Request for Qualifications (RFQ)

Licensed Specialist in School Psychology

RFQ 771-CP-22-P0006

NIGP CODE 948-74



Texas School for the Blind and Visually Impaired

Submission Date

November 27, 2022 - 2:00 PM

Schedule of Events- Section 4.2.

Table of Contents

[SECTION 1. GENERAL INFORMATION 2](#_Toc29970831)

[SECTION 2 SERVICES TO BE PROVIDED 2](#_Toc29970832)

[SECTION 3. MINIMUM QUALIFICATIONS 2](#_Toc29970833)

[SECTION 4. SUBMITTAL INFORMATION 3](#_Toc29970834)

[SECTION 5. SOLICITATION RESPONSE EVALUATION AND AWARD PROCESS 4](#_Toc29970835)

[SECTION 6. PROPOSAL CONTENT AND SEQUENCE 5](#_Toc29970836)

[SECTION 7. GENERAL CONDITIONS AND EXCEPTIONS 7](#_Toc29970837)

[SECTION 8. SUBMISSION CRITERIA 8](#_Toc29970838)

[EXHIBIT A. GENERAL AFFIRMATIONS AND SOLICITATION ACCEPTANCE 10](#_Toc29970839)

[EXHIBIT B. TERMS AND CONDITIONS 12](#_Toc29970841)

EXHIBIT C. CRIMINAL CONVICTION CERTIFICATION…………………………………………………………… 20

[EXHIBIT D. NONDISCLOSURE AGREEMENT 23](#_Toc29970842)

[EXHIBIT E. CONFLICT OF INTEREST STATEMENT 24](#_Toc29970843)

RESPONDENT ONBOARDING PACKAGE- Separate posting to the ESBD

# **SECTION 1.** **GENERAL INFORMATION**

1.1 Introduction

The Texas School for the Blind and Visually Impaired (TSBVI) issues this Request for Qualifications (“RFQ”) to solicit proposals from qualified Respondents to provide Licensed Specialist in School Psychology services for the students of the campus.

All requisite services, which are fully described in Section 2, are referred to as “Services” in this RFQ. Each individual or respondent submitting a proposal in response to this RFQ shall be referred to as a “Respondent.”. The selected Respondent or Respondents, if any, are hereinafter referred to collectively as the “Successful Respondent.”

TSBVI reserves full discretion and authority to make the final selection of a Successful Respondent. TSBVI will make the final decision regarding whether to accept or to reject all proposals. TSBVI further reserves the right and discretion to enter into parallel negotiations with more than one Respondent to this RFQ. TSBVI reserves the discretion to request a best and final offer.

1.2 Authority

TSBVI has determined that the services of a Licensed Specialist in School Psychology services is necessary for TSBVI to perform/provide services its constitutional duties and is soliciting the services listed herein under Chapter 30.001 (b)(5), Texas Education Code.

1.3 Contract and Terms

TSBVI intends to award one contract for the services solicited herein. It is anticipated that a contract awarded under this solicitation will be effective on or about December 9, 2022 and shall terminate on August 31, 2023. Any extensions beyond the initial term of the contract must be by amendment signed by all parties and are at the discretion of the TSBVI.

A contract awarded under this RFQ, if any, shall be based on the terms and conditions as outlined in Exhibit B of this RFQ and shall incorporate this entire RFQ. The terms and conditions Contract includes boilerplate provisions, and TSBVI reserves the right, in its sole discretion, to make a contract award without negotiation of these provisions.

Each Respondent must review these terms and conditions in Exhibit B and elsewhere in this RFQ and address any concerns or issues and offer alternative provisions in its transmittal letter. Terms and conditions not specifically objected to in the transmittal letter will be deemed accepted by Respondent.

TSBVI has final approval of any contract awarded as a result of this RFQ. TSBVI reserves the right, in its sole discretion, to modify the terms and conditions of the Licensed Specialist in School Psychology service. Contract in the best interests of the state prior to signature by the Parties

Notwithstanding any exceptions or other provision of Respondent’s proposal to the contrary, the Respondent shall indemnify TSBVI and the State of Texas. The State of Texas, TSBVI and their respective employees, officers, agents, and representatives will not indemnify the Successful Respondent for any amount for any purpose and any provisions to the contrary are void.

1.4 Program Overview

The Texas School for the Blind and Visually Impaired was established by the Sixth Texas Legislature on August 16, 1856, as The Blind Institute. We serve as a leading center of expertise and resources, working in partnership with schools, families, communities, and organizations to transform outcomes for students, ages birth to 22, who are blind, visually impaired, or deafblind

Additional information about TSBVI and its programs can be found at <http://www.TSBVI.edu/.>

1.5 Compensation

RESERVED

1.6 Definitions

“Addendum” means a written clarification or revision to the Request for Qualification issued by TSBVI. Respondent must acknowledge receipt of any addenda in the submission of the Solicitation Response.

“Affiliate” means any individual or entity that, directly or indirectly, is in control of, is controlled by, or is under common control with, Respondent. Respondent shall be deemed to control another entity if it can directly or indirectly influence the management and policies of the other entity, whether through the ownership of voting securities, membership interests, by contract, or otherwise.

“Agency” means the Texas School for the Blind and Visually Impaired.

“ESBD” means the Electronic State Business Daily, http://www.txsmartbuy.com/sp.

“Project” means the services solicited herein.

“Respondent” means an entity responding to this Solicitation.

“Solicitation Response” means the Respondent’s entire response to this Solicitation, including all documents requested in this Solicitation.

“Solicitation” means this RFQ.

“State” means the State of Texas and any state agency; TSBVI or other state agency identified in this Solicitation, its officers, employees, or authorized agents.

“Successful Respondent” means the respondent with whom the Texas School for the Blind and Visually Impaired executes a contract to provide the services listed in Section 2 of this RFQ.

“TAC” means Texas Administrative Code.

“TSBVI” means the Texas School for the Blind and Visually Impaired.

“TSBVI Point of Contact” means the appointee, designee, or alternate designee assigned by TSBVI to this project.

# **SECTION 2 SERVICES TO BE PROVIDED**

The Successful Respondent will primarily provide Licensed Specialist in School Psychology services. The Successful Respondent will have extensive relevant experience. Upon request, the Successful Respondent will:

* 2.1 Complete psychoeducational evaluations for students, working closely with assigned staff member to incorporate best practices for assessing students with visual and multiple impairments.
* 2.2 Participate in Review of Existing Evaluation Data (REED) meetings to assist in determining three year re-evaluation needs.
* 2.3 Compile multidisciplinary evaluation reports including eligibility considerations and recommendations.
* 2.4 Consult with instructional staff regarding evaluation results and recommended teaching strategies
* 2.5 Communicate evaluation results in jargon-free manner to parents
* 2.6 Participate in IEP Planning Meetings, IEP Committee Meetings, and other team meetings as assigned
* 2.7 Serve as a member of the school’s crisis team.
* 2.8 Collaborate with team members to implement positive behavior interventions and supports
* 2.9 Consult with team members and assist with the development of functional behavior assessments and behavior intervention plans.
* 2.10 Assist with training of staff on behavior or mental health related topics.
* 2.11 Provide consultation to team members and parents.
* 2.12Provide individual counseling and psychological services to students as assigned in accordance with students’ Individualized Education Program
* 2.13 Provide group counseling and supports social emotional learning lessons.
* 2.14 Estimate schedule = Mondays-Thursdays, 7:45-4:00, Fridays, 7:45-2:45.
* **SECTION 3. MINIMUM QUALIFICATIONS**

Respondents must meet the minimum qualifications listed below:

* 3.1 Must possess State of Texas licensure as a Licensed Specialist in School Psychology.
* 3.2 Must not be proposed for debarment or suspension.
* 3.3 Must not be declared ineligible or voluntarily excluded from contracting with any federal, State of Texas, or local department or agency.
* 3.4 Must have been engaged in the active practice of Licensed Specialist in School Psychology services for at least five consecutive years prior to the date of responding to this solicitation with at least four years of practice in the area of an educational environment.
* 3.5 Must maintain insurance or an acceptable substitute in an amount acceptable to the Agency.

# **SECTION 4. SUBMITTAL INFORMATION**

All proposals shall become a part of TSBVI official procurement files and may be available for public inspection upon execution of a contract, if any. TSBVI, in its sole discretion, may amend or modify any provisions of this RFQ or withdraw this RFQ at any time prior to award of a contract.

4.1 Respondent Obligations

Respondents to this RFQ are responsible for any expense related to the preparation and submission of a proposal. TSBVI shall not pay for any cost that is incurred by any Respondent prior to the effective date of the contract.

TSBVI shall look solely to the Successful Respondent for performance of the contract. Successful Respondent shall provide the services delineated in Section 2 under the direction of TSBVI. The Successful Respondent shall be the sole point of contract responsibility. The Successful Respondent shall be liable, both individually and severally, for the performance of all obligation under the awarded contract and shall not be relieved of the non-performance of any subcontractor

4.2 Schedule of Events

|  |  |
| --- | --- |
| EVENT | DATE/TIME |
| Issue Solicitation | November 1, 2022 |
| Deadline for Submitting Questions and Letter of Intent | November 7, 2022 by 2pm |
| Official Questions/Answers Issued | November 11, 2022 |
| Deadline for Submission of Solicitation Responses | November 27, 2022 by 2pm |
| Administrative Review and Evaluation Period (incorporates Thanksgiving break) | November 28-December 1, 2022 |
| Contract Development, Negotiation, and Execution | December 2-7, 2022 |
| Selection and Award Notice | December 9, 2022 |
| Projected Contract Effective Date | December 9, 2022 |

TSBVI anticipates that the selection of the Successful Respondent and execution of the contract, if any, will proceed according to the schedule above. All times stated in this document refer to Central Daylight Time, Austin, Texas. All deadlines are subject to change at TSBVI sole discretion.

It is the responsibility of interested parties to periodically check the ESBD website for updates to this RFQ prior to submitting a proposal. Respondent’s failure to periodically check the ESBD website for updates will in no way release the Successful Respondent from compliance with any requirements, even if such compliance results in additional costs to meet the requirement.

If the dates stated above are changed prior to the deadline for submission of Solicitation Responses, TSBVI will notify Responders of record, if any, of the changes and will post such changes on the ESBD website at: http://www.txesbd smartbuy.com/sp (search under Agency Code 326).

Any modification of dates after the deadline for submission of Solicitation Responses will not be posted; however, TSBVI will notify all responsive Responders of record of those changes.

4.3 TSBVI Point of Contact

All requests, questions, or other communications about this Solicitation shall be emailed to the person named below:

Cyrenna Villegas, CTCD, CTCM

TSBVI Director of Procurement

Villegasc@tsbvi.edu

4.4 Letter of Intent; Submission of Questions

Respondents interested in submitting a proposal in response to this RFQ are encouraged to submit a non-mandatory letter of intent containing their contact information to the TSBVI Point of Contact by the deadline set forth in the Schedule of Events.

TSBVI will allow written requests for clarification of this Solicitation. Questions must be e-mailed to the TSBVI Point of Contact (section 4.3). Questions MUST identify the specific item, i.e. section #, etc. and the related question. TSBVI reserves the right to not respond to questions.

The deadline for submitting questions is noted in Section 4.2. Please provide Respondent’s name, address, phone number, e-mail address, and name of contact person when submitting questions.

4.5 Responses to Questions

All accepted questions will result in written responses with copies posted to the ESBD at: http://www.txsmartbuy.com/sp. Respondents’ names shall be removed from questions in the responses released.

The official answers to questions will be posted to the ESBD website on or before the date specified in Section 4.2. It is the responsibility of all potential Respondents to frequently check the ESBD website or contact the TSBVI Point of Contact for updates to this RFQ, official responses to submitted questions, and for other related information.

4.6 Prohibited Communications

On issuance of this Solicitation, except for the designated TSBVI Point of Contact described in Section 4.3 TSBVI, its representative(s), or partners will not answer questions or otherwise discuss the contents of this Solicitation with any potential Respondent or their representative(s).

Attempts to ask questions by phone or in person will not be allowed or recognized as valid. Failure to observe this restriction may disqualify the Respondent.

Respondent shall rely only on written statements issued through or by the TSBVI Point of Contact. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this Solicitation

4.7 Solicitation Response Requirements

4.7.1 General Requirements

4.7.1.1 Respondent shall complete and submit:

* One electronic copy of the Solicitation Response in PDF format (“RFQ771-CP-23-P006.”).

4.7.1.2 Any terms and conditions attached to a Solicitation Response will not be considered unless specifically referred to in this Solicitation.

4.7.1.3 Failure to meet these conditions may result in disqualification of the Solicitation Response, and the Respondent shall receive no further consideration.

4.7.2 Discrepancies

If discrepancies are found between the original printed Solicitation Response and the electronic copy, the original printed response will be the basis for resolving any discrepancies.

4.7.3 Solicitation Response Format

The Solicitation Response shall be presented in the order found in Section 6 and in the format specified below.

4.7.3.1 Responses to each section and subsection shall be labeled clearly to indicate the item being addressed. Exceptions to this will be considered during the evaluation process.

4.7.3.2 Attachments:

Exhibit A. Affirmations and Solicitation Acceptance;

Exhibit B. Terms and Conditions

Exhibit C. Criminal Conviction Certification;

Exhibit D. Nondisclosure Agreement;

Exhibit E. Conflict of Interest Statement;

Completed Respondent Onboarding Package (W9 & Direct Deposit Forms)

4.8 Solicitation Response Submission and Delivery

4.8.1 Deadline for Submission

Solicitation Responses must be received by TSBVI the date in Section 4.2. Respondent may submit its Solicitation Response any time prior to the deadline specified in Section 4.2

4.8.3 Submission Instructions

Respondent must email Solicitation Responses to:

* Villegasc@tsbvi.edu
* Subject line to read: RFQ Licensed Specialist in School Psychology (RFQ-771-CP-23-P0006**)**
* Request read receipt or email confirmation.

4.8.4 Alterations, Modifications, and Withdrawals

Solicitation Responses may be modified, altered, or withdrawn by e-mail or written notice to the TSBVI Point of Contact, provided such notice is received prior to the deadline for the submittal of the Solicitation Response stated in Section 4.2.

# **SECTION 5. SOLICITATION RESPONSE EVALUATION AND AWARD PROCESS**

5.1 Evaluation Criteria

5.1.1 Only those responses that meet the requirements delineated in Section 8, Submission Criteria, shall be evaluated and scored.

5.1.2 The evaluation of responses will be conducted in accordance with best value standards. The criteria and relative weights are as follows:

* AWARD Respondent’s Demonstrated Competence, Knowledge, and Qualifications: Respondent’s qualifications and experience in providing similar services to those requested in this RFQ, including the experience of Respondent’s proposed personnel, as stated in the written response to this RFQ. A contract will be recommended for award to the responsive and responsible proposer who achieves the highest point score through the proposal scope, quality and price and any other issues it considers relevant to successful performance of the services. If an agreement cannot be reached with the highest ranked proposer, TSBVI reserves the right to negotiate and recommend award to the nest highest proposer or subsequent proposers until an agreement is reached.

5.1.3 In order to clarify any response, the TSBVI Point of Contact may contact the Respondent’s point of contact, references provided in a Response to this Solicitation, contact Respondent’s clients, or solicit information from any available source concerning any aspect of the Solicitation deemed pertinent to the evaluation process.

5.2 Short List

TSBVI expects to conduct an initial evaluation of the Solicitation Responses and develop a short list of finalists. However, TSBVI is not obligated to develop this list. If a list is developed, all Respondents will be notified in writing whether or not they are finalists.

5.3 Interviews

TSBVI may request that finalists deliver a presentation and /or be available for an interview regarding the Respondent’s experience and qualifications and/or be interviewed on a date and at a location to be determined.

TSBVI is not responsible for any costs incurred by the Respondent regarding preparation, travel, and all other expenses related to the delivery of a presentation and/or an interview.

5.4 Contract Award

It is the intent of TSBVI to award one contract to a qualified contractor under this Solicitation.

TSBVI reserves the right, in its sole discretion, to enter into preliminary negotiations with one or more than one of the top-ranked Respondents.

An award notice will be sent to the selected Respondent. Neither TSBVI issuance nor Respondent’s receipt or acceptance of an award notice constitutes a contract between TSBVI and the selected Respondent.

Any award is contingent upon the successful negotiation of final contract terms and upon the approval of the Executive Director of TSBVI. Negotiations shall be confidential and not subject to disclosure to competing Respondents unless and until an agreement is reached.

Solicitation Responses are subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, and will be withheld from or released to the public only in accordance therewith.

# **SECTION 6. PROPOSAL CONTENT AND SEQUENCE**

Respondent must provide the following information

6.1 Transmittal Letter:

6.1.1 Respondent must submit a transmittal letter that identifies the entity submitting the proposal and includes a commitment by that entity to provide Licensed Specialist in School Psychology services to TSBVI.

6.1.2 The transmittal letter must also state that the proposal is complete as submitted and must warrant the Respondent has met all of the minimum qualifications specified in Section 3.

6.1.3 The transmittal letter must state that the proposal is valid for one hundred eighty (180) days from the deadline for delivery of proposals to TSBVI. Any proposal containing a term of less than one hundred eighty (180) days for acceptance from this deadline may be rejected as non-responsive.

6.1.4 Each Respondent must review these terms and conditions in Exhibit B and elsewhere in this RFQ and address any concerns or issues in its transmittal letter and offer alternative provisions. Terms and conditions not specifically objected to in the transmittal letter will be deemed accepted by Respondent.

6.1.5 The transmittal letter must include a statement of acceptance of the terms and conditions as set forth in Exhibit B of the RFQ. **If a Respondent takes exception to any of the proposed terms and conditions stated in the Outside Counsel Contract or this RFQ, those exceptions must be noted and explained in the transmittal letter.** However, failure to accept those terms and conditions may result in disqualification of the proposal.

6.1.6 The transmittal letter must be signed by a person legally authorized to bind Respondent. Respondent also must indicate in its transmittal letter why it believes it is the most qualified Respondent to provide the requisite Services and why it believes its proposed services best meet the Board’s objectives and RFQ requirements.

6.2 Table of Contents

The proposal must contain a table of contents.

6.3 Respondent’s Narrative

6.3.1 Executive Summary: Provide a brief overview of the key points of the proposal.

6.3.2 Provide a detailed narrative explaining why Respondent is qualified to provide the services enumerated in Section 2, focusing on the Respondent’s key strengths and competitive advantages. Must include:

* Resume
* Credentials (copy of Board Certification and degree)

6.3.3 Provide a detailed narrative that provides specific support for meeting the minimum qualifications outlined in Section 3, this must include:

* Three references- Provided service to within the last four (4) years. Company name, current contact name, email and phone contact.
* Copy of Insurance

6.3.4 Major subcontractors.

6.3.4.1 Respondent must identify in its Respondent’s Narrative any major subcontractors the Respondent intends to utilize in performing 15% or more of the work stated in Section 2.

Respondent must indicate in its Respondent’s Narrative whether or not the Respondent holds any financial interest in any major subcontractor. It may be required as a condition of award that an authorized officer or agent of each proposed major subcontractor sign a statement to the effect that the subcontractor has read, and will agree to abide by, the Respondent’s obligations under any contract awarded pursuant to this Solicitation.

6.3.4.2 If a major subcontractor will not be utilized, Respondent must indicate such in its Solicitation Response Respondent’s Narrative.

6.3.4.3 In all circumstances, Respondent is required to complete and submit in its Solicitation Response Exhibit F, HUB Subcontracting Plan (HSP).

6.3.5 Litigation History

6.3.5.1 Provide a complete disclosure of any actual or alleged breaches of contract with regard to any and all engagements.

6.3.5.2 Provide a complete disclosure of any civil or criminal litigation or investigation pending at any point during the last three (3) years that involves Respondent or in which Respondent has been judged guilty or liable. For each instance of litigation or investigation, Respondent shall list the basic case information (e.g., cause number/case number, jurisdiction, venue information, names of parties, name of investigating entity, and subject matter); a description of claims alleged by or against the Respondent or its parent, subsidiary, or other affiliate; for each resolved case, a description of the disposition of the Respondent’s involvement (e.g., settled, dismissed, judgment entered, etc.).

6.3.5.3 If Respondent has no litigation history, as described in Sections 6.3.5 above, indicate such in the Respondent Narrative.

6.3.5.4 In all circumstances, the Respondent must include in its Solicitation Response a completed and signed copy of Exhibit C, Criminal Conviction Certification.

6.3.5.5 Failure to comply with the terms of this provision may disqualify any Respondent.

6.3.5.6 Responses may be rejected based upon Respondent’s prior history with the State of Texas or with any other party that demonstrates, without limitation, unsatisfactory performance, adversarial or contentious demeanor, or significant failure(s) to meet contractual obligations.

6.4 Corporate Board Resolution, Authorized Representative

If the Respondent is a corporation or other legal entity, the Respondent must include in its Solicitation Response a copy of the Corporate Board Resolution or other official document which states by name and title the person who is authorized by signature to legally bind the Corporation or entity in a contract.

6.5 Fee Proposal

Proposals must include all information regarding any proposed fees in a manner that makes clear all charges TSBVI would incur for the Services. Respondent may provide a proposed detailed fixed dollar fee schedule, if applicable, to any Services proposed. If Respondent has multiple fee schedules for strategies or Services, relevant fee schedules must be provided with its proposal. Respondent must state the assumptions upon which its fee or fees are based.

Respondent must state if fees are negotiable and any pricing break points and provide any other relevant information.

Fees paid to Successful Respondent shall be negotiated prior to contract signature and shall be based on the Services provided, and shall be the sole compensation paid hereunder.

6.6 Required Exhibits

The Respondent must include in its Solicitation Response a completed and signed copies of each of the following exhibits:

Exhibit A. Affirmations and Solicitation Acceptance;

Exhibit B Terms and Conditions

Exhibit C. Criminal Conviction Certification;

Exhibit D. Nondisclosure Agreement;

Exhibit E. Conflict of Interest Statement;

Completed Vendor Onboarding Package

# **SECTION 7. GENERAL CONDITIONS AND EXCEPTIONS**

7.1GENERAL CONDITIONS

7.1.1 Amendment. TSBVI reserves the right to alter, amend, or modify any provision of this Solicitation, or to withdraw this Solicitation, at any time prior to the award, if it is in the best interest of TSBVI.

7.1.2 Rejection. TSBVI reserves the right to reject any or all Solicitation Responses received prior to contract award.

7.1.3 Irregularities. Any irregularities or lack of clarity in this RFQ should be made in writing to the attention of the TSBVI Point of Contact listed in Section 4.3 as soon as possible so that corrective addenda may be furnished to prospective Respondents.

7.1.4 Open Records. TSBVI is a government agency subject to the Texas Public Information Act (PIA), Chapter 552, Texas Government Code. The Solicitation Response and other information submitted to TSBVI by the Respondent are subject to release as public information. The Solicitation Response and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies.

If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Solicitation Response or other submitted information, the Respondent must clearly label the information as proprietary or confidential information and identify the specific exception to disclosure of that information in the PIA.

The Respondent making a blanket claim that the entire Solicitation Response is protected from disclosure because it contains some proprietary information is not acceptable and shall have the effect to make the entire Solicitation Response subject to release under the PIA. In order to initiate the process to seek the Texas Attorney General’s opinion regarding the release of proprietary or confidential information, the specific provisions of the Solicitation Response the Respondent considers proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA, except as provided by law.

Respondents are required to make any information created or exchanged with the state pursuant to this solicitation and any contract that may result from this solicitation, 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.

Information related to the performance of this contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. The Respondent shall make any information required under the PIA available to TSBVI in Portable Document Format (PDF) or any other format agreed between the parties.

Solicitation Responses and all other documents associated with this Solicitation will be withheld or released upon written request only in accordance with the PIA. To the extent that the Respondent seeks to prevent the disclosure of portions of its Solicitation Response to the public, the Respondent shall be responsible for demonstrating the applicability of any exception to disclosure provided under the PIA in accordance with the procedures prescribed by the PIA.

The Respondent may clearly label individual documents “confidential” or “trade secret” to indicate that the Respondent is of the opinion that the so marked document is excepted from disclosure and may legally be withheld from the public. Respondent thereby agrees to indemnify and defend TSBVI for honoring such a designation. The failure of Respondent to clearly label such documents shall constitute a complete waiver of any and all claims for damages caused by TSBVI release of these records.

Pursuant to Texas Government Code, Chapter 2261.253(a), any contract that results from this Solicitation, including the selected Respondent’s Solicitation Response, shall be posted to the TSBVI website.

7.1.5 Contract Responsibility. The Respondent shall be solely responsible for the performance of all contractual obligations that may result from an award based on this RFQ. The Respondent shall not be relieved of its obligations for any non-performance by its subcontractors, if any.

7.1.6 Public Disclosure. The Respondent will not advertise that it is doing business with TSBVI or use a contract resulting from this Solicitation as a marketing or sales tool without the prior written consent of TSBVI.

The Respondent may not distribute or disclose this Solicitation to any other Respondents or companies without permission from TSBVI.

7.1.7 Remedies. All remedies available to TSBVI for breach or anticipatory breach of any contract that results from this Solicitation are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. TSBVI may exercise any available legal or equitable remedy.

7.1.8 Protest. Any Respondent unsuccessful or aggrieved in connection with this Solicitation may file a protest with the Executive Director.

7.1.9 Contract Terms and Conditions. TSBVI reserves the right to negotiate final contract terms with any selected Respondent. The terms and conditions in Exhibit B are subject to change prior to the execution of any contract or work order that may result from this Solicitation.

Execution of Exhibit B of this Solicitation shall constitute an agreement to all terms and conditions specified in this Solicitation including, but not limited to, Exhibit B and all terms and conditions therein.

7.1.10 Vendor Performance Tracking. As of January 24, 2017, the VPTS reporting methodology was revised so that Respondents are assigned a letter grade (A-F) rather than the historic satisfactory/unsatisfactory ratings. The report grades for historic reports will be displayed as “Legacy Satisfactory” or “Legacy Unsatisfactory.” New reports will be graded on the A-F scale as now required by statute. A Respondent’s past performance shall be measured in the VPTS by a letter grade that combines any historic ratings with ratings using the new letter grade system in the method described in 34 TAC §20.115. 7.1.10 Respondent Performance Reporting. TSBVI is required by Rule (34 TAC §20.509) to report Respondent performance through the Respondent Performance Tracking System (VPTS). Additional information on this system can be found on the Texas Comptroller of Public Accounts website through this link:

TSBVI is authorized to consider past performance when determining contract award as part of the “Best Value” standard, in compliance with applicable provisions of Texas Government Code §§2155.074, 2155.075 and 2156.125. TSBVI may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the VPTS, TSBVI may examine other sources of Respondent performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TSBVI, and any negative findings, as determined by TSBVI, may result in non-award to the Respondent.

# **SECTION 8. SUBMISSION CRITERIA**

This checklist is provided to inform the Respondent of the documents that must be submitted as the Respondent’s Solicitation Response. Solicitation Reponses must contain all documents in the order prescribed below to be considered as a responsive offer. Any Solicitation Responses received

without these requisite documents may be deemed nonresponsive and may not be considered for contract award.

8.1 Solicitation Response Checklist – Provide documents in the following order:

|  |  |
| --- | --- |
| Transmittal Letter | Section 6.1 |
| Table of Contents | Section 6.2 |
| Respondent Narrative (Resume, Credentials, three references, copy of insurance) | Section 6.3 |
| Corporate Board Resolution, Authorized Representative | Section 6.4 |
| Fee Proposal | Section 6.5 |
| Exhibit A, Affirmations and Solicitation Acceptance | Exhibit A |
| Exhibit B, Terms and Conditions | Exhibit B |
| Exhibit C, Criminal Conviction Certification | Exhibit C |
| Exhibit D, Nondisclosure Agreement | Exhibit D |
| Exhibit E, Conflicts of Interest Statement | Exhibit E |
| Exhibit F, Historically Underutilized Business Subcontracting Plan | Exhibit F |
| Completed Vendor Onboarding Package (W9 & Direct Deposit) | Separate Package posted to the ESBD |

# EXHIBIT A. GENERAL AFFIRMATIONS AND SOLICITATION ACCEPTANCE

Execution of this Exhibit A, shall constitute an agreement to all terms and conditions specified in the Solicitation, including, without limitation, Exhibit A and all terms and conditions therein.

Failure to sign this Exhibit A or signing it with a false statement shall void the submitted Solicitation Response and/or any resulting contracts. Respondent agrees without exception to the following general affirmations and acknowledges that any contract resulting from this Solicitation may be terminated and payment withheld if any of the following affirmations or certifications are inaccurate:

1. All statements and information prepared and submitted in the response to this Solicitation are current, complete, and accurate.

2. The Respondent 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 submitted Solicitation Response.

3. Section 2155.004 of the Texas Government Code prohibits TSBVI from awarding a contract that includes proposed financial participation by a person who received compensation from TSBVI to participate in preparing the specifications or request for proposals on which the contract is based. Under Section 2155.004, Government Code, the Respondent [Respondent] certifies that the individual or business entity named in this bid or contract [Solicitation Response] is not ineligible to receive any contract resulting from this Solicitation.

4. Under the Texas Family Code, Section 231.006, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services. Under Section 231.006, Texas Family Code, the Respondent or applicant [Respondent] certifies that the individual or business entity named in this contract, bid, or application [Solicitation Response] is not ineligible to receive the specified grant, loan, or payment. The Solicitation Response must include the name and social security number of any individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. This information must be provided prior to execution of any offer.

5. TSBVI is federally mandated to adhere to the directions provided in the President’s Executive Order (EO) 13224, blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism and any subsequent changes made to it. TSBVI will cross-reference Respondents/Respondents with the federal System for Award Management (https://www.sam.gov/) which includes the United States Treasury’s Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Respondent certifies: 1) that the responding 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; 2) that Respondent is in compliance with the State of Texas statutes and rules relating to procurement; and 3) that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at https://www.sam.gov/SAM/ This provision shall be included in its entirety in Respondents’ subcontracts.

6. Respondent agrees that any payments due under any contract resulting from this Solicitation will be applied towards any debt, including, but not limited to, delinquent taxes and child support Respondent owes to the State of Texas.

7. Respondent certifies it is in compliance with Texas Government Code Section 669.003, relating to contracting with the executive head of a state agency. If this Section applies, Respondent will complete the following information in order for the bid to be evaluated:

|  |  |
| --- | --- |
| Name of Former State Agency Executive: |  |
| Name of State Agency: |  |
| Date of Separation from State Agency: |  |
| Position with Respondent: |  |
| Date of Employment with Respondent: |  |

8. If any contract resulting from this Solicitation is for services, Respondent, in performing the contract, shall purchase products and materials produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside this state.

9. Respondent shall maintain all documents and other related records relating to the State’s property and any contract resulting from this Solicitation for a period of seven (7) years after the date of the submission of final invoices or until a resolution of billing questions, whichever is later. Respondent acknowledges that the state has a right of access to information in Respondent’s possession relating to state property and agrees to make such information reasonably available upon request of the state.

10. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under a contract or indirectly through a subcontract under the contract. Acceptance of funds directly under any contract resulting from this Solicitation or indirectly through a subcontract under such 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. Respondent shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Respondent and the requirement to cooperate is included in any subcontract it awards.

11. Respondent certifies that if it employs any former employee of TSBVI, such employee will perform no work in connection with any contract resulting from this Solicitation during the twelve (12) month period immediately following the employee’s last date of employment at TSBVI.

12. The Respondent shall not discriminate against any employee or applicant for employment because of race, disability, color, religion, sex, age, or national origin. The Respondent shall take affirmative action to ensure that applicants are employed and that employees are treated without regard to their race, disability, color, sex, religion, age, or national origin. Such action shall include, but is not to be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Respondent agrees to post notices, which set forth the provisions of this non-discrimination article, in conspicuous places available to employees or applicants for employment. The Respondent shall include the above provisions in all subcontracts pertaining to the work.

13. Respondent certifies that neither Respondent nor any firm, corporation, partnership, or institution represented by Respondent or anyone acting for such firm, corporation, partnership, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or federal antitrust laws; or (2) communicated the contents of the Solicitation Response either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for the Solicitation.

14. By signing this Solicitation Response, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a “Texas Bidder” as defined in Section 2155.444(c) of the Texas Government Code.

15. Respondent understands that TSBVI does not tolerate any type of fraud. The agency’s policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Respondents are expected to report any possible fraudulent or dishonest acts, waste, or abuse to the agency's Director of Procurement at Villegasc@TSBVI.edu.

16. Respondent certifies that it will comply with the federal Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Immigration Act of 1996 regarding employment, employment verification, and retention of verification forms of individuals who will prospectively perform work described in this proposal.

17. Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Solicitation Response is not ineligible to receive the specified contract.

18. Respondent represents and warrants that it shall comply with the applicable provisions of and rules and regulations related to the Drug-Free Work Place Act of 1988 (41 U.S.C. §§ 8101-8106).

19. The Respondent represents that payment to the Respondent and the Respondent’s receipt of appropriated or other funds under any contract resulting from this Solicitation are not prohibited by Section 556.005 or Section 556.008 of the Texas Government Code.

20. Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the Public Information Act).

22. By signature hereon, Respondent represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Respondent does not boycott Israel and will not boycott Israel during the term of the contract resulting from this RFQ.

23. By signature hereon, Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code.

24. By signature hereon, Respondent represents and warrants that it has read and agrees to all terms and conditions of this RFQ, unless Respondent specifically takes an exception and offers an alternative provision in Respondent’s Solicitation Response Transmittal Letter as provided in Section 5.1.1 of this RFQ.

Signature of the person authorized to bind the Respondent’s firm to any contract that may be awarded from this RFQ is required below:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Signature of Authorized Representative |  | Date of Signature |
|  |  |  |
| Print Name, Title of Authorized Representative |  | Phone Number |
|  |  | Email Address |
| Full Legal Name of Firm as Registered with the Texas Secretary of State |  | Federal Employer ID Number |
|  |  |  |
| Mailing |  | Fax Number |
|  |  |  |
| City |  | State, Zip Code |

# EXHIBIT B. TERMS AND CONDITIONS

**1.DEFINITIONS.** (1) “Contract” means a written contract between a unit of state government and a Respondent for goods or services, or for a project as defined by Texas Gov. Code Section 2166.001, Subtitle F, State and Local Contracts and Fund Management. The term does not include a contract subject to Section 201.112, Transportation Code.

(2) “Respondent” means an independent Respondent who has entered into a contract directly with a unit of state government.

The term does **not** include:

(A) a Respondent’s sub Respondent, officer, employee, agent, or other person furnishing goods or services to a Respondent;

(B) an employee of a unit of state government; or

(C) a student at an institution of higher education.

**2.PUBLIC INFORMATION ACT.** In accordance with Section 2252.907, Gov. Code, Respondent acknowledges that this contract and information created or maintained in connection with this contract is public information and subject to disclosure as provided by Chapter 552, Gov. Code (Texas Public Information Act). The Public Information Act may require the Respondent to make information related to this contract available to the public pursuant to a request for public information the Respondent agrees, upon request to make information related to this contract that is not otherwise excepted from release by the Public Information Act available to the public in hard copy, unless the requestor of the information consents to receive the information in another mutually agreeable format. The Respondent acknowledges that the Texas School for the Blind and Visually Impaired shall not provide legal counsel related to the Respondent’s compliance with the Public Information Act.

**3.RFQ COMPLIANCE**. Respondents must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.

Bids should be submitted on this form. Respondents must price per unit shown. Unit prices shall govern in the event of extension errors. If a price quotation is submitted as part of the bid, the quotation must be referenced on the bid document and signed by the Respondent to establish formal linkage to the bid.

Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.

Bid prices are requested to be firm for TSBVI acceptance for 60 days from bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts offered will be taken if earned.

Respondent should enter Texas Identification Number System (TINS) number, full firm name and address of Respondent on the face of this form. Enter in the space provided, if not shown. Additionally, firm name should appear on each continuation page of a bid, in the block provided in the upper right hand corner.

Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.

This contract in all its particulars is subject to approval by the Board of Trustees for the Texas School for the Blind and Visually Impaired, to all Federal and Texas State laws, and to all rules and administrative regulations pertaining to the contract project, and any recourse or judicial action shall be in the Courts of the State of Texas in Travis County to the exclusion of all other courts. Respondent understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor’s Office, or any successor agency, to conduct an audit or investigation in connection with those funds.

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

**5.AWARD NOTICE.** The State reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items at the sole discretion of the State. The State also reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the State. Any contract may also be extended up to three months at the sole discretion of the State.

Consistent and continued tie bidding could cause rejection of bids by TSBVI and/or investigation for antitrust violations.

Inquiries pertaining to this RFQ must include the requisition number, class/item codes, and opening date.

**6.AWARD OF CONTRACT.** A response to this RFQ is an offer to contract based upon the terms, conditions, and specifications contained herein. Bids do not become contracts until they are accepted through an open market purchase order. The contract shall be governed, construed, and interpreted under the laws of the State of Texas. The factors listed in §§2155.074, 2155.144, 2156.007, and 2157.003, Gov. Code, shall also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.

**7.OPTION TO EXTEND.** TSBVI reserves the right to extend the contract not more than one additional option period. If the contract does not contain a defined option period, the extension is limited to one year. Extensions are exercised through an amendment and executed by both parties

**8.STRICT COMPLIANCE.** Time is of the essence in the performance of this contract. Respondent shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this contract.

**9.INCORPORATION BY REFERENCE.** All Invitation for Bids (IFB), Bids, Request for Proposals (RFP), Proposals, Request for Quotes (RFQ), and Quotes associated with this contract hereunder shall be incorporated by reference and this contract shall control.

**10.SPECIFICATION.** Unless otherwise specified, items shall be new and unused and of current production.

All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.

Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the Respondent, on request, at Respondent's expense. Each sample should be marked with Respondent's name and address, and requisition number. Do not enclose in or attach bid to sample.

TSBVI will not be bound by any oral statement or representation contrary to the written specifications of this Request for Quote (RFQ).

Manufacturer's standard warranty shall apply unless otherwise stated in the RFQ.

**11.SERVICES.** The Respondent agrees to perform, during the term of this contract, services as described in “Scope of Work” which summarizes the scope of work to be completed. The Respondent agrees to provide the services and any additionally required services necessary under this contract in a prompt, timely and professional manner. THE RESPONDENT AGREES CONTRACTED SERVICES WILL NOT BEGIN UNTIL THE CONTRACT IS FULLY EXECUTED AND A PURCHASE ORDER HAS BEEN ISSUED TO THE RESPONDENT AND THAT PAYMENTS WILL NOT BE MADE BY TSBVI UNTIL AFTER THE SERVICE HAS BEEN RENDERED AND AN INVOICE HAS BEEN PROPERLY SUBMITTED. Per TSBVI policy, contracted services provided by TSBVI employees or their immediate family members are prohibited without prior approval from the Superintendent or designee.

**12.COMPENSATION.** If quote is accepted, TSBVI agrees to compensate the Respondent for services related to the performance of this contract based upon work actually performed not to exceed the total amount of the Purchase Order. **There is no minimum guarantee of service and thus there is no minimum guarantee of payment to any singular company.** The Respondent shall not receive reimbursement for travel, meals and lodging related to services rendered in fulfilling the obligation of this contract unless expressly authorized by TSBVI. This Contract is subject to termination, either in whole or in part, without penalty to TSBVI, subject to appropriation or availability of state funds. TSBVI is a state agency whose authority and appropriations are subject to actions of the Texas Legislature and whose availability of funds may be subject to governmental action. If TSBVI becomes subject to a legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds which would render Respondent's delivery or performance under this Contract impossible or unnecessary, this Contract will be terminated, either in whole or in part. In the event of a termination under this Section, TSBVI will not be liable to Respondent or any other person or entity for any payments, damages or any other amounts which were otherwise due or which may be caused or associated with such termination and TSBVI will not be required to give prior notice.

**13.NO LIABILITY UPON TERMINATION.** If this contract is terminated for any reason, TSBVIand the State of Texas shall not be liable to Respondent for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Respondent may be entitled to the remedies provided in Texas Gov. Code, Chapter 2260.

**14,SURVIVAL OF TERMS.** Termination of the Contract for any reason shall not release the Respondent from liability or obligation 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 confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.

**15.TERMINATION.** Notwithstanding the termination or expiration of this contract, the provisions of this contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this contract. TSBVImay, in its sole discretion, terminate this contract upon thirty (30) days’ written notice to Respondent. Such notice may be provided by facsimile or certified mail; return receipt requested and is effective upon Respondent’s receipt.

1. Convenience: TSBVI may, in its sole discretion, terminate this contract upon thirty (30) days’ written notice to Respondent. Such notice may be provided by facsimile or certified mail return receipt requested and is effective upon Respondent’s receipt. In the event of such termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Customers shall be liable only for payments for any goods or services ordered from the Respondent before the termination date.
2. Cause/Default: If the Respondent fails to provide the goods or services contracted for according to the provisions of the contract, or fails to comply with any terms or conditions of the contract. TSBVI may, upon written notice of default to the Respondent immediately terminate all or any part of the contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the contract reference Texas Gov. Code 2260, Resolution of Certain Contract Claims Against the State. TSBVI may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the contract. The exercise of any of the foregoing remedies will not constitute a termination of the contract unless TSBVI notifies the Respondent in writing prior to the exercise of such remedy. The Respondent shall be liable for all costs and expenses, including court costs, incurred by TSBVI with respect to the enforcement of any of the remedies listed herein.
3. Rights upon Termination or Expiration: In the event that the contract is terminated for any reason, or upon its expiration, TSBVI and Customers shall retain ownership of all associated work products and documentation obtained from the Respondent under the contract.
4. **EXCESS OBLIGATION PROHIBITED (Term Without Cause).** Contract is subject to termination or cancellation, without penalty to TSBVI, either in whole or in part subject to the availability of state funds. TEX CONST ART III §49a, TEX CONST ART VIII §6, General Appropriations Act, Art IX, § 6.03 (2017-2018 Biennium)

**16.AMENDMENTS**: This Contract may be amended only upon written amendment between *TSBVI* and Respondent; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.

**17.NOTICES.** Except as expressly provided herein, any notice required or permitted to be given under this contract must be in writing and delivered in person or by registered or certified mail, return receipt requested, postage prepaid, to the individuals and addresses shown below:

Respondent: reference signature page for legal address.

Texas School for the Blind and Visually Impaired

1100 W. 45th Street, Austin, Texas 78756

Attn: Director of Procurement

**18.PARTIALLY COMPLETED WORK.** No later than the first calendar day after the termination of this contract, or at any time and from time to time TSBVI shall request and within 30 days of any such request, Respondent shall deliver to TSBVIall completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of this contract. Respondent shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the TSBVI.

**19.OWNERSHIP OF WORK.** Respondent recognizes that TSBVI will have perpetual, exclusive, non-transferrable license to use any work product or deliverables developed by the Respondent in the performance of the services and delivered to TSBVI, upon TSBVI’s payment in full of all amounts due hereunder. The Respondent retains ownership of all information, software and other property owned by it prior to this contract or which it develops independently of this contract and all work products compiled or developed by the Respondent in the performance of this contract.

**20.WORK MADE FOR HIRE.** For the purposes of this contract, the term “Work” is defined as all 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 this contract. All work performed pursuant to this contract is made the exclusive property of TSBVI. All right, title and interest in and to said property shall vest in TSBVIupon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this contract. To the extent that title to any such work may not, by operation of law, vest in TSBVI, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to TSBVI. TSBVIshall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Respondent must give TSBVI and/or the State of Texas, as well as any person designated by TSBVI and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Respondent for the services rendered under this contract.

**21.DELIVERY.** Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days’ mean calendar days, unless otherwise specified. Failure to state delivery time obligates Respondent to deliver in 14 calendar days. Unrealistic delivery promises may cause bid to be disregarded. If delay is foreseen, Respondent shall give written notice to TSBVI. Respondent must keep TSBVI advised at all times of status of order.

Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes TSBVI to purchase the goods or services of this RFQ elsewhere and charge any increased costs for the goods or services, including the cost of re-bidding, to the Respondent.

No substitutions permitted without written approval of TSBVI.

Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency.

**22.INSPECTION AND TESTS.** All goods will be subject to inspection and test by the State. Authorized TSBVI personnel shall have access to supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the bid or on samples taken from regular shipment. All costs shall be borne by the Respondent in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the State's option, be returned to the Respondent or held for disposition at Respondent's expense. Latent defects may result in revocation of acceptance.

**23.ASSIGNMENT.** Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the Agency. Any attempted assignment in violation of this provision is void and without effect. Texas Gov. Code § 2262.056(b)

**24.INVOICING AND PAYMENT.** Once services described in “Scope of Work” have been performed and completed or commodity orders are fulfilled in whole (no partial invoices), the Contactor agrees to submit an original invoice referencing Purchase Order number requesting payment for performance: to Accounts[payable@tsbvi.edu](mailto:payable@tsbvi.edu) OR TSBVI, 1100 West 45th Street, Austin, Texas 78703- 5300, Attention: Accounts Payable. Contact number is 512.206.9295. Respondent shall submit 1 copy of an itemized invoice showing TSBVI purchase order number on all copies. The State will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. Payment shall be made in accordance with Chapter 2251, Gov. Code. Prior to authorizing payment to Respondent, TSBVI shall evaluate Respondent’s performance using the performance standards set forth in all documents constituting this contract. Invoices must be submitted not later than the 15th day of the month after the services are completed. No payment whatsoever shall be made under this contract without the prior submission of detailed, correct invoices. Subject to the foregoing, TSBVI must make all payments in accordance with the Texas Prompt Payment Act, Texas Gov. Code, Chapter 2251. Payments under this contract are subject to the availability of appropriated funds. Respondent acknowledges and agrees that payments for services provided under this contract are contingent upon TSBVI receipt of funds appropriated by the Texas Legislature.

**25.PATENTS, TRADEMARKS, OR COPYRIGHTS.** Respondent agrees to defend and indemnify TSBVI and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the TSBVI or the State's use of any good or service provided by the Respondent as a result of this RFQ.

**26.CONFIDENTIALITY.** Respondent agrees to maintain the confidentiality of information received from the TSBVI during the performance of this contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers and all information, dates or records relating to students of TSBVI and shall not disclose information except as required to the implementation of services in accordance with the terms of this contract, or as may be required by law.

**27.RESPONDENT ASSIGNMENTS.** Respondent 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.

**28.RESPONDENT AFFIRMATIONS.** Signing this bid with a false statement is a material breach of contract and shall void the submitted bid and any resulting contracts, and the Respondent shall be removed from all bid lists. By signature hereon affixed, the Respondent hereby certifies that:

* The Respondent 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 submitted bid.
* Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the Respondent nor the firm, corporation, partnership, or institution represented by the Respondent, 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.
* Pursuant to §2155.004, Gov. Code, neither the Respondent nor any person or entity which will participate financially in any contract resulting from this RFQ has received compensation for participation in the preparation of the specifications for this RFQ.
* Pursuant to §231.006(d), Texas Family Code, regarding child support, the Respondent certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to §231.006, Gov. Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

|  |  |
| --- | --- |
| Name: | Social Security Number: |
| Name: | Social Security Number: |
| Name: | Social Security Number: |

* Under §2155.004, Gov. Code, the Respondent certifies that the individual or business entity named in this bid or any contract resulting from this RFQ is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. §2155.004, prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.
* As required by §2252.903, Gov. Code, Respondent agrees that any payments due under a contract resulting from this RFQ shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. Respondent shall comply with rules adopted by CPA under §§403.055, 403.0551, 2252.903, Gov. Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
* Pursuant to §669.003, Gov. Code, TSBVI may not enter into a contract with a person who employs a current or former executive head of TSBVI until four years has passed since that person was the executive head of TSBVI. By submitting a bid, the Respondent certifies that it does not employ any person who was the executive head of TSBVI in the past four years. If Respondent does employ a person who was the executive head of TSBVI, provide the following information:

Name of Former Executive: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
Name of State Agency: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Position with Respondent: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Employment

Respondent:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* In accordance with §2155.4441, Gov. Code, Respondent 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.
* In accordance with §2254.033 of the Texas Government Code, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by TSBVI or another agency at any time during the two year preceding the submission of the response or, in the alternative, Respondent has disclosed in its response the following: (i) the nature of the previous employment with TSBVI or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.
* **SUSPENSION** **DISBARMENT** **TERRORISM.** Respondent 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 Debarred Respondent List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. TEX GOVT CODE § 2155.077.
* **EXCLUDED PARTIES.** Respondent certifies that it is not listed in the prohibited Respondents list authorized by **Executive Order 13224**, “*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*”, published by the Unites States Department of Treasury, Office of Foreign Assets Control.
* **PRIOR** **DISASTER** **RELIEF** **CONTRACT** **VIOLATION** Sections 2155.006 and 2261.053, Gov. Code, prohibit state agencies from awarding contracts to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov. Code, occurring after September 24, 2005. Under §2155.006, Gov. Code, Respondent certifies that the individual or business entity named in its bid is not ineligible to receive a contract and acknowledges that any contract resulting from this RFQ may be terminated and payment withheld if this certification is inaccurate.
* **Lobbying**. Respondent represents and warrants that payment to the Respondent and the Respondent’s receipt of appropriated or other funds under any contract resulting from this RFQ are not prohibited by §556.005 or §556.008, Gov. Code, relating to the prohibition of using state funds for lobbying activities.
* **Texas Bidder.** Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, Respondent qualifies as a Texas Respondent as defined in Section 2155.444(c) of the Texas Gov. Code.
* Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to TSBVI under the RFQ and any resulting contract, if any, and that Respondent’s provision of the requested items under the RFQ and any resulting contract, if any, would not reasonably create an appearance of impropriety.
* **FOREIGN TERRORIST**: Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Gov. Code.
* **BOYCOTT ISRAEL:** If Respondent is required to make a certification pursuant to Section 2271.001 of the Texas Gov. Code, Respondent certifies that Respondent does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Respondent does not make that certification, Respondent must indicate that in its Response and state why the certification is not required. TEX GOVT CODE § 2271.002
* **BUY TEXAS:** In accordance with Texas Gov. Code, Section 2155.4441, Respondent agrees that the 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.
* **E- VERIFY:** Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security’s E-Verify system during the term of the contract to determine the eligibility of:

1. all persons employed by Respondent to perform duties within Texas; and

2. all persons, including sub Respondents, assigned by Respondent to perform work pursuant the contract within the United States of America.

Executive Order No. RP-80 Tex. Att’y Gen. Op. No. KP-70 (2016)

* If Respondent signs the contract with a false statement or it is subsequently determined that Respondent has violated any of the representations, warranties, guarantees, certifications, or affirmations included in the contract, Respondent will be in default under the contract and TSBVI may terminate or void the contract. TEX GOVT CODE § 2155.077 (a)(2)
* **CONTRACTING INFORMATION RESPONSIBILITIES**. Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.
* **ENERGY COMPANY BOYCOTTS.** Respondent represents and warrants that; (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify TSBVI.
* **STRICT COMPLIANCE.** Time is of the essence in the performance of this contract. Respondent shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this contract.
* **SUBSTITUTIONS**. Substitutions are not permitted without written approval of TSBVI

**29. SEVERABILITY CLAUSE.** In the event that any provision of this contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**30.CYBERSECURITY.** Respondent represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Gov. Code relating to cybersecurity training and required verification of completion of the training program. Texas Govt. Code § 2054.5192

**31.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 the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency. TEX GOVT CODE § 2155.0012

**32.HUMAN TRAFFICKING PROHIBITION.** Under Section 2155.0061 of the Texas Gov. Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. TEX GOVT CODE § 2155.0061

**33.PROTEST PROCEDURES.** Any actual or prospective Respondent who is aggrieved in connection with this RFQ, evaluation, or award of any contract resulting from this RFQ may formally protest as provided in CPA’s rules at 34 TAC Rule 20.384.

**34.DISPUTE RESOLUTION.** The mediation dispute resolution process provided for in Chapter 2260, Texas Govt. Code must be used by TSBVI and the Respondent to attempt to resolve any dispute arising under any contract resulting from this RFQ.

**35.DEFAULT.** If Respondent is found to be in default under any provision of this contract, TSBVI may cancel the contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Respondent will be responsible for paying damages to TSBVI including but not limited to re-procurement costs, and any consequential damages to the State of Texas or TSBVI resulting from Respondent’s non-performance. The defaulting Respondent 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 is significantly changed.

**36.ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY 1 TAC CHAPTER 213 (APPLICABLE TO STATE AGENCIES)**

# Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

# Respondent shall provide DIR and TSBVI with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (http://www.buyaccessible.gov). Respondents 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/.](http://www.section508.gov/)

# **37.DRUG FREE WORK PLACE.** Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§ 8101-8106.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Respondent shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

# **38.EQUAL OPPORTUNITY.** Respondent represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this contract.

**39.NON-APPROPRIATION OF FUNDS/EXCESS OBLIGATIONS.** Any contract resulting from this RFQ is subject to termination or cancellation, without penalty to TSBVI, either in whole or in part, subject to the availability of state funds. 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 funds which would render TSBVI or Respondent’s delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TSBVI will not be liable to Respondent for any damages, which are caused or associated with such termination, or cancellation and TSBVI will not be required to give prior notice.TEX CONST Art III § 49a, TEX CONST Art III § 6, General Appropriations Act, House Bill 1, 86th R.S. at Ast, IX § 6.03.

**40.TEXAS PUBLIC INFORMATION ACT (PIA).** Notwithstanding any provisions of this RFQ to the contrary, Respondent understands that TSBVI will comply with the Texas Public Information Act (Chapter 552, Gov. Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. Within three (3) days of receipt, Respondent will refer to TSBVI any third party requests, received directly by Respondent, for information to which Respondent has access as a result of or in the course of performance under any contract resulting from this RFQ. Any part of the solicitation response that is of a confidential or proprietary nature must be clearly and prominently marked as such by the Respondent.

**41.NO CONFLICTS OF INTEREST.** Under §2155.003, Gov. 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 in Section ETHICS LAWS AND PROFESSIONAL STANDARDS of the State of Texas Procurement and Contract Management Guide, which outlines the ethical standards required of public purchasers, employees, and Respondents who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of CPA or purchasers of other state agencies.

Respondent 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 GOVT CODE §§ 2252.908,2254.032,2261.252 (b).

**42.FELONY CRIMINAL CONVICTIONS.** Respondent represents and warrants that Respondent has not and Respondent’s employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised TSBVI as to the facts and circumstances surrounding the conviction. In accordance with Texas Education Code, Section 44.034, Notification of Criminal History § (a) (b) and (c).

**43.CRIMINAL HISTORY RECORD INFORMATION.** Respondent shall ensure that criminal history record reviews have been conducted in accordance with Texas Education Code, Section 22.0834, Criminal History Record Information Review of Certain Contract Employees AND Texas Education Code, Section 22.0835, Access to Criminal History Records of Student Teachers and Volunteers by Local and Regional Education Authorities. TSBVI reserves the right to perform Criminal Background checks prior to full contract execution.

**44.DEALINGS WITH PUBLIC SERVANTS AFFIRMATION.** Pursuant to Section 2155.003 of the Texas Gov. Code, Respondent represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity for future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this contract. TEX GOVT CODE §§572.051 (a)(1), 2155.003 and 34 TEX ADMINISTRATIVE CODE § 20.157

**45.FORCE MAJEURE.** Neither Respondent nor TSBVI shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this RFQ 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, pandemics and other declared public emergencies 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.

**46.DISASTER RECOVERY PLAN.** Upon request of TSBVI, Respondent shall provide the descriptions of its business continuity and disaster recovery plans. TEX GOVT CODE § 441.190, 13 TAC §6.94 (a)(9)

**47.INDEPENDENT RESPONDENT.** Respondent is and shall remain an independent Respondent in relationship to TSBVI. TSBVI shall not be responsible for withholding taxes from payments made under any contract resulting from this RFQ. Respondent shall have no claim against TSBVI for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

**48.INDEMNIFICATION. RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND TSBVI, ITS OFFICERS, AND EMPLOYEES AND RESPONDENTS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS’ FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF RESPONDENT OR ANY AGENT, EMPLOYEE, SUBRESPONDENT, OR SUPPLIER OF RESPONDENT IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT WITH RESPONDENT RESULTING FROM THIS RFQ. RESPONDENT SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TSBVI. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE RESPONDENT TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TSBVI FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TSBVI OR ITS EMPLOYEES. TEX CONST Art VIII § 6, TEX GOVT CODE § 2254.0031.**

**INTELLECTUAL PROPERTY-RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS TSBVI AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF RESPONDENT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) TSBVI’S AND/OR RESPONDENT’S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO TSBVI BY RESPONDENT OR OTHERWISE TO WHICH TSBVI HAS ACCESS AS A RESULT OF RESPONDENT’S PERFORMANCE UNDER THE CONTRACT. RESPONDENT AND TSBVI AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS’ FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL(OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, RESPONDENT WILL REIMBURSE TSBVI AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS’ FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF TSBVI DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF RESPONDENT OR IF TSBVI IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TSBVI WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND RESPONDENT WILL PAY ALL REASONABLE COSTS OF AGENCY’S COUNSEL.**

**Infringements**

1. **Respondent shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Respondent’s written approval, (iii) any modifications made to the product by the Respondent pursuant to Customer’s specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license contract.**
2. **If Respondent becomes aware of an actual or potential claim, or Customer provides Respondent with notice of an actual or potential claim, Respondent may (or in the case of an injunction against Customer, shall), at Respondent’s sole option and expense; (i) procure for the Customer 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 Customer’s use is non-infringing.**

**c)If Respondent is notified of any claim subject to this section, Respondent shall notify TSBVI of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Respondent without TSBVI prior written approval. Respondent shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Respondent shall pay all reasonable costs of the State’s counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Respondent represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits**.

# **49.HUBs.** Respondent represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Texas Gov. Code, Chapter 2261. A HUB Subcontracting Plan form must be filled out and returned with the Proposal to be considered responsive. If the Proposal does not include a HUB Subcontracting Plan, it shall be rejected as a material failure to comply with advertised specifications.

**50.STATE AUDITOR’S RIGHT TO AUDIT.** In addition to and without limitation on the other audit provisions of this RFQ, pursuant to §2262.154, Texas Gov. Code, the state auditor may conduct an audit or investigation of the Respondent or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the Respondent or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This RFQ or any contract resulting from this RFQ 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, Texas Gov. Code. Respondent will ensure that this clause concerning the authority to audit funds received indirectly by sub Respondents through the Respondent and the requirement to cooperate is included in any subcontract it awards.

**51.FEDERAL, STATE, AND LOCAL REQUIREMENTS.** Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2’s to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Worker’s Compensation Insurance coverage. Respondent shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Respondent or its employees for any Unemployment or Workers’ Compensation coverage, or federal or State withholding requirements. Respondent shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Respondent’s omission or breach of this Section.

**52.MERGER.** This contract contains the entire contract between Respondent and TSBVI and supersedes any prior understandings or oral or written contracts between TSBVIand Respondent on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this contract and any attachments shall be valid unless in writing and executed by TSBVI and Respondent

**53.LIABILITY FOR TAXES.** Respondent represents and warrants that it shall pay all taxes or similar amounts resulting from this contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Respondent or its employees. TSBVI shall not be liable for any taxes resulting from this Contract.

**54.IMMIGRATION.** The Respondent represents and warrant that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verifications forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

**55.CAMPUS SECURITY REQUIREMENTS FOR RESPONDENTS.** At all times when the Respondent and/of the Respondent’s sub- Respondents, staff, and/or volunteers enter a TSBVI facility, each individual must go to the front office of the campus and provide valid identification and justification of their presence on the campus.

**56.MEDIA RELEASES**. Respondent 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 Respondent, commodity or service. Respondent 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.

**57.OVERPAYMENTS (REFUNDS/CREDITS).** TSBVI will not accept any form of credits for overpayment or refund. All overpayments and refunds are to be made in check form only.

**58. COVID 19 VACCINE PASSPORT PROHIBITION.** Under Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that the individual or business entity named in this response or contract is not ineligible to receive the specified contract.

**59.CRITICALINFRASTRUCTURE AFFRIMATION/SUBCONTRACTS**. Pursuant to Government Code Section 2274.0102, Respondent certifies that neither it nor its parent company, nor any affiliate of the Respondent or its parent company, is: (1) majority owned or controlled by citizens of governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Texas Government Code Section 2274.0103, or (2) headquartered in any of those countries.

**60. FIREARM ENTITIES AND TRADE ASSOCIATIONS DISCRIMINATION.** If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of this contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its response and state why the verification is not required.

Signature of the person authorized to bind the Respondent’s firm to any contract that may be awarded from this RFQ is required below:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Signature of Authorized Representative |  | Date of Signature |
|  |  |  |
| Print Name, Title of Authorized Representative |  | Phone Number |
|  |  | Email Address |
| Full Legal Name of Firm as Registered with the Texas Secretary of State |  | Federal Employer ID Number |
|  |  |  |
| Mailing |  | Fax Number |
|  |  |  |
| City |  | State, Zip Code |

# EXHIBIT C. CRIMINAL CONVICTION CERTIFICATION

This Criminal Conviction Certification Form is incorporated as part of Respondent’s proposal and any resulting contract for all purposes.

Respondent represents and warrants that it shall comply with all of the following requirements:

Respondent must take appropriate steps and perform due diligence –- at a minimum, as described in this Exhibit C -- to become informed as to each assigned employee’s felony criminal convictions, if any, and must promptly inform TSBVI Point of Contact of any such felony criminal convictions for any assigned employee.

At a minimum, Respondent must take these appropriate steps and perform due diligence at each of these three (3) intervals:

(1) within the seven (7) business days immediately prior to submission of Respondent’s proposal;

(2) within the seven (7) business days prior to the proposed effective date of any renewal or extension of this contract; and

(3) within the seven (7) business days prior to requesting approval for assignment of a new employee (such as a substitute employee).

Respondent must inform TSBVI in writing within three (3) business days of Respondent’s receipt of any information on any felony convictions of assigned employees obtained from any of these steps at any of these intervals.

At each of the above three (3) intervals, Respondent must take minimum steps to review and perform due diligence of every assigned employee’s criminal history. Respondent’s minimum steps shall include, at a minimum,

(1) Respondent’s compliance with Respondent’s published employee policies and procedures for background and criminal checks of Respondent’s employees and

(2) Respondent’s comprehensive search of the public information portion of an online criminal conviction database, such as the DPS criminal conviction database at: https://records.txdps.state.tx.us/DpsWebsite/.

If such DPS criminal conviction database is not appropriate for a particular assigned employee, Respondent must submit with its proposal, its renewal or extension, or with its request for assignment, as appropriate, sufficient documentation that an equivalent or more extensive search was conducted and that the alternative is appropriate for that assigned employee.

Upon request by TSBVI, Respondent must provide to TSBVI, no later than five (5) business days after receiving such request, the written results of these minimum steps for all assigned employees.

For purposes of this Exhibit C, “assigned employees” includes, without limitation, all employees or personnel, for example, who will or may (1) be assigned as lead or key employees or personnel under this contract; (2) interact on site at TSBVI premises with any TSBVI personnel, assets, records or resources in connection with this contract; or (3) otherwise access or interact with any assets, records or resources of TSBVI in connection with this contract.

By signing this form and initialing the appropriate space, Respondent represents and warrants that it took the above minimum steps and performed due diligence as required by this Exhibit C to become informed as to each assigned employee’s felony convictions. If one or more proposed individuals have felony convictions, Respondent must describe the nature and timing of each conviction in a separate letter as part of Respondent’s proposal (and in its renewal or extension, request for assignment, etc., as appropriate).

If TSBVI becomes aware that the completed certification form is false, or if Respondent fails to promptly advise TSBVI of a felony criminal conviction occurring after the certification becomes effective, Respondent shall be in breach of this contract and TSBVI shall have the option to terminate the contract without further obligation to Respondent and may pursue all other remedies and rights available to TSBVI under this contract, at law, or in equity.

Respondent must have an authorized company representative initial and sign this document in the blanks provided below, and must return the initialed and signed form along with the other required paperwork with its proposal (and as appropriate, its renewal or extension, or with its request for assignment).

Respondent shall indicate, by initialing in the space provided to the left of Items 1-2 below, its intent to comply with these provisions. Respondent shall initial below EITHER Item 1 or Item 2 as applicable. DO NOT INITIAL BOTH ITEMS. Additionally, Respondent shall sign, date, and provide the title of the person executing this Criminal Conviction Certification on its behalf in the space provided below at the end of this document.

1.\_\_\_\_\_Respondent represents and warrants that it performed all minimum steps and due diligence described in this Exhibit C and that all currently assigned employees and all employees proposed for assignment have no felony criminal convictions. (If Respondent cannot make this unqualified representation and warranty, Respondent must initial Item 2 below and provide detailed information requested in Item 2 as a separate attachment to this Exhibit C, detailing and explaining any such convictions.) Further, Respondent represents and warrants that it shall notify TSBVI Point of Contact in writing if any future proposed employee (for example, a substitute or other newly assigned employee) has any felony criminal conviction or if any information for any previously assigned employee has changed, no later than three (3) business days prior to such employee’s proposed assignment starting date or no later than three (3) business days after Respondent’s receipt of such changed information, whichever is applicable.

OR

2.\_\_\_\_\_Respondent represents and warrants that the attached detailed information describes the nature and timing of each felony conviction for each employee listed. Respondent represents and warrants that it shall notify TSBVI Point of Contact in writing of any changes or updates to the information provided with this Exhibit C or subsequently provided no later than three (3) business days after Respondent’s receipt of such changed or updated information. Respondent represents and warrants that it provided with this Exhibit C a separate attached document detailing and explaining these convictions. Further, Respondent represents and warrants that it shall notify TSBVI Point of Contact in writing if any future proposed employee (for example, a substitute or other newly assigned employee) has any felony criminal conviction or if any information for any previously assigned employee has changed, no later than three (3) business days prior to such employee’s proposed assignment starting date or no later than three (3) business days after Respondent’s receipt of such changed information, whichever is applicable.

SIGNATURE REQUIRED:

Signature of the person authorized to bind the Respondent’s firm to any contract that may be awarded from this RFQ is required below

|  |  |  |
| --- | --- | --- |
| Signature of Authorized Representative |  | Date of Signature |
|  |  |  |
| Print Name, Title of Authorized Representative |  |  |
|  |  |  |
| Full Legal Name of Firm as Registered with the Texas Secretary of State |  |  |

# EXHIBIT D. NONDISCLOSURE AGREEMENT

In consideration of TSBVI communicating with the undersigned Respondent regarding a potential contract resulting from the referenced RFQ and because of the sensitivity of certain information provided to Respondent, both parties agree that all information regarding TSBVI or gathered, produced, collected or derived from or related to the potential contract, or provided to Respondent under a resulting contract (“Confidential Information”) must remain confidential subject to release only upon prior written approval of TSBVI, and more specifically agree as follows:

1.The Confidential Information may be used by Respondent only to assist Respondent in connection with the business relationship

contemplated in the solicitation or performance of a contract with TSBVI resulting from the solicitation.

2.Respondent shall not, at any time, use the Confidential information in any fashion, form, or manner except in its capacity as proposed consultant or independent contractor to TSBVI.

3.Unless otherwise provided in the solicitation or resulting contract, Respondent agrees to maintain the confidentiality of all Confidential

Information in the same manner that it protects the confidentiality of its own materials of like kind, but in no event less than reasonable care. Respondent shall take reasonable precautions to protect the Confidential Information including, but not limited to, not disclosing Confidential

Information in any manner to any person, firm, or entity, except for authorized employees, agents, or contractors of Respondent with a need to know who are bound by confidentiality obligations at least as stringent as those contained in this agreement prior to any disclosure of such

Confidential Information.

4.The Confidential Information may not be copied, reproduced, disclosed, distributed, or otherwise divulged without TSBVI prior written

approval. Confidential Information and any copies thereof shall be TSBVI exclusive property.

5.All Confidential Information made available to Respondent, including copies thereof, must be returned to TSBVI upon the first to occur of (a) expiration or termination of any contract resulting from the solicitation, or (b) request by TSBVI.

6.The foregoing does not prohibit or limit Respondent’s use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, provided such prior knowledge was not subject to a confidentiality obligation, (b) independently developed by it, (c) acquired by it from a third party under no obligation of confidentiality to TSBVI, (d) which is or becomes part of the public domain through no breach by Respondent of this nondisclosure agreement or other contractual obligations to TSBVI, or (e) approved by TSBVI in writing for unrestricted disclosure resulting from the solicitation upon written notice to Respondent for such breach. The parties acknowledge that the measure of damages in the event of a breach of this nondisclosure agreement may be difficult or impossible to calculate, depending on the nature of the breach. Regardless of whether TSBVI elects to terminate any contract with Respondent resulting from the solicitation upon the breach hereof, TSBVI may require Respondent to pay to TSBVI the sum of $5,000 for each breach as liquidated damages. This amount is not intended to be in the nature of a penalty, but is intended to be a reasonable estimate of the amount of damages to TSBVI in the event of a breach hereof by Respondent of this nondisclosure agreement. TSBVI does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this nondisclosure agreement.

7. If Respondent is required by applicable law, regulation, or legal process to disclose any Confidential Information, then Respondent

shall provide TSBVI with prompt notice of any such requirement prior to delivery of the Confidential Information to allow TSBVI a reasonable

opportunity to seek a protective order or equivalent.

8.This nondisclosure agreement shall become effective as of the date Confidential Information is first made available to Respondent

and shall survive the expiration or termination of any contract resulting from the solicitation and be a continuing requirement.

9. The breach of this nondisclosure agreement by Respondent shall entitle TSBVI to immediately terminate any contract with Respondent

10.This nondisclosure agreement is governed by and construed under the laws of the State of Texas. Any and all obligations of this agreement are due in Travis County, Texas and venue is proper in only such county.

SIGNATURE REQUIRED:

Signature of the person authorized to bind the Respondent’s firm to any contract that may be awarded from this RFQ is required below

|  |  |  |
| --- | --- | --- |
| Signature of Authorized Representative |  | Date of Signature |
|  |  |  |
| Print Name, Title of Authorized Representative |  |  |
|  |  |  |
| Full Legal Name of Firm as Registered with the Texas Secretary of State |  |  |

# EXHIBIT E. CONFLICT OF INTEREST STATEMENT

In accordance with Section 5.5 of the RFQ, the Respondent must disclose in its Solicitation Response any actual or potential conflict of interest it has or may have in providing the services described in this RFQ, including all existing or prior arrangements, contracts, or other engagements.

Describe herein (Exhibit E) any and all actual or potential conflicts of interest includes any activities of affiliated or parent organizations and individuals who may be assigned to provide management, oversight, services, and tasks under a contract awarded as a result of this RFQ.

If there are no potential conflicts of interest, so indicate in the space provided below:

SIGNATURE REQUIRED:

Signature of the person authorized to bind the Respondent’s firm to any contract that may be awarded from this RFQ is required below

|  |  |  |
| --- | --- | --- |
| Signature of Authorized Representative |  | Date of Signature |
|  |  |  |
| Print Name, Title of Authorized Representative |  |  |
|  |  |  |
| Full Legal Name of Firm as Registered with the Texas Secretary of State |  |  |

Vendor Onboarding Package is a separate posting to the ESBD and must be completed.