
TERMS AND CONDITIONS**

**Items below apply to an issued purchase order.
("Contract" and "PO" are used interchangeably)**

1. PAYMENT:

-PAYMENTS: shall be made in accordance with Chapter 2251 of the TEX. GOV'T. CODE, commonly known as the Prompt Payment Act following satisfactory delivery and acceptance of products or services and TSBVI receipt of a properly submitted and completed invoice (read instructions on PO). Chapter 2251 of the TEX. GOV'T. CODE shall govern remittance or payment and remedies for late.

-WITHHOLDING/RECOUPMENT OF PAYMENTS: TSBVI may withhold or recoup payments due or paid under this Purchase Order/Contract, in whole or in part, in the event of Contractor's noncompliance with any term or provision of this Purchase Order/Contract, any Federal or state law or regulation, or any TSBVI rules or standards, including but not limited to requirements specifically stated in this Purchase Order/Contract, relating to Contractor's performance under this Purchase Order/Contract. If non-compliance results in TSBVI purchasing goods or services from another entity to remedy the non-compliance, TSBVI will deduct those costs from the Contractor's Payment.

-REFUNDS Contractor will promptly refund or credit within (30) calendar days any funds erroneously paid by TSBVI which are not expressly authorized under the contract.

-TAXES: Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. TSBVI will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. TSBVI shall not be liable for any taxes resulting from the contract.

2. ANTITRUST AFFIRMATION:

Contractor represents and warrants that, in accordance with Section 2155.005 of the TEX. GOV'T. CODE CODE, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, of the federal antitrust laws, or (2) communicated directly or indirectly the contents of the offer to any competitor or any other person engaged in the same line of business as Contractor. TEX GOVT CODE §2155.005

Contractor hereby assigns to TSBVI any and all claims for overcharges associated with this Contract arising under the antitrust laws of the United States 15 U.S.C.A.

§1, et seq., and the antitrust laws of the State of Texas, TEX. BUS. & COMM. CODE §15.01, et seq.

3. CONTRACTOR AFFIRMATIONS:

False Statement TEX. GOV'T. CODE CODE §2155.077 (a)

(2) Signing or accepting this Contract with a false statement is a material breach of contract and shall void this Contract, and Contractor shall be removed from all bid lists. Contractor, by its signature on or acceptance of this Contract, hereby certifies to TSBVI and affirms to TSBVI all of the following:

3.1 Dealings with Public Servants-

Contractor 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 this Contract. TEXAS GOV'T CODE §§572.051 (a)(1), 2155.003 and 34 TAC § 201.157 Violation of this requirement may result in termination of this Contract at TSBVI's discretion.

3.2 Contractor will promptly notify TSBVI in the event that any representations and warranties provided in this Contract are no longer true and correct, Contractor acknowledges that all of its representations and warranties contained in this Contract are material and have been relied upon by TSBVI in selecting Contractor for the award of this Contract. Further, Contractor warrants and represents that all of its statements and representations made to TSBVI prior to being awarded this Contract, and those made during the negotiation of this Contract, are material, true and correct.

3.3 **Child Support Obligation-**Under §231.006 of the Family Code (relating to child support), the contractor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. TEX FAMILY CODE §§ 231.006, 231.302

3.4 **Franchise Tax-** Contractor certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, TEXAS TAX CODE. If Contractor is a qualifying business entity type per Texas Comptroller of Public Accounts guidelines and is not set up in the Texas Franchise Tax System, Contractor must do so prior to contracting with TSBVI.

3.5 **Financial Participation Prohibited-** Under §2155.004 (b), TEX. GOV'T. CODE, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if that person

or entity received compensation for participating in preparing the solicitation or specifications for the contract.

3.6 Debts and Delinquencies-

Under §2252.903, TEX. GOV'T. CODE, Contractor agrees that any payments due under this contract shall be directly applied towards eliminating any debt or delinquency including it has to the State of Texas including, but not limited to delinquent taxes, delinquent student loan payments, and delinquent child support.

3.7 Executive Head of a State Agency- Under Section 669.003 of the TEX. GOV'T. CODE CODE, relating to contracting with an executive head of a state agency, Contractor represents that no person who served as an executive of TSBVI, in the past four (4) years, was involved with or has any interest in the contract. If Contractor employs or has used the services of a former executive of TSBVI, then Contractor shall provide the following information in the offer: name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Contractor, and the date of employment with Contractor.

3.8 Equal Employment Opportunity- Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

3.9 Buy Texas-In accordance with Section §2155.4441, of the TEX. GOV'T. CODE, the Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

3.10 Excluded Parties-

Contractor certifies that the entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in 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 Treasury, Office of Foreign Assets Control.

Entities ineligible for federal procurement are listed at <http://www.sam.gov>

3.11 Prior Disaster Relief Contract Violation- Under Sections 2155.006 and 2261.053 of the TEX. GOV'T CODE, the Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

3.12 Disclosure or Prior State Employment –In accordance with Section 254.033 of the TEX. GOV'T. CODE, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by TSBVI or another agency at any

time during the two years preceding the submission of the offer or, in the alternative, Contractor has disclosed in its offer the following: (i) the nature of the previous employment with the TSBVI or other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

3.13 Former Agency Employees- In accordance with Section 2252.901 of the TEX. GOV'T. CODE, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of TSBVI during the previous (12) month period immediately prior to the date of execution of the contract.

3.14 No Conflicts of Interest:

Contractor represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. TEX. GOV'T. CODE §§2252.908,2254.032,2261.252(b). Contractor represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in signing or accepting this Contract. Contractor also represents and warrants that entering into or accepting this Contract will not create the appearance of impropriety. Any existing or potential conflict of interest has been disclosed to TSBVI. This requirement to disclose any actual or potential conflict of interest will continue during the term of this Contract, and will survive until the end of the applicable record keeping requirements identified for this Contract. Contractor has disclosed or does not employ any personnel who are current or former officers or employees of TSBVI or who are related, within the third degree by consanguinity (as defined by §573.023, TEX. GOV'T. CODE) or within the second degree of affinity (as defined by §573.025, TEX. GOV'T. CODE), to any current or former officers or employees of TSBVI.

3.15 Lobbying Prohibition-

Contractor represents and warrants that payment to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by §556.005 or §556.008, TEX. GOV'T. CODE, relating to the prohibition of using state funds for lobbying activities.

3.16 Contractor certifies that to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting it, which if determined adversely to it will have a material adverse effect on its ability to fulfill its obligations under this Contract.

3.17 Computer Equipment Recycling Program-

To the extent applicable to the scope of this Contract, Contractor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328, 1TAC §217.10, Texas Health and Safety Code §361.96 (c).

3.18 Suspension and Debarment

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 Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. TEX. GOV'T. CODE § 2155.077.

4. DISPUTE RESOLUTION:

4.1 General

The dispute resolution process provided for in TEX. GOV'T. CODE § 2260.004 shall be used by the Contractor.

4.2 Engineering, Architectural, or Construction Services

Subject to TEX. GOV'T. CODE , Section 2260.002, the dispute resolution process provide for in Chapter 2260 of the Texas Govt. Code and set forth in section (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under this contract. Additional legal authority TEX.CIV.PRAC.& REM.CODE CH 144

5. EXCESS OBLIGATIONS PROHIBITED- NON-APPROPRIATION OF FUNDS:

This contract is subject to termination or cancellation, without penalty to TSBVI, either in whole or in part, subject to the availability of state or grant funds, GENERAL APPROPRIATIONS ACT, ART IX, SECTION 6.03 (2017-2018) BIENNUM. TSBVI is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TSBVI becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated or grant funds which would render either TSBVI' or Contractor's delivery or performance under this Contract impossible or unnecessary, the contract will be terminated or cancelled and deemed null and void. IN THE EVENT OF A TERMINATION OR CANCELLATION UNDER THOS Section, TSBVI will not be liable to Contractor for any damages that are caused or associated with such termination , or cancellation, and TSBVI will not be required to give prior notice

6. PUBLIC INFORMATION ACT:

6.1 Information documentation, and other material in connection with the offer or any resulting contract may be subject to public disclosure pursuant to Chapter 552 to the Tex. Gov't. Code (the "Public Information Act").

6.2 In accordance with Section 2252.907 to the TEX. GOV'T. CODE Contractor is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

6.3 Contractor waives any claim against and releases TSBVI, its officers, employees, agents, and attorneys from liability with respect to disclosure of information provided

under or in this Contract or otherwise created, assembled, maintained, or held by Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

7. STATE EMPLOYEE CONFLICT OF INTEREST:

Under §2155.003, TEX. GOV'T CODE, a TSBVI employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established with any opinions or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers.

8. FORCE MAJEURE:

Neither Contractor nor TSBVI shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

9. INDEPENDENT CONTRACTOR:

Contractor and its employees, representatives, agents, any subcontractor(s) and volunteers shall serve as an independent contractor in providing services under this Contract. Contractor and its employees, representatives, agents and any subcontractors shall not be employees of TSBVI. Should Contractor subcontract any of these services provided under this Contract, Contractor expressly understands and acknowledges that in entering into such subcontracts, TSBVI is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring the services rendered under all subcontracts are rendered in compliance with this Contract.

10. INDEMNIFICATION:

CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TSBVI, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTOR

S IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND TSBVI AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. TEXAS CONSTITUTION ART VIII § 6 AND TEX. GOV'T. CODE CODE § 2254.0031.

11. STATE AUDITORS RIGHT TO AUDIT:

In addition to and without limitation on the other audit provisions of this contract, pursuant to §2262.154, TEX. GOV'T. CODE, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by Contractor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Contract may be amended unilaterally by TSBVI to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.154, TEX. GOV'T. CODE. Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

12. ABANDONMENT OR DEFAULT:

If Contractor defaults on this contract, TSBVI reserves the right to cancel this contract without notice and either re-solicit or re-award this Contract to the next best responsive and responsible Contractor. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the agency based on the seriousness of the default.

13. ASSIGNMENT:

Contractor shall not assign its rights under the contract or delegate the performance of duties under the contract without prior written approval from TSBVI. Any attempted assignment in violation of this Section is void and without effect.

14. NOTICE:

Any written notices to the Contractor required under this Contract will be by email or hand delivery to Contractor's office address specified on Page 1 of this Contract or by U.S. Mail, certified, return receipt requested. Notice to TSBVI, shall be delivered to the Procurement Director. Notice will be effective on receipt by the affected party..

15. IMMIGRATION:

Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

16. LIMITATIONS:

The Parties are aware that there may be constitutional and statutory limitations on the authority of TSBVI (a state agency) to enter into certain terms and conditions of this contract, including, but not limited to, those terms and conditions relating to liens on the STATE's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on TSBVI except to the extent authorized by the laws and Constitution of the State of Texas.

17. DRUG-FREE WORKPLACE:

The Contractor must comply with the applicable provisions of the Drug-Free Work Place Act of 1988.

18. THIRD-PARTY CUSTODIANS OF STATE RECORDS/DISASTER RECOVERY:

As required by 13 TEX. ADMIN. CODE § 6.94(a)(9), TSBVI must require a third-party custodian of state records to provide TSBVI with descriptions of its business continuity and disaster recovery plans regarding how the custodian will protect TSBVI's vital state records. In its response, Contractor, UPON REQUEST, must submit descriptions of its business continuity and disaster recovery plans regarding how it will protect TSBVI's vital state records throughout the life of any Contract and for any record retention period required beyond the life of the Contract. If TSBVI awards a contract under this solicitation, Contractor must again submit these descriptions no later than ten days after contract award and annually until the required retention period ends (even if this is after the Contract expires or is terminated).

19. ENTITIES WHO BOYCOTT ISRAEL PROHIBITED:

In accordance with Section 2270.002 of the TEX. GOV'T. CODE, Contractor hereby represents and warrants that it does not , and shall not for the duration of the contract, boycott Israel as the term is defined by 808.001 (1) of the TEX. GOV'T. CODE.

20. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED:

Contractor represents and warrants that it is not engaged in business with Iran, Sudan ,or a foreign terrorist organization, as prohibited by Section 2252.152 of the TEX. GOV'T. CODE.

21. E-VERIFY:

In accordance with Executive Order No. RP-80 and Texas. Att'y Gen. OP No. KP-70 (2016), Contractor certifies that it utilizes and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1) All persons employed to perform duties within Texas during the term of the contract; and

2) All persons, including subcontractors , assigned by Contractor to perform work pursuant to the contract within the Unites States of America

22. GOVERNING LAW AND VENUE:

The contract shall be governed by and construed in accordance with the laws of the State of Texas without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency (TSBVI). TEX. GOV'T. CODE §2155.077

23.SIGNATURE AUTHORITY:

By submitting the offer, Contractor represents and warrants that the individual submitting this document and the documents made part of this offer is authorized to sign such documents on behalf of the Contractor and to bind the Contractor und any contract that may result from the submission of this offer. TEX. GOV'T. CODE §2155.0012.

24. MEDIA RELEASES:

Contractor shall not use TSBVI's name, logo, or other likeness in any press release, marketing material, or other announcement without TSBVI's prior written approval. TSBVI does not endorse any vendor, commodity or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the offer or the service to which they relate without TSBVI's prior written consent, and then only in accordance with explicit written instructions from TSBVI. Contact the Procurement Director.