



**RAILROAD COMMISSION OF TEXAS
1701 N. CONGRESS AVE.
AUSTIN, TEXAS 78701**

REQUEST FOR PROPOSAL

**MASTER SERVICE AGREEMENT FOR ANALYTICAL SERVICES
FOR SITE REMEDIATION – STATEWIDE**

RFP #455-18-8656

POSTING DATE: FEBRUARY 5, 2018

**OPTIONAL PRE-PROPOSAL TELECONFERENCE:
Friday, February 9, 2018 at 2 PM CT
See Section 3.0 Schedule of Events**

**DEADLINE FOR SUBMISSION:
FEBRUARY 26, 2018 at 2:00 PM Central Time**

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DEFINITIONS

For purposes of this RFP, the following definitions apply:

Addendum: A modification of the specifications issued by RRC.

Basic Sediment/Crude Oil Impacted Soil: Media/soil that may consist of a mixture or solely of paraffin, drilling mud, sludge, sediment and/or crude oil impacted material. This waste, measured in cubic yards, can be transported in a dump truck or roll off box container.

Basic Sediment and Water (BS & W): Impurities and water contained in the fluid recovered during drilling operations or production. This waste, measured in barrels, can be transported in a vacuum truck.

Best Value: Factors to be considered in determining lowest overall cost and value in making certain purchases. Reference Texas Government Code, Section 2155.074 (Non-Information Technology Related).

Contract: The written agreement, if any, executed by the authorized representative of the parties and the Respondent that formalizes the terms, provisions, covenants, and obligations, including but not limited to those contained in this RFP, of the respective parties to the arrangement for provision of services.

Contractor: The individual or entity qualified to provide the goods and/or services sought by RRC pursuant to this RFP and who is ultimately be selected to carry out the requirements stipulated in this RFP and any resulting contract.

FMRC: Factory Mutual Research Corporation.

NEMA: National Electrical Manufacturers Association.

Oil and Gas Waste: Material to be disposed or reclaimed which have been generated in connection with activities associated with the exploration, development, and production of oil and gas or geothermal resources.

Pit/Tank Bottoms: Sediments and solids that settle to the bottom of a pit/tank and become compacted and cannot be removed by conventional methods such as vacuum truck, jetting, or blending. This waste, measured in cubic yards, can be transported in a dump truck or roll off box container.

OSHA: Occupational Safety and Health Administration; agency of the United States Department of Labor to assure safe and healthful working conditions.

Waste Water: Standing water in pit areas and water found in vessels that may be contaminated by crude oil, contains elevated chloride concentrations and is injectable by commercial saltwater disposal facilities. This waste, measured in barrels, can be transported in a vacuum truck.

Project Manager /RRC Authorized Representative: The individual authorized to make decisions on behalf of the RRC.

RCRA: Resource Conservation and Recovery Act.

RRC: The Railroad Commission of Texas and the state agency responsible for the issuance of this RFP.

Request for Proposal (RFP): The document so titled and exhibits, attachments, and appendices thereto which are incorporated by reference as set forth in full in this RFP.

Respondent/Proposer: An individual or entity qualified to provide the goods and/or services sought by RRC pursuant to this RFP and who may ultimately be selected to carry out the requirements stipulated in this RFP and any resulting contract.

Respondent's Employee(s)/Respondent's Personnel: Any and/or all of the following, without limitation to: employees, leased employees, agents, officers, directors, staff, independent contractors, contractors, or subcontractors, or any individuals furnished, referred, or provided by the Respondent for the purposes arising out of or related to this RFP, the Respondent's Proposal, and the contract, if any, that results from the award made by RRC to the Respondent.

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PART I – GENERAL INFORMATION

1.1. Background.

In accordance with the provisions of Section 2155.137, Emergency Purchase Texas Government Code, Chapter §2269 Subchapter D, Competitive Sealed Proposal Method, and Rules and Procedures adopted by for The Railroad Commission of Texas (RRC), RRC is soliciting proposals for analytical laboratory services. The goals of the RRC include eliminating the threat of pollution posed by abandoned tank battery facilities, spills, illegal dumping, abandoned reclamation and commercial disposal facilities and other pollution threats under the jurisdiction of the RRC. Abandoned tank batteries and other sites under the jurisdiction of the RRC pose a threat of pollution to surface and sub-surface waters and for the migration of fluids into formations containing usable quality water or onto surface water. The RRC has a regulatory obligation to ensure the proper removal of waste/hydrocarbons and the decommissioning of abandoned tank batteries is properly handled within our rules and regulations.

1.2. Project Overview.

The Oil and Gas Regulation and Cleanup Fund is a fund that was created by the 82nd Texas Legislature in 2011. This fund replaced the previous Oil Field Cleanup Fund. This fund allows the RRC to plug abandoned oil and gas wells and clean-up abandoned oilfield sites. The RRC will award a fixed price contract to the respondent offering the best value for the state, while conforming to the specifications required. The RRC may make multiple and/or regional awards for the work set forth in this scope of work. The respondent shall perform work to support the State Managed Cleanup Program and the Oil and Gas Division/Field Operation District Offices. In order to fulfill and expedite the completion of assessments and remedial activities at contaminant release sites, RRC requires analytical testing of the affected and/or suspected contaminated media. To meet these analytical testing needs, the RRC shall contract laboratory services that are accredited thru the Texas Laboratory Accreditation. Services required under this award include but may not be limited to the activities and requirements as outlined in this RFP.

1.3. Work Process.

All work will be performed based on the analyses identified on the chain of custody (COC) and paid at a fixed price per unit as stated on Request for Proposal (RFP). Any additional work not covered under this section or by unit prices will be handled as a reimbursable at cost item.

The Contractor is responsible for providing laboratory analytical services in accordance with applicable method protocols, laboratory Quality Assurance Project Plan (QAPP), and all applicable rules and regulations. Laboratory analysis shall be performed in accordance with applicable published standards for analytical methods (i.e. EPA, NIOSH, TCEQ) and shall include all method-required and method-recommended quality control (QC) steps as described below. The Contractor is responsible for supplying ice chests, sampling containers, shipping labels, preservatives, chain-of-custody forms, etc. The Contractor shall provide the analytical results on either an expedited (by close of business, the next working day after the receipt of the samples) or normal turnaround basis (7-10 working days from when the samples were received) as indicated on the chain-of-custody form by a RRC representative.

The Contractor shall be responsible for the costs of shipping the samples to the laboratory. The RRC may request the Contractor to pick up samples at the District Office during normal business hours. In this situation, the Contractor shall be responsible for storing samples in the proper containers, keeping samples properly refrigerated, preserving samples with appropriate preservatives, and shipping samples promptly to the laboratory within a 24-hour time period. The RRC may elect to deliver the samples directly to the shipping company.

The Bidder shall submit a QAPP that consists of a comprehensive program to generate data of acceptable quality. As an appendix to the QAPP, the Bidder shall submit all internal laboratory quality assurance procedures that are specified in the laboratory's Quality Management Plan (QMP) developed in compliance with Section 4.2 of ISO 17025. The QAPP and appendix should be submitted on a compact disc (cd).

The contractor will invoice the District Office Cleanup Coordinator. Contractor must submit a valid and correct invoice within two weeks of completing the analytical, with all appropriate support documentation as required by the terms and conditions of this contract.

1.4. Contract Term.

The initial term of the contract will be from date of award, or the last signature date, whichever is later, and shall expire on August 31, 2018. The Contract may be renewed for two (2) additional two (2) year periods, provided that renewal is executed prior to expiration of the current contract term. Any renewals shall be in writing and at the same terms and conditions, plus any approved changes. Contract shall not exceed a total maximum term of six (6) years. This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, provisions of the Termination Article in the Services Contract shall apply.

Notwithstanding the termination or expiration of this Agreement, the provisions regarding indemnification, confidentiality, dispute resolution, audit rights, and warranties shall survive the termination and expiration dates of this Agreement.

1.5 Texas State Agency Holiday Schedule and RRC Official Business Hours.

The resulting contract will be issued in State Fiscal Year (FY) 2018. The State FY begins September 1st, and ends on August 31st. There are official State holidays recognized by Texas State agencies. On these days, the RRC may not be officially opened for business or may be closed. Respondents submitting Proposals in response to this RFP should refer to the Texas State Auditor's website at the following link: <http://www.hr.sao.texas.gov/Documents/Holidays/Holidays2018.pdf>, for a .pdf document of the FY2018 State Agency Holiday schedule, which provides additional information on state agency closures: <http://www.hr.sao.texas.gov/holidays>. This Holiday schedule is updated each State FY by the Texas State Auditor's Office.

For the purposes of this RFP, the official business hours of the Agency are Monday through Friday, 8:00 a.m. to 5:00 p.m.

1.6 Protest Procedure.

Any protest shall be governed by RRC's protest rules, which are set forth in 16 TEX. ADMIN. CODE §20.1.

1.7 Minimum Qualifications for Respondents.

Respondents submitting a Proposal in response to this RFP must meet the following minimum requirements:

- a. Respondents will be held to have studied the Plans and Statement of Work and gathered a clear understanding
- b. Have stated qualifications as demonstrated on **Attachment 3; Respondent Qualification & Required Information Form.**
- c. The respondent must be accredited thru the Texas Laboratory Accreditation.

1.7.1 Laboratory Accreditation.

- a. The CONTRACTOR and any subcontractor employed or used by the CONTRACTOR shall have and maintain accreditation from Texas Laboratory Accreditation Program according to Title 30 Texas Administrative Code (TAC) Chapter 25 (relating to Environmental Testing Laboratory Accreditation and Certification) Subchapters A, B, and/or C, where applicable, as amended, for all matrices and all methods and parameters of analysis associated with work performed under this Contract, unless RRC agrees in writing to allow one of the regulatory exceptions specified in 30 TAC 25.6.
- b. The CONTRACTOR and any subcontractor employed or used by the CONTRACTOR may not analyze any samples received under this Contract for which the CONTRACTOR or any subcontractors employed or used by the CONTRACTOR does not have accreditation from Texas Laboratory Accreditation Program

according to 30 TAC 25 Subchapters A, B, or C as amended, for the matrices and all methods and parameters of analysis associated with work performed under this Contract, unless RRC agrees in writing to allow one of the regulatory exceptions specified in 30 TAC 25.6.

- c. While performing work under this Contract, the CONTRACTOR shall operate its laboratory and maintain its accreditation according to the standards for accreditation.
- d. The CONTRACTOR shall include these requirements in any contract, work order, or other type of agreement associated with the subcontracting of analytical work under this Contract.
- e. Notwithstanding anything to the contrary, nothing in this Section shall be construed as requiring the CONTRACTOR to acquire Texas Laboratory Accreditation Program lab accreditation for any methods and parameters of analysis they were not certified for prior to entering into this Contract. The maintenance of accreditation requirements herein shall apply to methods of analysis which CONTRACTOR, and its subcontractors, where applicable, held at the time of evaluation and award of this Contract.

Respondents that do not meet required qualification requirements may be determined to be non-responsive and its proposal rejected.

1.8. RRC Responsibilities.

RRC representatives shall have the authority to stop the work if a/the RRC representative deems work to be noncompliant with the terms of the contract. The Contractor shall not be entitled to and waives any claim for damages caused by such a stop work order.

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PART II - STATEMENT OF WORK

2.0 General Overview.

The Successful Respondent shall provide all labor, equipment, goods, materials, services, coordination and Lab Manager activities and complete the specified work scope in a safe and legally correct manner. All work shall be performed in a thoroughly workmanlike manner in accordance with the highest standards of quality for such work.

2.1 Services to be Performed.

All work will be performed and paid as per unit prices stated on the RFP. Any additional work not covered under this section or by unit prices will be handled as a reimbursable item. All work shall be performed and paid per the unit prices provided in **Attachment 2; Mandatory Price Sheet – Analytical Laboratory Services Contract**.

The Contractor is responsible for providing laboratory analytical services in accordance with applicable method protocols, laboratory QAPP, and all applicable rules and regulations. Laboratory analysis shall be performed in accordance with applicable published standards for analytical methods (i.e. EPA, NIOSH, TCEQ) and shall include all method-required and method-recommended QC steps as described below. The Contractor is responsible for supplying ice chests, sampling containers, shipping labels, preservatives, chain-of-custody forms, etc. The Contractor shall provide the analytical results on either an expedited (by close of business, the next working day after the receipt of the samples) or normal turnaround basis (7-10 working days from when the samples were received) as indicated on the chain-of-custody form by a RRC representative. The Contractor shall be responsible for the costs of shipping the samples to the laboratory.

2.1.1 Quality Assurance Project Plan.

The Contractor shall submit a QAPP that consists of a comprehensive program to generate data of acceptable quality. The QAPP must include a quality assurance (QA) component that encompasses the long-term management procedures and controls, and an operational, day-to-day, Quality Control (QC) component. The QAPP should present the policies, organization, objectives, functional guidelines, and specific QA and QC activities designed to achieve the data quality requirements when running performance-based methods. The standard operating procedures (SOPs) pertaining to each element shall be included, or referenced, and should describe the specific operational and analytical procedures as normally implemented by the laboratory.

The QAPP should address, at a minimum, the following elements:

- 1) The laboratory's organization and job descriptions;
- 2) Facilities and equipment;
- 3) Personnel training;
- 4) Analytical procedures;
- 5) Sample handling practices and chain-of-custody;
- 6) Holding times and preservatives;
- 7) Material procurement and control;
- 8) QC of samples and documentation;
- 9) Corrective action;
- 10) Internal/external audits and outside certifications;
- 11) Method detection limits;
- 12) Equipment maintenance and repair;
- 13) Document control;
- 14) Data reduction and validation;
- 15) Data deliverables; and,
- 16) Completeness.

As an appendix to the QAPP, the Contractor shall provide all internal laboratory QA procedures that are specified in the laboratory's QMP developed in compliance with Section 4.2 ISO 17025. The laboratory's QMP shall describe all the general and specific procedures used within the laboratory to achieve scientifically sound and legally defensible data.

2.1.2 Sample Handling Requirements.

All samples shipped to the contract laboratory for analysis shall be packaged properly, refrigerated as necessary, transferred in accordance with appropriate chain-of-custody procedures and shall arrive at the laboratory within 24 hours after sample pickup.

The Contractor, per specific laboratory operating procedures and QAPP requirements, is required to document the following information on the chain-of-custody form upon receipt of samples:

- 1) Date of sampling;
- 2) Date and time samples are received and relinquished;
- 3) Signature of Contractor accepting custody of the samples.
- 4) Condition of samples upon receipt (e.g. intact, leaking, broken);
- 5) Mode of delivery;
- 6) Sample identification information and corresponding field sample identification information;
- 7) Analyses requested for each sample;
- 8) Temperature of the samples upon receipt;
- 9) Matrix of each sample;
- 10) The pH for applicable samples;
- 11) Contact information of a RRC representative;
- 12) Signature of person relinquishing custody of the samples; and,

The chain-of-custody forms, shipping documents, telephone conversation records, and any corrective action forms shall be maintained by the Contractor for each shipment and included in the reporting package for submittal to the RRC.

All samples and extracts shall be stored under conditions that will ensure their integrity and preservation. All measures shall be taken to prevent cross-contamination. Limited and controlled access to all laboratory areas shall be maintained.

Samples and associated extracts shall be stored for a minimum of 60 days after receipt of the final data report for those samples. After that time, the Contractor shall be responsible for the disposal of the samples and their associated extracts in compliance with all local, state, and federal regulations unless arrangements have been made for the return of any unused sample portions back to the site.

Extraction/digestion holding times shall be defined from the date and time of sample collection in the field to the date and time when the sample is first exposed to the extraction/digestion solvent. For non-continuous extraction procedures, the holding times shall be defined from the date/time of sample collection in the field to the date/time when the sample is extracted up to the point of concentration and prior to any clean up. Holding times for analytical procedures shall be defined from the date and time of sample extraction to the date and time of sample analysis. The Contractor shall maintain documentation that clearly shows the dates and times for all sample handling/manipulation processes.

Samples must be analyzed within the normal or expedited turnaround times as specified on the sample chain-of-custody form. If Contractor does not meet the expedited turnaround time, then the RRC shall pay the bid price for normal turnaround time for that sample analysis. If the normal turnaround time is not met, then the RRC shall pay half the RFP price for the sample analysis.

2.1.3 Analysis Requirements.

The Contractor shall maintain written, laboratory-specific SOPs for all methods and general operations. The laboratory-specific SOPs shall fully detail the actual procedures and documentation used to implement performance-based methods. The SOPs should be based on the guidance as published by EPA (i.e. QA/G-6 Guidance for the preparation of SOPs for Quality-Related Documents, April 2007). The SOPs shall include specific details for estimating the method detection limit. Method detection limit studies shall be conducted for each analysis according to EPA Method, 40 CFR, Part 136, Appendix B. The laboratory SOPs shall be available to the RRC upon request.

The Contractor shall have the appropriate standards for all target analytes on the premises. The Contractor shall store the standard's certificate of analysis. The Contractor shall continuously monitor the purity or quality of

standards through a series of well-documented procedures described in the QAPP. Primary reference standards and standard solutions used by the laboratory shall be obtained from reliable commercial sources (i.e. NIST, EPA, etc.) to ensure the highest purity possible.

For each method performed, the Contractor shall maintain documentation that demonstrates the laboratory's ability to perform the method within the QA limits as stated in the method or the QAPP. The Contractor may be required to demonstrate their continuing capability to perform any given method by ensuring that applicable SOPs are current and representative of what is implemented in the laboratory. In the case of a method deviation, the Contractor shall demonstrate that the altered method meets QA limits.

The Contractor shall maintain records that document all laboratory activities. Examples of laboratory documents shall include but not be limited to the following:

- 1) Logbooks;
- 2) Chain-of-custody records;
- 3) Sample work sheets;
- 4) Bench sheets; and,
- 5) Other documents relating to the sample or sample analysis.

The data produced by the Contractor should be legally defensible per the QAPP and regulatory requirements. The Contractor shall be aware of these requirements and be able to show that these requirements were followed. The Contractor shall be able to clearly show how analytical values were obtained. Intentional falsification of process results or QC parameters, or failure to document actual conditions for the purpose of misrepresentation, may constitute fraud. Mistakes must be documented and corrected. The QAPP should include procedures for an electronic audit trail that documents the changes, all changes to data, by whom the changes were made, the date of the change, and reason for the change.

2.1.4 Calibration Procedure and Frequencies.

The Contractor shall provide all necessary analytical support to achieve scientifically sound and legally defensible data. This includes verifying, measuring and recording on first daily use the calibration of analytical balances, the internal temperatures of all refrigerators and freezers, and the calibration of all variable volume pipettes. Fixed glassware and the water supply system shall be calibrated/monitored monthly and other glassware shall be calibrated/monitored annually.

Calibration of the instruments is required to ensure that the analytical systems are operating correctly and with proper sensitivity. Calibration curves, blanks, standards, and background correction systems shall be verified and recorded for the appropriate instrument and analyses as described in the QAPP and in accordance with the manufacturer.

2.1.5 Quality Assurance/Quality Control Procedures.

The Contractor's internal QC checks shall determine if laboratory operations are operating within acceptable QC limits and the effect of the sample matrix on the data being generated (matrix-specific QC). Target ranges shall be set to determine if QA and QC objectives are met.

Samples shall be prepared, analyzed and reported in batches and be traceable. The preparation and analysis batches shall be identified. Samples taken from the same site shall be grouped together for batching purposes within the constraints imposed by the method holding times. The laboratory QC procedure manual shall include a description of all batches. The QC procedures shall also include the minimum required QC samples for each preparation batch, which includes but is not limited to the following: reagent blanks, method blanks, laboratory control samples, matrix spikes, matrix spike duplicates and duplicates.

2.1.6 Preventive Maintenance.

Preventive maintenance shall be routinely performed on each analytical instrument. Either trained staff or trained service personnel shall perform repairs. The method SOPs or the QAPP shall describe preventive maintenance procedures and schedules. The Contractor shall maintain detailed logs for each instrument that documents the preventive maintenance and repairs performed.

2.1.7 Corrective Actions.

The Contractor shall provide corrective action to resolve problems and restore proper functioning to the analytical

systems. Corrective action procedures shall be described in the QAPP and shall include at a minimum the following:

- 1) Sample integrity violation;
- 2) Sample delivered at improper temperature;
- 3) Sample not preserved properly;
- 4) Sample exceeding holding times;
- 5) Errors on the chain-of-custody;
- 6) Instrument calibration failure;
- 7) Laboratory Control Sample (LCS) failure;
- 8) Matrix Spikes and Matrix Spike Duplicates (MS/MSD) failure; and
- 9) Calculating and reporting errors.

If corrective actions are needed for deficiencies that would affect data quality, the Contractor shall immediately notify a RRC representative and the RRC Austin office of the samples that may be affected. The Contractor shall record all corrective action, including the call alerting the RRC, on the chain-of-custody.

2.1.8 Data Reduction, Evaluation and Reporting.

The Contractor shall provide laboratory analytical data reports that comply with the requirements in Section 4.2 of ISO 17025, and shall include a reference to the extraction procedure performed by the laboratory. All analytical data generated by the laboratory shall be extensively reviewed prior to report release to assure the validity of the reported data. The internal data evaluation process shall cover the areas of data generation and reduction and shall require at least two levels of independent review.

Each report shall include a case narrative that includes but is not necessarily limited to:

- 1) Notation of extractions or analyses that exceed holding times;
- 2) Definition of all data qualifiers;
- 3) Description of corrective actions; and
- 4) Notation of any other factors that could affect the sample results.

The analytical report shall contain sufficient information to determine the precision, bias, representativeness, comparability, and sensitivity of the data. The analytical report for each sample shall include:

- 1) Chain-of-custody;
- 2) Project name and identification information;
- 3) Field sample identification information as stated on the chain-of-custody;
- 4) Laboratory sample identification information;
- 5) Matrix or sample description (if necessary);
- 6) Holding time compliance (including sample collection date, sample received date, sample extracted/prepared date, sample analysis date);
- 7) Preparation, analysis or other batch numbers;
- 8) Analyte or parameter evaluated;
- 9) Analytical result with correct number of significant figures;
- 10) Detection limits (including any adjustment for sample-specific factors);
- 11) Method quantitation limits;
- 12) Sample quantitation limits;
- 13) Data qualifiers;
- 14) Concentration units;
- 15) Dilution factors; and,
- 16) Chromatograms, if applicable.

The QC report shall include the following:

- 1) Surrogate recoveries (organic analyses only);
- 2) LCS recoveries;
- 3) MS/MSD recoveries and percent differences;
- 4) Blank results;
- 5) Laboratory duplicate results and percent differences;

- 6) Post-digestion spike;
- 7) Dilution check sample results (inorganic analyses only); and,
- 8) All associated acceptance criteria.

Electronic data deliverables may be specified either in addition to or in lieu of hard copy requirements. Electronic data deliverables shall contain the same information as described for the hard copy deliverables.

2.1.9 Sample Analyses.

The Contractor shall use the methods specified as line items on the bid submission sheets. The Contractor may also use equivalent methods if approved by a RRC representative.

Copies of the reports shall be emailed to the RRC at the completion of the analyses in the requested turnaround time. Upon request, reports shall be faxed to a RRC representative at the completion of the analyses in the requested turnaround time.

2.1.10 Contractor Responsibilities.

Contractor shall provide sample shipping from the district office during normal business hours, packing, refrigerating as necessary, labor, equipment, goods, materials (including chain-of-custody forms, ice chests, gift cards to purchase ice, sampling jars, vials, preservatives, etc.) and services necessary to perform expedited turnaround (i.e., by close of business, the next working day after the receipt of the samples) and normal turnaround (i.e., 7-10 working days turnaround) for chemical analysis in a safe and legally correct manner.

Contractor shall provide a laboratory manager who is responsible for the following: 1) implementing the laboratory's QA Plan, 2) maintaining accurate SOPs and enforcing their use in the laboratory, 3) participating in interlaboratory comparisons and proficiency testing, 4) certifying that personnel performing all tests have proper education and training, 5) providing a contingency plan which identifies back-up personnel for key laboratory positions (i.e., QA officer (QAO), etc.) in the event of personnel absence, 6) having policy and procedures in place which ensure protection of client's confidential information and proprietary rights, 7) maintaining a work environment that emphasizes the importance of data quality, and 8) providing appropriate management and supervisory support.

Contractor shall provide a laboratory QAO who shall be responsible for maintaining the quality system and overseeing the QA aspects of the data. The laboratory manager may also serve as the QAO.

The CONTRACTOR shall contact the sample submitter of record, the RRC Project QAM, as soon as practicable, but no later than twenty-four (24) hours from receipt, concerning any sample that is:

- 1) improperly collected, preserved, or handled;
- 2) received after holding times has expired;
- 3) received in a container that is broken or in a container whose seal is broken;
- 4) received without a chain of custody (COC) or request for analysis (RFA) form;
- 5) received with a COC or RFA form that lacks signature(s), sampling date(s), or sampling time(s);
- 6) received with a COC or RFA form that lacks field measurement results, information concerning analyses requested or program area, unless the sample submitter of record provides the missing information upon request.

The CONTRACTOR may contact the RRC Project QAM to determine whether or not to accept incomplete or missing documents or information. CONTRACTOR shall contact RRC Contract Manager within 24 hours and prior to invalidating the samples.

The CONTRACTOR shall notify the sample submitter of record and the RRC Project QAM by electronic mail or facsimile of the rejection of any sample and reason(s) for rejection within 72 hours of rejection. Reasons for invalidation of samples will be provided. Records of invalidated samples will be maintained in accordance with procedures outlined in Standard Operating Procedures (SOPs)

maintained by the CONTRACTOR.

2.1.11 Sample Control.

1) Upon receipt of a sample, the CONTRACTOR shall assign and monitor the due date for each analysis performed under this Contract.

2) Legal Chain of Custody

The CONTRACTOR shall have a written SOP for maintaining legal chain of custody of samples consistent with the procedures in the current version of American Society for Testing and Materials Method D 4840, *Standard Guide for Sample Chain-of-Custody Procedures*. The CONTRACTOR shall maintain legal chain of custody on samples that RRC identifies in a written request for the laboratory to implement the SOP.

2.1.12 Method Modification.

The CONTRACTOR shall request and receive written approval from RRC before using a modified analytical method. The request shall be submitted to and approved by the RRC according to *The Analytical Method Modification Program - How to Apply*, TCEQ Regulatory Guide RG-380. It is the CONTRACTOR'S responsibility to demonstrate and maintain documentation that supports the equivalency of any method modifications.

Method modification may be employed and the data will be accepted as long as the methods used:

- (1) meet the sensitivity requirements of the measurement performance specifications;
- (2) are contained in 40 Code of Federal Regulations Part 136, the most current version of Standard Methods, or another reliable procedure approved by the RRC QAM;
- (3) are implemented by the laboratory in accordance with applicable accreditation requirements, and;
- (4) modifications are documented in the applicable test method SOP. Prior approval to submit an application for analytical method modification must be obtained from the RRC Project QAO. Approval by the RRC will be granted or denied based on review of the application, specifically the section documenting an initial demonstration of method equivalency conducted by the laboratory.

The CONTRACTOR shall submit a weekly report via electronic mail to the RRC Contract Manager on Monday of each week or, if the Monday is a state holiday, on the first work day following the Monday.

Each weekly report shall include:

- 1) A listing of the samples received during the preceding week;
- 2) The total amount of the contract award;
- 3) The total amount billed by the CONTRACTOR through the preceding week;
- 4) The total amount remaining (contract award minus amount billed).

2.1.13 Work Schedule.

Contractor shall commence the contract laboratory services upon receipt of a Chain of Custody from the RRC.

Should the Contractor be unable to initiate the contract by the designated deadline, the RRC representative reserves the right to notify the Contractor in writing that the contract has been terminated and will be awarded to the subsequent Respondent offering the best value to the state.

Contractor may make a written request for delaying initiating contract to the RRC. Any extension granted will be made in writing for reasons deemed appropriate by the RRC.

Contractor shall commence based on the analysis requested on the chain-of-custody form(s) upon receipt of samples at the laboratory or by the Contractor's courier. Once the courier or the Contractor (prime) receives the samples, the samples must be received by the laboratory performing the analysis within 24 hours, unless the RRC provides notice otherwise.

Contractor shall conduct work diligently on a daily basis until analyses are completed.

Contractor shall perform no work without the authority of the RRC by receipt of the chain-of-custody form. Any work performed by the Contractor without authorization from the RRC will be done at the Contractor's own risk.

Contractor shall submit a laboratory report to the RRC within established expedited turnaround (i.e., by close of business, the next working day after the receipt of the samples) and normal turnaround (i.e., 7-10 working days turnaround) as specified in the chain-of-custody form. The laboratory report shall contain the information and be in the format required by this RFP.

Contractor shall complete and submit the laboratory report(s) by such deadline as specified in the chain-of-custody. Failure to complete and submit laboratory report(s) within established deadlines shall result in contract termination or a different pay schedule as outlined in this RFP. Failure to meet established deadline(s) shall result in contract termination or a different pay schedule as outlined in this RFP.

2.1.14 Safety.

The Contractor shall follow all required safety and health protection procedures. The Contractor shall be responsible for the safety of all persons who may be affected by the services.

The Contractor shall be responsible for ensuring compliance with all appropriate and applicable safety requirements at all times by all workers. Any health and safety program or manual required hereunder and such specific health and safety plan as may be required by the RRC or law is to remain and be maintained at the Contractor, readily accessible for review by all workers and subcontractors or review by the RRC.

The Contractor, its employees, and subcontractors shall observe all required or otherwise appropriate safety practices at all times.

In emergencies affecting the safety or protection of persons, work or property at the laboratory or by a subcontractor, Contractor, without special instructions or authorization from the RRC, is obligated to act to prevent threatened damage, injury or loss, and to be fully responsive to directives issued by authorized official emergency personnel, including any emergency response Contractor employed by the RRC. Contractor shall give prompt notification to the RRC when such emergency occurs.

2.1.15 Quality Assurance/Quality Control QA/QC.

Contractor shall adhere to all QA/QC requirements as specified Section 4.2 of ISO 17025 (General Requirements for the Competence of Testing and Calibration Laboratories), guidance as published by Environmental Protection Agency (EPA) (e.g., QA/G-6 Guidance for the preparation of SOPS for Quality-Related Documents, April 2007), 40 CFR, Part 136, and the Solid Waste Manual (EPA, SW-846), or other appropriate industry standard and updates thereof. Contractor shall adhere to all applicable published standards for analytical (and extraction) methods (i.e., EPA, NIOSH, TCEQ, etc.).

2.1.16 Records Retention.

Contractor shall maintain in a safe place one record copy of all laboratory analytical results [including QA/QC, chromatographs (if applicable), etc.], all control documents, run logs, this agreement, all written amendments. These record documents together with all data collected as required by these contract documents and reports will be available to RRC for reference.

Except as otherwise provided by this agreement, Contractor shall not provide data, or reports generated or otherwise obtained in the performance of its responsibilities under this agreement to any party other than the RRC, EPA, the state of Texas or any of their authorized agents for the life of the agreement and for a period of five years after completion of this agreement.

Contractor agrees to disclose all information and reports resulting from access to records and to any of the entities referred to in this document.

Records maintained shall be maintained by Contractor during performance of the work under this agreement, and for five years thereafter. If any litigation, claim, negotiation, audit, cost recovery, or other action (including actions concerning costs of items to which an audit exception has been taken) involving such records has been started before the expiration of the five-year period, such records must be retained until completion of the action or resolution of all issues which arise from it, or until the end of the regular five-year period, whichever is later.

Access to records is not limited to the required retention periods. The entities designated in this section shall have access to records at any reasonable time for as long as the records are maintained.

2.1.17 Reimbursables.

Reimbursable items are items not included in the RFP pricing. Reimbursable items will be invoiced separately and will be paid according to actual invoices received from third party vendors or according to the Contractor's rate sheet prices. Reimbursement of actual invoices from third party vendors will be made based on the actual invoice. The administrative fee will not be allowed on reimbursement based on the Contractor's rate sheet prices. All reimbursable materials and services purchased from third party vendors must be accompanied by the necessary documentation to ensure the best value for the state and by the actual invoice in order for payment to be rendered. Under no circumstances will the Contractor provide or purchase reimbursable materials and services without prior written authorization from the RRC. The RRC shall determine the amount of sales taxes paid by the Contractor or subcontractors, which under applicable law are reimbursable, and will pay the same to the Contractor.

INVOICES: Invoices shall be submitted to and all payment inquiries directed to:

San Antonio Railroad Commission of Texas Attn: William B. Miertschin/Neal Rosales Site Remediation Section 112 E. Pecan Street, Suite 705 San Antonio, TX 78205	Houston Railroad Commission of Texas Attn: Randall Johnson/Dean Southward Site Remediation Section 1706 Seamist Drive, Ste 501 Houston, TX 77008-3135
Corpus Christi Railroad Commission of Texas Attn: Casey Mibb/Larry Schnexnayder Site Remediation Section 10320 IH 37 Corpus Christi, Texas 78410	Kilgore Railroad Commission of Texas Attn: Jeff Lauman Site Remediation Section 2005 North State Highway 42 Kilgore, Texas 75662
Abilene Railroad Commission of Texas Attn: Crystal Denson/David Hudson Site Remediation Section 3444 N. First Street, Ste 66 Abilene, TX 79603	San Angelo Railroad Commission of Texas Attn: Kevin Turner Site Remediation Section 622 S. Oakes St. Ste. J San Angelo, TX 76903
Midland Railroad Commission of Texas Attn: Carl Vessels/Bo Viscaino 10 Desta Dr. Suite 500 E Site Remediation Section Midland, Texas 79705	Wichita Falls Railroad Commission of Texas Attn: Ray Horton/Jeffery Jacobs Site Remediation Section 901 Indiana Ave., Ste 600 Wichita Falls, TX 76301-6798

Pampa Railroad Commission of Texas Attn: Johnny Lomas Site Remediation Section 201 W. Foster Pampa, TX 79065	
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2.18. Insurance Requirements.

2.18.1. All required insurance coverage must issue from a company or companies that:

- a. have both a Financial Strength Rating of “A” or better from A.M. Best Company, Inc.; and,
- b. have a Financial Size Category Class of “VII” or better from A. M. Best Company, Inc.

2.18.2. All insurance policies for required coverage must be issued by companies authorized to do business under the laws of the State of Texas and in a form satisfactory to **RRC**. All required insurance contracts must:

- a. be written on a primary and non-contributory basis with any other insurance coverage **Respondent** currently has in place; and
- b. include a Waiver of Subrogation Clause.

2.18.3. All certificates of insurance for required coverage other than workers compensation and professional liability must name the State of Texas and its Officers, Directors, and Employees as additional insured.

2.18.4. In its proposal response, **Respondent** must provide proof of minimum required amounts of insurance coverage. Proof of insurance may be provided in the form of current certificates of insurance (e.g. an AcordTM form).

2.18.5. The **Contractor** will, within five (5) business days of a Notice of Award or Executed Contract, provide **RRC** with current certificates of insurance. **Contractor** shall maintain the required insurance during the entire term of the **Contract**.

2.18.6. Minimum Required Amounts of Insurance Coverage.

Type of Insurance	Each Occurrence/Aggregate
Workers' Compensation	Statutory Limits and Pursuant to Texas Labor Code, Section 406.096(a) and 406.096(b)
Employer's Liability Bodily Injury by Accident Bodily Injury by Disease	\$1,000,000 Each Accident \$1,000,000 Each Employee \$1,000,000 Policy Limit
Commercial General Liability (occurrence based)	Bodily Injury and Property Damage \$1,000,000 Each Occurrence Limit \$2,000,000 Aggregate Limit \$5,000 Medical Expense each person \$2,000,000 Products/Completed Operations Aggregate Limit \$1,000,000 Personal Injury and Advertising Liability
Automobile Liability All Owned, Hired and Non-Owned Vehicles	\$1,000,000 Combined Single Limit (for each accident)

RRC's and Contractor's Protective Policy (liability)	\$1,000,000 Per Occurrence \$1,000,000 Aggregate Limit
Name of Insured: Railroad Commission of Texas (Requires separate AcordTM or equivalent form).	

2.18.7. Failure to Obtain, Maintain or Renew.

Failure to timely obtain, maintain and/or renew the insurance policies as required may, at the sole discretion of **RRC**, subject **Contractor** to suspension or termination of **Contract** for cause, in addition to all other available remedies provided by law.

2.18.8. Respondent Costs.

Respondent shall bear all costs and expenses for the provision of services required under this RFP.

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PART III - GENERAL PROPOSAL INFORMATION AND MANDATORY RESPONSE REQUIREMENTS

3.0. Schedule of Events.

The schedule of RFP events is indicated in Table 1 below. RRC reserves the right to amend the schedule.

Respondent must submit its Proposal to RRC in time for verification and confirmation that each Proposal is received and documented in accordance with the due date and time indicated in Table 1 below. RRC reserves the right to revise this schedule or any portion of this RFP by published Addendum on the Electronic State Business Daily (ESBD).

TABLE 1. RFP Schedule of Events	
DATE	EVENT
Monday, February 5, 2018	RFP issued; published on the ESBD
Friday, February 9, 2018 at 2:00 PM CT	Optional Pre-Proposal Teleconference Toll free #:(877) 820-7831 Toll #: (720) 279-0026 Participant Passcode: 168145 Power point presentation will be attached to ESBD
Wednesday, February 14, 2018 at 12:00 PM CT	Deadline For Submission of Written Questions
Thursday, February 15, 2018	Responses To Written Questions Posted on ESBD
Answers to questions will be provided through an Addendum posted on the ESBD. In addition, an email notification will be sent to those who submitted questions.	
Monday, February 26, 2018, 2:00 PM CT	Deadline for Submission of Proposals

3.1 Revisions to Schedule.

RRC reserves the right to change the dates in the schedule of events above as written notification to prospective Respondents through a posting on the ESBD as an Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal. The Respondent's failure to periodically check the ESBD will in no way release the Respondent from the requirements of "addenda or additional information".

3.2 Proposal Instructions/Documents.

All Respondent's documents submitted in response to this RFP, including all required documents, the Acknowledgements of any posted Addenda, and any warranty documents, are collectively referred to as "Respondent Documents". Respondent Proposal must include copies of ALL applicable Respondent documents. Responses shall be organized. Vague and general responses will be considered non-responsive and disqualified. Responses must be complete; failure to include all required information may result in disqualification.

3.3 RRC Sole Point-of-Contact and Inquiries.

Respondents must direct all inquiries and communications concerning this RFP to the Point-of-Contact listed below. Failure to comply with these requirements and communications with anyone other than the Point-of-Contact without express prior approval may result in disqualification of a response.

Respondents may not use this e-mail address for submission of a response. Follow the instructions outlined in

Section 3.6.3. Delivery of Responses for proper submission. The sole Point-of-Contact for this RFP is:

Jesse Herrera, CPPO, CTPM
1701 N. Congress Ave
Mail Code: 10.180C
Austin, TX 78701
jesse.herrera@rrc.texas.gov
Phone: 512-463-6736
Fax: 512-936-6402

3.4 Inquiries.

Respondents must send all questions regarding this RFP in an editable format, i.e. Microsoft Word, or standard email, to the RRC Point-of-Contact identified in **Section 3.2.1**. Respondents must reference the appropriate RFP page and section number in its questions, and must submit them by the deadline set forth in Section 3.1. However, RRC in its sole discretion, may respond to questions received after the deadline. RRC's responses to questions will be posted to the ESBD: <http://esbd.cpa.state.tx.us/>. RRC reserves the right to amend answers prior to the Proposal submission deadline.

3.4.1 Respondents must notify RRC of any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error in the RFP in the manner required and by the deadline for submitting questions. If a Respondent fails to notify RRC of such issues, Respondent submits its Proposal at its own risk, and if awarded a Contract: (1) waives any claim of error or ambiguity in the RFP or resulting Contract; (2) will not contest RRC's interpretation of such provision(s); and, (3) is not entitled to additional compensation, relief, or time by reason of ambiguity, error, or later correction.

3.5. Historically Underutilized Businesses (HUB) Requirements.

Historically Underutilized Businesses (HUBs) are strongly urged to respond to this RFP. Under State law, State agencies are required to make a good faith effort to increase the contract awards to HUBs for the purchase of goods or services that State agencies expect to make during a fiscal year (For example, see rules promulgated at 34 Tex. Admin. Code §§20.11 through 20.28).

3.5.1. HUB Subcontracting Plan.

RRC has determined subcontracting opportunities are probable with this RFP. **Table 2 - NIGP Class- Item Code/ Commodity Description** lists potential areas of subcontracting opportunities. Respondent must perform the good faith effort outlined in the HUB Subcontracting Plan (HSP) (found in Bid Package 4 on ESBD posting). The HUB Subcontracting Plan Form, **Attachment 5**, must be submitted with the RFP Response to be considered responsive. Respondents must complete and return the HSP documentation with the proposal to be considered responsive. RRC will reject responses received without the HSP as a material failure to comply with the requirements of this RFP and renders the respondent **ineligible for contract award**.

3.5.2. Progress Assessment Report.

The HUB Subcontracting Prime Contractor Progress Assessment Report (PAR), **Attachment 7**, shall be submitted by the awarded contractor on a monthly basis after a contract award has been issued.

3.5.2.1. Full commodity descriptions may be found on the Comptroller of Public Accounts website in the National Institute for Government Purchasing (NIGP) Commodity Book Listings at:

<https://comptroller.texas.gov/purchasing/nigp/>

3.5.3 Probable HUB Subcontracting Opportunities.

TABLE 2. NIGP CLASS-ITEM CODE AND COMMODITY DESCRIPTION		
Class	Item No.	Commodity Description
961	48	Laboratory and Field-Testing Services, Including Hazardous Waste, (Not Otherwise Classified)

This list is neither mandatory nor exhaustive. Other areas of subcontracting may be more appropriate given the Respondent's business structure and internal resources. Please see the attached HSP for further instructions that require vendors to identify the specific areas intended for subcontracting.

3.5.4. Respondents are highly encouraged to contact the RRC's HUB Administration at 512-463-7211 or hub@rrc.texas.gov for assistance with completing the HSP forms, obtaining HUB lists if web access is not possible, and/or further explanation of the RRC's HUB program.

3.6. Proposal Submission.

All proposals shall be received and time stamped at RRC no later than 3:00 P.M. Central Time on the date specified in the **Table 1 - Schedule of Events**. RRC reserves the right to accept late proposals; however, no proposals shall be accepted once the proposal opening process has begun, they will be returned to the Respondent unopened. All responses become the property of RRC after submission.

3.6.1. Number and Form of Submission Copies.

Respondent must submit **one (1) original and three (3) copies** of its Proposal, and must sign the original copy in ink. Respondent must also submit **one (1) electronic copy** of its Proposal on compact disc or flash drive, which at the minimum is compatible with Microsoft Office 2010 or later. Compact discs or flash drives must be labeled with the company's name, and un-encrypted. If Respondent feels it is necessary to encrypt the disc or flash drive, Respondent must immediately provide RRC's Point-of-Contact person listed in Section 3.2.1. with the encrypted password to access to the file.

3.6.1.1. Proposals should be placed in a separate envelope/package and correctly identified with **RFP number, proposal deadline/opening date and time**. If submitting multiple responses, each response should be placed in a separate envelope with correct identification. It is the respondent's responsibility to appropriately mark and deliver the proposal to RRC by the specified date and time. Receipt of all addenda to this RFP must be acknowledged by Respondent through the return of a signed copy of each addendum, with the submission of the Respondent's Proposal.

3.6.2. Confidential Information; Public Information Act Disclosures.

RRC is a governmental body subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552. The Proposal and other information submitted to the RRC by the Respondent are subject to release as public information by the RRC. The Proposal and other submitted information is presumed 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 Proposal or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the legal basis for confidentiality. Merely making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable, and will make the entire Proposal subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified by the Respondent as proprietary or confidential will be deemed subject to disclosure pursuant to the PIA. Respondent will irrevocably deemed to have waived, and Respondent agrees to fully indemnify the State of Texas, RRC any claim of infringement by RRC regarding the intellectual property rights of Respondent or any third party for any materials appearing in the Proposal.

Contractor is required to make any information created or exchanged with a state governmental entity (as defined by Texas Government Code §2252.907(d)) pursuant to this Contract, and not otherwise excepted from disclosure under the PIA, available in at least one of the following formats that is accessible by the public at no additional charge to the State of Texas, RRC: portable document format (pdf) compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).

If Respondent's Proposal contains any information, which Respondent claims is confidential and not subject to release under the PIA, Respondent must prepare and deliver to RRC four CDs containing the following information:

1. Two (2) CDs containing complete copies of all of Respondent's submissions pursuant to this RFP. Respondent must mark these **"Complete Proposal Documents, [Respondent's Name], Railroad Commission of Texas RFP 455-18-8656 CONTAINS CONFIDENTIAL INFORMATION."**
2. Two (2) CDs, each containing copies of all of Respondent's submissions with all information claimed as confidential excised, blacked out, or otherwise redacted. Each of these CDs must also contain an Appendix which contains clear references to all redacted information including a general description of the redacted information. Respondent must mark these CDs **"For Public Release: Redacted Version of [Respondent's Name], Railroad Commission of Texas RFP 455-18-8656"**.

3.6.3. Delivery of Responses.

Responses shall be submitted to RRC by one of the following methods:

<u>U.S. Postal Service to:</u> RFP #455-18-8656 Railroad Commission of Texas Contract Management Department Attn: Jesse Herrera, CPPO, CTPM PO Box 12967 Austin, TX 78711-2967	<u>By Overnight or Hand Delivery:</u> RFP #455-18-8656 Railroad Commission of Texas Contract Management Department, Room 10-180C Attn: Jesse Herrera, CPPO, CTPM 1701 N. Congress Ave. Austin, TX 78701
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Email and facsimile proposals will not be accepted.

3.7. Exception to Provisions.

If Respondent takes any exceptions to any provisions of this RFP, these exceptions must be specifically and clearly identified by Section in Respondent's Proposal in response to this RFP. Respondents cannot take a blanket exception to this entire RFP. If any Respondent takes a blanket exception to this entire RFP or does not provide proposed alternative language, the Respondent's Proposal may be disqualified from further consideration. Any exception may result in a contract not being awarded to the Respondent.

3.7.1. Responsive Information.

The Respondent's Proposal must be responsive to all requirements set forth in this RFP and prepared according to the format described in this RFP. All Proposals must provide sufficient information to enable the review committee to evaluate the Respondent's ability to provide the services described in Part II, Statement of Work, and to comply with any other contractual provisions described in this RFP. The person signing the Proposal must indicate the title or authority to bind the Respondent in a contract.

3.7.2. Organization of Proposal.

The Proposal shall include all information required in this RFP and shall be in the format described in this document. The Respondent is solely responsible for thoroughly understanding the RFP and its attachments, exhibits, and forms. Any questions concerning this RFP should be directed to the Point-of-Contact by the Deadline for Submitting Questions identified in Part A. The Respondent is cautioned to pay particular attention to the clarity and completeness of its Proposal. The Respondent is solely responsible for its Proposal and all documentation submitted.

A Proposal constitutes a binding offer by the Respondent. RRC will disqualify any response to this RFP that includes any type of disclaimer or other statement indicating that the response does not constitute a binding offer.

3.7.3. Title Page.

The Title Page must include the following information:

- (a) RFP ID Number
- (b) Respondent's Name and Address
- (c) Respondent's State of Texas Taxpayer Number and Federal Employer's Identification Number and
- (d) Respondent's Printed Name, Signature, Title, and Date signed

3.8. Executive Summary.

The Respondent must demonstrate its ability to perform the services described in the RFP by providing, at a minimum, the following information:

- (a) **Qualifications.** To be entitled for consideration, Respondent must have available the required qualified personnel, knowledge, skills, abilities, organization, facilities, materials, supplies and equipment, to fulfill all requirements under this RFP and any resulting Contract.

3.8.1. Texas Child Support Requirement for Names and Social Security Numbers.

Responses must include names and Social Security Numbers of each person, with at least twenty-five percent (25%) ownership of the business entity submitting the response. RRC may accept responses that do not include this information, if RRC obtains the required information before the contract is executed. Respondent shall submit this information with its' Proposal, on the Execution of Proposal form, identified as **Attachment 1**.

Federal Privacy Act Notice: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2) of the Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e) of the Texas Family Code.

3.9. Conflicts or Potential Conflicts of Interest.

Respondent must provide a statement of any conflicts or potential conflicts of interest for the Respondent or the Respondent's employees, who will or may provide services under any contract resulting from this RFP. Failure to disclose all conflicts or potential conflicts of interest may result in the Respondent being disqualified and may result in cancellation of the contract.

3.9.1. Changes in Ownership Conditions.

The Proposal must include a certification to notify RRC of a change in ownership. If a Respondent experiences a substantial change in its ownership during the period prior to the award of any contract pursuant to the RFP, or if the Respondent(s) experiences a substantial change in ownership during the term of the contract or any extension thereof, RRC must be notified of the change in writing, at the time the change occurs or is identified. Failure to notify RRC of such substantial change in ownership during the term of the contract or any extension thereof will be sufficient grounds for rejecting the Proposal or terminating any resulting contract, whichever is applicable.

3.9.2. Legal Actions.

Respondent must identify any pending or completed legal actions against the Respondent during the past five (5) years related to services performed. Respondent must specifically describe any legal actions related to failure to perform contracted services, breach of contract, or general mismanagement of a contract that have been brought against the Respondent or any of the individuals who will be working with RRC. The Respondent must also state whether during the last five (5) years the Respondent has been assessed any penalties or liquidated damages under any existing or past contract with any governmental entity. If so, the Respondent must indicate the public jurisdiction, the reason for the penalty or liquidated damages, and the penalty or liquidated damage amount of each incident.

3.9.3. Relatives/Employees, Definitions of Employee.

State law imposes restrictions on certain contracts with former or retired employees. Respondent must complete the Respondent Identification of Relatives & Employees Form, submitted as **Attachment 6 - Identification of Respondent Relatives and Employees**.

3.9.4. RRC Contact(s) Following Award.

RRC contact(s) for day-to-day administration of the contract will be determined following contract award. These individuals may appoint one or more delegates to assist in the day-to-day administration of the contract and may notify the Respondent in writing of those delegates.

3.9.5. Reservation of Rights.

In addition to any other rights specified elsewhere in this RFP, RRC reserves the following rights:

- (a) RRC is under no legal requirement to execute a contract on the basis of this RFP.
- (b) RRC reserves the right to reject a Proposal or response submitted that does not fully comply with the instructions and criteria outlined in this RFP.
- (c) RRC reserves the right to reject any or all Proposals and call for new Proposals or responses, if deemed by RRC to be in the best interests of RRC or the State of Texas.
- (d) RRC reserves the right to vary all provisions set forth at any time prior to execution of a contract, where RRC deems it to be in the best interest of RRC or the State of Texas.
- (e) RRC reserves the right to select none, one, or more than one Respondent when it is determined that such action would be in the best interest of RRC and the State of Texas.

3.10. Proposal Attachment Submission Checklist.

The RFP package also includes the following Documents/Attachments:

	MANDATORY
Attachment 1: Execution of Proposal (Mandatory)	Yes
Attachment 2: Mandatory Price Sheet	Yes
Attachment 3: Respondent Qualifications Form	Yes
Attachment 4: Experience & Qualification Statement	Yes
Attachment 5: Qualification Score Sheet	N/A-Referenced Only
Attachment 6: HUB Subcontracting Plan (HSP) Form	Yes
Attachment 7: HUB Prime Contractor Progress Assessment Report	N/A-Referenced Only
Attachment 8: Respondent References	Yes
Attachment 9: Respondent Identification of Relatives and Employees	Yes
Attachment 10: Railroad Commission of Texas Anti-Lobbying Affidavit	Yes
Attachment 11: Railroad Commission of Texas Sample Contract	N/A-Reference Only
Prior to award the contractor must submit a QAPP as outlined in Section 2.1.1.	Yes

3.11. Proposal Evaluation and Contract Award.

If the RFP is awarded, RRC will issue a notice of award to the successful Respondent(s) in response to this RFP. However, there is no guarantee that an award or any Contract will result from this solicitation. RRC may issue multiple "Work Order" contract awards from this solicitation based on all or none pricing for all line items that provides the best value to the State.

3.11.1. Best Value.

RRC will consider best value for the state as directed by Texas Government Code §2155.074 when awarding a Contract to a Respondent.

3.11.2. Evaluation Criteria.

Each evaluated proposal will be reviewed and scored according to the table set out in Table 4 below. The relative weight of each criterion is indicated by the maximum possible number of points indicated in the right-hand column.

TABLE 4. Evaluation Criteria	
Evaluation Criteria	Maximum Possible Score
Price/Cost	60
Qualifications	40
Total Points	100

Respondent(s) should be aware that sealed Proposals and information regarding sealed Proposals cannot and will not be disclosed to the public prior to award of Contract(s).

Proposals shall be evaluated based upon the extension totals of the line items, compliance with advertised specifications, terms and conditions, proposal requirements and the qualifications of the respondent and its personnel. The estimated quantities stated in the RFP Pricing Sheets are not guaranteed and are solely for response evaluation purposes. Payments under this contract will be based on the unit prices accepted by RRC multiplied by the actual quantities resulting from performance of the services.

3.11.3. RFP Review Process.

RRC reserves the right to conduct studies and other investigations as necessary to evaluate any Proposal. RRC reserves the right to waive any minor or immaterial response requirements noted in the submission process. Submission of Proposals confers no legal rights upon any Respondent. RRC will determine whether negotiations or Best and Final Offers are necessary and may invite selected Respondents to provide oral presentations of their Proposals.

3.11.4. Review of Proposals for Minimum Requirements Compliance.

Proposals will be reviewed by Contract Management Department to ensure the Respondents met the minimum requirements required for submission, as outlined in the RFP, and to ensure the required documents are properly organized and submitted.

3.11.5. Review and Initial Evaluation by the Evaluation Committee.

Each member of the Evaluation committee will conduct an independent review of each Proposal submitted and will score each Proposal in accordance with the Evaluation Criteria provided in **Table 4** above.

- (a) The committee may request clarification of information or representations made in a Proposal or in all Proposals before completing its initial evaluation. Requests for clarification and responses to requests for clarification will be made in writing become a part of the evaluation record.
- (b) The Contract Management Department will compile the scores of the entire committee and determine a final average score for each Respondent will establish a competitive range based upon the scoring of Proposals.

3.12. Respondent Oral Presentations.

If RRC determines that it is necessary, one or more Respondents may be required to deliver an Oral presentation(s) before the Evaluation committee. The Oral presentation provides the Respondent the opportunity to highlight their strengths and unique aspects of their approach as provided in its RFP response, as well as to address any questions from the Evaluation committee. Respondent Oral presentations are not guaranteed.

3.13. Best and Final Offer (BAFO).

Following the initial scoring of Proposals according to the Evaluation Criteria outlined in **Table 4** above and Respondent Oral presentations, if any, RRC, in its sole discretion, may proceed in making a contract award(s),

or may proceed to request a Best and Final Offer (BAFO) from one or more Respondents whose scores are, in the Evaluation committee's determination, sufficient to qualify them for further consideration and negotiation. If utilized, the BAFO process will allow the requested Respondents to modify their original proposal. BAFOs would then be re-evaluated by Contract Management Department.

3.13.1. Respondent is strongly encouraged to provide its best price in its Proposal, RRC makes no guarantee that there will be any opportunity to negotiate or provide alternative pricing at any point during the RFP process. RRC may limit the number of proposals in the competitive range to consist of the greatest number of proposals that will permit an efficient competition among the Respondents based in accordance with the proposed pricing and the required criteria specified in the RFP. RRC may seek additional information and solicit BAFOs only from those Respondents determined to be in the competitive range.

3.14. Contract Negotiations.

RRC will have the option to negotiate with one or more Respondents, including but not limited to pricing, services, provisions, terms, and conditions. RRC reserves the right to continue to negotiate until the point where the best value for RRC and the State has been determined as achieved.

3.15. Evaluation Process Overview/Summary.

RRC reserves the right to conduct studies and other investigations as necessary to evaluate any Proposal. RRC reserves the right to waive any minor or immaterial response requirements noted in the submission process. Submission of Proposals confers no legal rights upon any Respondent. RRC will determine whether negotiations or Best and Final Offers are necessary and may invite selected Respondents to provide oral presentations of their Proposals.

Respondent(s) should be aware that sealed Proposals and information regarding sealed Proposals cannot and will not be disclosed to the public prior to award of Contract(s).

3.16. Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Texas Government Code §§ 2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criterion for any of the following conditions;

1. A score of less than 90% in the Vendor Performance System;
2. Currently under a Corrective Action Plan through RRC;
3. Having repeated negative Vendor Performance Reports for the same reason;
4. Having a record of repeated non-responsiveness to Vendor Performance issues; or,
5. Having purchase orders that have been cancelled in the previous 12 months for non-performance (late delivery, etc.).

Contractor performance information is located on the Comptroller of Public Accounts (CPA) website and can currently be accessed at: <https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>.

RRC may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.115), RRC may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of Contracts. Such sources of vendor performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, RRC may initiate such examinations of Contractor performance based upon media reports. Any such investigations shall be at the sole discretion of RRC and any negative findings, as determined by RRC, may result in non-award to the Respondent.

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Part IV - GENERAL TERMS AND CONDITIONS AND RESPONDENT AFFIRMATIONS AND CERTIFICATIONS

4.0. This Section contains the standard terms and conditions and shall be incorporated for all purposes into this RFP and any contract awarded. Subcontractors are also obliged to comply with the provisions as shown in this Section. These general terms governing the Request for Proposal survive the RFP and become part of any resulting contract unless provision for their exclusion, in whole or part, is specifically made in the contract.

4.1 Respondent Affirmations and Certifications.

4.1.1. Deceptive Trade Practices; Unfair Business Practices.

Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under the Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit, and that Respondent has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

4.1.2. 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 any contract resulting from this RFP.

4.1.3. Franchise Taxes, Non-Residents, Foreign Corporations, Sales Taxes.

Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed to the State of Texas under Chapter 171, Texas Tax Code. In addition, if Respondent is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the following certification applies. Respondent certifies that it holds a permit issued by the Comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas, or certifies that it does not sell tangible personal property or services that are subject to the state and local sales and use tax.

4.1.4. Eligibility.

Pursuant to Texas Government Code Section 2155.004(b), Respondent certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

4.1.5. Prior Employment.

Pursuant to Texas Government Code Chapter 573 and Section 2254.032, Respondent certifies that it knows no officer or employee of RRC, or any relative within the second degree of consanguinity or affinity of an officer or employee of RRC that has a financial interest in Respondent's company or corporation. Respondent further certifies that no partner, corporation, or unincorporated association which employs, retains, or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Respondent will be dealing on behalf of RRC. Furthermore, Respondent certifies that if it employs any former employee of RRC, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee's last date of employment at RRC.

Contractor shall disclose any current or former employees or subcontractors who are current or former employees of the State of Texas, and shall disclose their role or position relative to the provision of services under the Contract, as well as their hire or contract date. Contractor shall also disclose any proposed personnel who are

related by marriage or within the second degree of consanguinity to any current or former employees of the State. Failure to fully disclose the information required under this paragraph may result in disqualification of a Contractor's bid or termination of the Contract after award.

4.1.6. Family Code.

Pursuant to the requirements of Texas Family Code Section 231.006, regarding delinquent child support, the undersigned signatory certifies that the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and, if applicable, Respondent has provided the name and SSN of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25 percent (25%) ownership of the business entity entering into this Contract prior to its execution. Respondent acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

4.1.7. Financial Interests/Gifts.

Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, Respondent certifies that it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

4.1.8. Debts or Delinquencies to the State.

Pursuant to Texas Government Code Section 403.055, Respondent understands and agrees that any payment due under this Contract may be applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support.

4.1.9. Agency Executive Head.

Under Texas Government Code Section 669.003 relating to contracting with an executive of a State agency, Respondent represents that no person who, in the past four (4) years, served as an executive of RRC or any other state agency, was involved with or has any interest in this Contract or any contract resulting from this Respondent. If Respondent employs or has used the services of a former executive head of RRC or any other State agency, then Respondent shall provide the following information: the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Respondent, and the date of employment with Respondent.

4.1.10. 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. RRC shall not be liable for any taxes resulting from this Contract.

4.1.11. No Conflicts.

Respondent represents and warrants that Respondent has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Respondent's provision of services under this Contract would not reasonably create an appearance of impropriety.

4.1.12. Prohibition of Certain Bids and Contracts.

Under Texas Government Code, Section 2155.006, relating to the prohibition of certain bids and contracts, Respondent certifies that the individual or business entity responding to the RFP or any subsequent contract is not ineligible to receive the specified contract and acknowledges that any resulting contract may be terminated and payment withheld if this certification is inaccurate. Respondent represents and warrants that during the five (5) year period preceding the publication date of the RFP or the date of any resulting contract, Respondent has not been: (i) 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 Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005, or (ii) 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 Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

4.1.13. Felony Criminal Convictions.

Respondent represents and warrants that Respondent 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 RRC as to the facts and circumstances surrounding the conviction.

4.1.14. Immigration Reform.

Respondent represents and warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under any resulting PO/Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996. Respondent shall not place any employee of Respondent at a worksite, nor shall Respondent permit any employees, nor any employee of its subcontractor to perform any work on behalf of, or for the benefit of, RRC without first ensuring said employee's authorization to lawfully work in the United States.

4.1.15. Warranties.

Notwithstanding any disclaimers in any RFP response or other Respondent document, and notwithstanding any other provision of this RFP or the contract to the contrary, Respondent warrants and guarantees that all services will meet all specifications of the executed contract, including but not limited to this RFP.

4.1.16. False Statements, Breach of Representations.

If Respondent signs the RFP with a false statement or it is subsequently determined that the Respondent has violated any of the representations, warranties, guarantees, certifications, and affirmations included in this RFP and any resulting contract, the Respondent shall be in default under this RFP and any resulting contract, and RRC may terminate or void the contract for cause and pursue other remedies available to RRC under this contract and applicable law.

4.2. General Terms and Conditions.

4.2.1. Drug Free Workplace.

Contractor 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 contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

4.2.2. Contract Award, Copyright, Reissuance.

A response to an RFP is a Proposal to contract with the State based upon the specifications, terms, and conditions contained in the RFP. Proposals do not become contracts with RRC unless, until and to the extent, a duly authorized representative of RRC issues a valid RRC Contract. RRC reserves the right to reject, in its sole discretion, all or any part of any Proposals, waives minor technicalities, and reserves the right to negotiate price and other provisions with all Respondents or no Respondents, and award a contract in the best interests of RRC and the State. RRC's waiver of any deviations in any Proposals will not constitute a modification of this RFP and will not preclude RRC from asserting all rights against Respondent for failure to fully comply with all terms and conditions of this RFP. Copyrighted Proposals are unacceptable and are subject to disqualification as non-responsive. RRC reserves the right to make any corrections or include additional requirements in the contract prior to issuance, which are required for RRC's compliance, as an agency of the State of Texas, with all state and federal requirements. RRC reserves the right to disqualify any Proposal that asserts any copyright on any RRC-created form that is specifically designated by this RFP to be a form that must be completed and included in a Proposal submitted in response to this RFP. RRC may reissue or issue another RFP for the requested items described in this RFP or similar items at any time.

4.2.3. Indemnification.

4.2.3.1. Acts or Omissions.

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

4.2.3.2. Infringements.

- (a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- (b) Vendor 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 Vendor's written approval, (iii) any modifications made to the product by the Vendor 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 agreement.
- (c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor'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.

4.2.3.3. Texas/Workers' Compensation/Unemployment Insurance – Including Indemnity.

- (a) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

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

4.2.4. Respondent Identification.

Proposals must include Respondent's Texas Identification Number, which is the taxpayer number assigned by The Comptroller of Public Account (CPA) and used by RRC. If this number is not known, provide the Respondent's Federal Employer's Identification Number, if any, or for sole proprietors that do not have a Texas Identification Number or Federal Employer's Identification Number, provide Respondent's Social Security Number.

4.2.5. No Alterations or Withdrawals of Proposal After Deadline.

Proposals cannot be altered or amended after the deadline specified in Section 3 of this RFP. Any alterations made before this deadline must be initialed by the Respondent or its authorized employee. No Proposals can be withdrawn after this deadline without approval by RRC's Contract Management section, based on a written acceptable reason.

4.2.6. Tie Proposals.

Consistent and continued tie Proposals could cause rejection of Proposals by RRC's Contract Management Department.

4.2.7. Limitation on Authority, No Other Obligations.

Respondent will have no authority to act for or on behalf of RRC or the State of Texas except as expressly provided for in the executed contract; no other authority, power, or use is granted or implied. Respondent may not incur any debt, obligation, expenses, or liability of any kind on behalf of RRC or the State of Texas.

4.2.8. No Other Benefits.

Respondent has no exclusive rights or benefits other than those set forth herein.

4.2.9. Attachments.

RRC will not consider any terms and conditions or other documents attached to a Proposal as part of the Proposal unless the Respondent specifically and prominently refers to each of them in the Transmittal Letter with its Proposal. RRC reserves the right, in its sole discretion, to reject any Respondent terms and conditions or other documents or attachments as part of Respondent's Proposal.

4.2.10. Incorporation of Entire RFP.

Except as otherwise provided in the negotiated terms and conditions, if any that are expressly identified as such in the formal signed agreement or contract resulting from this RFP, this entire RFP applies to and becomes part of any such agreement or contract.

4.2.11. Amendments and Agreement Between RRC and Respondent.

Any resulting Contract may be amended only upon the written agreement between RRC and Successful Respondent; however, the contract may not be amended so as to conflict with the laws of the State of Texas. To the extent the laws of the State of Texas require RRC to include additional language in its contracts the Respondent agrees to amend any resulting contract and to cooperate in the execution of any contract amendments necessary to effectuate such state law. During the term of a resulting contract, if any, and any

extensions or renewals, RRC reserves the right to request contract amendments or modifications as is determined to be in the best interests of RRC or the State and for compliance with all applicable state and federal laws, regulations, requirements and guidelines. Except as otherwise provided in the negotiated terms and conditions, if any, that are expressly identified as such in the formal signed contract resulting from this RFP, the entire agreement between RRC and Respondent shall consist of the following documents: The Contract, Purchase Order, Change Notices, if any, the RFP, and Respondent's Proposal.

4.2.12. Conflicting Provisions.

In the event of conflicting terms or provisions between this RFP, except as otherwise provided in the negotiated terms and conditions, if any, that are identified as such in the resulting Contract, this RFP, the Contract; any Addenda, if issued, and Respondent's Proposal will control in this order of precedence.

4.2.13. Unacceptable Terms in Respondent's Proposal.

No RRC action, including, but not limited to, issuance of a Contract, will constitute an acceptance of conflicting terms, conditions, or attachments in Respondent's Proposal; however, this lack of acceptance by RRC shall not apply to the negotiated terms and conditions, if any, that are expressly identified as such in the formal signed agreement or contract resulting from this RFP. Such negotiated terms and conditions shall take precedence over the other documents that collectively constitute the contract as specifically provided in the formal signed agreement or contract resulting from this RFP.

- (a) Proposed terms and conditions that may violate Texas law applicable to the specific procurement or may be unacceptable to RRC for inclusion in any formal signed agreement or contract resulting from the RFP include:
 - 1) proposals that incorporate the laws of a state other than Texas, requirements for prepayment;
 - 2) limitations on RRC's remedies;
 - 3) requirements that RRC indemnify the Respondent;
 - 4) requirements that Respondent's documents control in case of conflicts;
 - 5) requirements that Respondent's documents control even if Respondent accepts or acknowledges the contract; and,
 - 6) disclaimer of warranties.

4.2.14. Statement of Work/Performance.

Respondent will provide the requested services in the manner described in this RFP. Respondent's failure to conform to all requirements of this RFP may, among other things, result in RRC's withholding of acceptance and payments under the contract, RRC's cancellation of all or part of the contract, RRC's revocation of any prior acceptance and Respondent's refund of amounts paid prior to revocation of acceptance.

4.2.15. Respondent Costs.

Respondent will bear all costs and expenses for the provision of the requested items required by this RFP and the contract. All such costs and expenses are included in the prices detailed in the contract. No other amounts will be paid.

4.2.16. Assignments.

Respondent may not assign this RFP and any resulting contract, in whole or in part, and may not assign any right or duty required under this RFP or awarded contract without the prior written consent of RRC. Respondent will have no right to transfer, assign, or pledge as security for a debt all or any part of Respondent's interest in any resulting contract without the prior written consent of RRC. Any attempted assignment in violation of this Section is void and without effect.

4.2.17. Time Limits.

Time is of the essence in any resulting contract and accordingly, all time limits will be strictly construed and rigidly enforced.

4.2.18. No Waiver.

No provision of this RFP and/or resulting Contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to RRC as an agency of the State of Texas or otherwise available to RRC. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in this RFP and the resulting Contract or otherwise available to RRC by law, shall not constitute a waiver of said privileges, rights, defenses, remedies, or immunities available to RRC, or be considered as a basis for estoppel. RRC does not waive any privileges, rights, defenses, remedies, or immunities available to RRC as an agency of the State of Texas or otherwise available to RRC, by entering into a resulting Contract with selected Respondent or by its conduct prior to, or subsequent to, entering into a Contract.

4.2.19. No Prepayments.

RRC will not prepay for any services provided to RRC by Respondent in its performance under the contract. Likewise, RRC will not make down payments, deposits, or pay advances, advance deposits, or any other payments that are not made specifically for properly documented completed services approved for payment by, and satisfactorily provided to RRC.

4.2.20. Refunds.

Respondent shall promptly refund or credit within thirty (30) calendar days any funds erroneously paid by RRC which are not expressly authorized under the contract.

4.2.21. Invoicing.

Respondent shall submit an electronic copy via email of an itemized invoice showing the Contract number to the RRC Point-of-Contact or their designee for all requested items, which have been delivered, inspected, tested, evaluated, and accepted by RRC. To expedite processing, additional recipients may be included on the email; Respondent must provide the required documentation for the invoiced service.

- (a) Invoice Requirements. The Respondent may request a sample of the invoice format from RRC. Submitted invoice must include the following information:
 - 1. respondent name
 - 2. respondent address
 - 3. bill to information
 - 4. remit payment to information
 - 5. invoice date
 - 6. invoice number
 - 7. RRC Contract number
 - 8. vendor Texas Identification Number (TIN), as assigned by the Texas Comptroller of Public Accounts
 - 9. date and time of services
 - 10. description of services, and
 - 11. signature or certification by an authorized representative
- (b) Missing Invoice Requirements. Invoices that are received by RRC which are otherwise received in non-conformance with all of the requirements of this RFP or the contract will be returned to Respondent unpaid or will be held by RRC until proper documentation is submitted.
- (c) Correct Invoicing. Prior to authorizing payment to Respondent, RRC shall evaluate Respondent's performance in accordance with the requirements of any resulting contract. No payment whatsoever will be made under any resulting contract without the prior submission of detailed, correct invoices. Subject to foregoing, RRC must make all payments in accordance with the Texas Prompt Pay Act, Texas Government Code Chapter 2251.
- (d) Non-Reimbursable Items. RRC will not reimburse for travel, meals, lodging, or other related expenses unless specifically provided for in the agreement. In that event, such costs will be invoiced to RRC based on actual expenses and RRC shall not be liable for reimbursement of expenses that (i) were not preapproved in writing by RRC or (ii) exceed the current State Travel Regulations. Receipts are required to validate invoicing.

4.2.22. Termination and Cancellation.

The contract may be terminated, canceled, or cancellation of services may occur, in whole or in part, in any one of the following circumstances:

4.2.23. Mutual Agreement.

Upon the mutual written agreement of RRC and Respondent, the contract may be terminated or canceled.

4.2.24. RRC Cancel Upon Thirty (30) Days' Notice.

RRC may, in its sole discretion, terminate, cancel the contract, or cancel specific services of the contract with thirty (30) calendar day's written notice to Respondent.

- (a) No additional charges or fees will be assessed to RRC for the termination or cancellation.
- (b) Upon termination or cancellation under this provision, Respondent shall refund to RRC any amounts attributable to the terminated or canceled months within thirty (30) days of the termination or cancellation. If RRC does not receive the refund within thirty (30) calendar days, the contract amount and monthly invoice will be reduced during the next billing cycle based on the services canceled.

4.2.25. Breach of Material Term.

Either party may, upon giving thirty (30) calendar day's written notice identifying specifically the basis of such notice, terminate the contract for breach of a material term or condition of the contract, provided the breaching party must not have cured such breach within the thirty (30) calendar day period. In the event of such termination, Respondent will be paid for all services accepted prior to the date of the termination.

4.2.26. Respondent Nonperformance.

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

- (a) The Contractor remains liable for all covenants and indemnities under the contract.
- (b) The Contractor is liable for all costs and expenses, including court costs, incurred by RRC with respect to the enforcement of any remedies listed herein.

4.2.27. Bankruptcy.

Upon the filing of a petition for bankruptcy, or upon the judgment of bankruptcy or insolvency by or against the Respondent, RRC may terminate the contract for cause without notice. Such termination shall be effective upon the date of such filing or upon the date of judgment.

4.2.28. Availability of State Funds, Legislative Action, Necessity of Performance.

The contract is subject to termination or cancellation, without penalty to RRC, in either whole or in part, subject to the availability of state funds. RRC is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If RRC becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render either RRC's or Respondent's delivery or performance under the contract impossible or unnecessary, the Contract will be terminated or canceled and be deemed null and void. In the event of a termination or cancellation under this Part, RRC will not be liable to Respondent for any damages which are caused or associated with such termination or cancellation, and RRC will not be required to give prior notice.

4.2.29. Legal Remedies and Damages Resulting from Breach of Contract.

RRC expressly reserves any and all legal remedies to which it may be entitled to collect and all damages directly or indirectly resulting from breach of contract by Respondent or any of its agents, representatives, subcontractors,

employees, or any other party acting on behalf of the Respondent. RRC reserves the right to pursue any and all applicable rights and remedies if the contract is terminated for any reason and RRC expressly waives no such rights or remedies.

4.2.30. Recovery of Funds.

RRC reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to RRC under the contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Respondent's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to RRC under the contract or under applicable law. RRC reserves the right to pursue any and all applicable rights and remedies if the contract is terminated for any reason, and RRC expressly waives no such rights or remedies.

4.2.31. Notice of Termination or Cancellation Delivery.

Any termination by RRC of the contract, which requires written notice, may be accomplished by RRC's delivery to Respondent of a notice of termination or cancellation specifying that the contract is terminated or canceled.

4.2.32. Substitute of Services.

In the event RRC terminates or cancels the contract for Respondent's nonperformance or for cause, RRC may procure, upon such reasonable terms and in such manner as it deems appropriate, substitute services similar to those so terminated or canceled. Respondent shall be liable to RRC for any excess or additional costs incurred by RRC in acquiring such services plus court costs and attorneys' fees. RRC's recovery of costs under this Section is in addition to any other remedies available to RRC under the contract and/or under applicable law.

4.2.33. Legal Obligations.

Respondent shall procure and maintain for the duration of this RFP and any resulting contract, any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification, or certification required by statute, ordinance, law, or regulation to be held by Respondent to provide the goods or services required by this RFP or any resulting contract. Respondent will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Respondent agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this resulting contract.

4.2.34. Assignments and Subcontractors.

Respondent shall neither assign, transfer, nor delegate any rights, obligations, or duties under this RFP or resulting contract without the prior written consent of RRC.

- (a) Notwithstanding this provision, it is mutually understood and agreed that Respondent may subcontract with others for some or all of the services to be performed.
- (b) RRC shall approve in writing, all subcontractors.
 - 1. Subcontractors providing service under the resulting contract shall meet the same requirements and level of experience as required of the Respondent.
 - 2. No subcontract under the resulting contract shall relieve the Respondent of responsibility for the service. If Respondent uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances:
 - i. Respondents planning to subcontract all or a portion of the work to be performed under this Contract shall identify the proposed subcontractor on Attachment 5, HUB Subcontracting Plan Form.
 - ii. Subcontracting shall be at the Respondent's expense.
 - iii. RRC retains the right to check any subcontractor's background and make the determination to approve or reject the use of submitted subcontractors.
 - iv. Respondent shall be the only contract for RRC and subcontractors. Respondent shall list a designated Point-of-Contact for all RRC and subcontractor inquiries.

4.2.35. Historically Underutilized Businesses (HUBS).

HUB Subcontracting Plan Requirements: It is the policy of RRC to promote and encourage contracting and subcontracting opportunities for State of Texas certified Historically Underutilized Businesses (HUBs) in all contracts in compliance with Texas Government Code Chapter 2161. Eligible Respondents are encouraged to become HUB certified. Respondents may find State of Texas HUB applications at: <https://comptroller.texas.gov/purchasing/vendor/registration/>. Definitions for State of Texas HUB certifiable businesses can be found in 34 Texas Administrative Code Chapter 20, Subchapter B, which is available at: [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=D](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=D)

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, RRC will reject the Proposal as a material failure to comply with advertised specifications.

RRC identified probable subcontracting opportunities in Section 3.3.3 of this RFP. This list should not be considered a mandatory or an exhaustive list. Other areas of subcontracting may be more appropriate given the Respondent's business structure and internal resources. Please see the attached HUB Subcontracting Plan for further instructions that require vendors to identify the specific areas intended for subcontracting.

Search the State of Texas HUB Database for HUB vendors by the NIGP class and item at: <https://mycpa.cpa.state.tx.us/tpasscmblsearch/tpasscmblsearch.do>.

Additional minority and women owned business association resources are available for subcontracting notices at: <https://comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

4.2.36. 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-2s 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.

4.2.37. Patent, Trademark, Copyright, and Other Infringement Claims.

Respondent shall indemnify, save, and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret, or other proprietary rights, violations, or infringements arising from the State's or Respondent's use of or acquisition of any services or other items provided to the State of Texas by Respondent or otherwise to which the State of Texas has access as a result of Respondent's performance under this Contract, provided that the State shall notify Respondent of any such claim within a reasonable time of the State's receiving notice of any such claim. If Respondent is notified of any claim subject to this Section, Respondent shall notify RRC of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Respondent without RRC's 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 counsels, 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.

4.2.38. Accessibility.

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.

Contractor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at: <http://www.section508.gov/>.

4.2.39. Relationship of the Parties.

Respondent is associated with RRC only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, Respondent is and shall be an independent contractor. Subject only to the terms of this Contract, Respondent shall have the sole right to supervise, manage, operate, control, and direct performance of its duties under this Contract. Nothing contained in the resulting contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for RRC whatsoever with respect to the indebtedness, liabilities, and obligations of Respondent or any other party. Respondent shall be solely responsible for, and RRC shall have no obligation with respect to:

- (a) withholding of income taxes, FICA, or any other taxes or fees;
- (b) industrial worker's compensation insurance coverage;
- (c) participation in any group insurance plans available to employees of the State of Texas;
- (d) participation or contributions by State of Texas to the State Employees Retirement System;
- (e) accumulation of vacation leave or sick leave, or
- (f) Unemployment compensation coverage provided by the State.

4.2.40. Compliance with Other Laws.

In the execution of this RFP and any resulting contract, Respondent shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. Respondent shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Contract.

4.2.41. Notices.

Any notice required or permitted to be delivered under this RFP and any resulting contract, shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to RRC or Respondent.

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

4.2.42. Governing Law and Venue.

This RFP and any resulting contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this RFP on any resulting contract shall be in a court of competent jurisdiction in Travis County, Texas. Respondent irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this RFP and any resulting contract or any document related hereto. Nothing in this Section shall be construed as a waiver of sovereign immunity by RRC.

4.2.43. Severability.

If any provision contained in this RFP and any resulting contract is held to be unenforceable by a court of law or equity, this RFP and any resulting contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

4.2.44. Force Majeure.

Any delays in or failure of performance by either party, except in respect of the obligation of payments under this RFP or resulting contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure," including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligences to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, RRC may terminate the resulting contract immediately upon written notification to the Respondent.

4.2.45. Certification Concerning Hurricane Relief.

Sections 2155.006 and Section 2261.053, Texas Government Code, prohibit state agencies from awarding a contract 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 Section 418.004 Texas Government Code, occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, the Respondent certifies that the individual or business entity named in its Proposal is no ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certifications inaccurate.

4.2.46. Labor Activity.

If any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against the Respondent at RRC's facility, which results in the curtailment or discontinuation of services performed herein, RRC shall have the right during said period to employ any means legally permissible to have the work performed.

4.2.47. Dispute Resolution.

The dispute resolution process provided for in Texas Government Code Chapter 2260 shall be used by RRC and Contractor to resolve any dispute arising under the Contract.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by the Respondent under the Contract. If the Respondent's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Respondent shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Respondent with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is the Respondent's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the RRC if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by the RRC nor any other conduct of any representative of the RRC relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the Contract, the RRC and the Respondent shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the RRC and the Respondent within fifteen (15) days after written notice by one them demanding mediation under this Section. The Respondent shall pay all costs of the medication unless the RRC in

its sole good faith discretion approves its payment of all or part of such costs. By mutual agreement, the RRC and the Respondent may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the RRC and the Respondent shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The RRC participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the RRC of (1) any rights, privileges, defenses, remedies or immunities available to the RRC as an agency of the State of Texas or otherwise available to the RRC; (2) the RRC termination rights; or (3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the {Insert agency name here the Respondent shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Respondent may suspend performance during the pendency of such claim or dispute if the Respondent has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

4.2.48. Counterparts.

Any contract issued pursuant to this RFP may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

4.2.49. Entire Contract and Modification.

The resulting Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to the RFP and resulting Contract specifically displays a mutual intent to amend a particular part of this RFP and resulting Contract, general conflicts in language between any such attachment and this RFP and resulting Contract shall be construed consistently with the terms of this RFP and resulting contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension, or amendment to this RFP and resulting contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

4.2.50. Infringement and Misappropriations.

- (a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**
- (b) Vendor 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 Vendor's written approval, (iii) any modifications made to the product by the Vendor 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 agreement.**

- (c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor'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. Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity.

(1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

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

4.2.51. Waiver of Moral Rights.

Respondent hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Respondent may now have or which may accrue to Respondent's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Respondent acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation, or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

4.2.52. Confidentiality of Information.

Respondent shall not use, share, or sell any RRC information to any other entity or person, for any reason, unless otherwise required by law and with prior written permission of RRC.

4.2.52.1. Materials forwarded to selected Respondent by RRC, for use in and preparation of the Work Product or the provision of services under this RFP, are confidential.

4.2.52.2. Selected Respondent shall not disclose to anyone, directly or indirectly, any work-papers, data, databases, materials, information, or reports in any form that are designated as confidential or that are or could be construed

as confidential or subject to restrictions on disclosure under applicable law, and received from RRC, or any such confidential information to which selected Respondent has access as a result of or in the course of performing services under this RFP and any awarded contract without the prior written consent of RRC.

4.2.52.3. This confidentiality provision does not apply to information required to be disclosed by law, legal process, and applicable professional standards or to information disclosed in connection with litigation relating to the contract or Respondent's performance.

4.2.52.4. Each party shall protect the confidentiality of the Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind.

4.2.52.5. Nothing in this RFP and any awarded contract shall prohibit or limit either party's use or disclosure of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies):

4.2.52.5.1. previously known to it without obligation of confidence;

4.2.52.5.2. independently developed by it;

4.2.52.5.3. acquired by it from a third party which is not, to its knowledge, under any obligation of confidence, with respect to such information, or

4.2.52.5.4. which is, or becomes publicly available through no breach of the contract.

4.2.52.6. In the event either party receives a subpoena or other validly issued administrative or judicial notice requesting Confidential Information, it will provide prompt notice to the other of such receipt. The party receiving the subpoena will thereafter be entitled to comply with such subpoena or other notice to the extent permitted by law, provided, however, that the Respondent is acting as RRC's agent in providing services under the contract and will defer to RRC's decision as to compliance with and other matters related to such subpoena or other validly issued notice.

4.2.52.7. Notwithstanding any provisions of this RFP and the executed contract to the contrary, Respondent understands that RRC is bound by the provisions of the Texas Public Information Act and Attorney General Opinions issued under that statute. Within three (3) business days of receipt, Respondent will refer to RRC any third-party requests, received directly by Respondent, for information to which the Respondent has access as a result of or in the course of performing services under the contract.

4.2.53. Return of Materials Pertaining to Work Product.

Upon the request of RRC, but in any event upon termination or expiration of any contract issued pursuant to this RFP, Respondent must surrender to RRC all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Respondent or furnished by RRC to Respondent, including all materials embodying the Work Product, any RRC confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This Section is intended to apply to all Work Product as well as to all documents and things furnished to Respondent by RRC or by anyone else that pertains to the Work Product.

4.2.54. Agreements with Subcontractors.

Respondent agrees that it must have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors, or subcontractors providing Services or Work Product pursuant to any contract issued pursuant to this RFP, prior to their providing such Services or Work Product, and that it must maintain such written agreements at all times during performance of any contract issued pursuant to this RFP, which are sufficient to support all performance and grants of rights by Respondent. Copies of such agreements must be provided to RRC promptly upon request.

4.2.55. Personal Injury, Property Damage.

Respondent will be liable for any bodily injury or personal injury to any individual caused by any of Respondent's employees during any assignment under the terms of the contract. In the event of loss, destruction, or damage to any RRC or State of Texas property by Respondent's employees, Respondent will indemnify RRC or the State of Texas and pay to RRC or the State of Texas the full cost of repair, reconstruction, or replacement at RRC's election. Respondent will reimburse RRC or the State of Texas for such property damage within thirty (30) calendar days after receipt of RRC's notice of amount due to Respondent. This provision survives the termination or expiration of any awarded contract.

4.2.56. No RRC Obligations for Costs.

RRC accepts no obligations for costs incurred in responding to this RFP in anticipation of being awarded a contract. All of the costs and expenses incurred by any Respondent or prospective Respondent in connection with or arising out of its possible or actual response to this RFP, including without limitation to the cost of developing and preparing a response, making presentations before the evaluation committee, and any travel and travel-related expenses therefore, are entirely the responsibility of the Respondent and must not be borne or reimbursed directly or indirectly by RRC, whether or not: (i) the prospective Respondent formally submits a response, (ii) such response, if submitted, is rejected by RRC, (iii) the Respondent is awarded the contract, or (iv) the RFP is withdrawn by RRC.

4.2.57. Misunderstanding or Lack of Information.

Respondents who respond to this RFP must be thoroughly informed concerning all relevant facts, data, and estimates, which are required for the purpose of assembling a Proposal, and concerning all difficulties that may be encountered in managing or operating the project under the contract.

- (a) No plea of ignorance of conditions that exist or of conditions or difficulties that may be encountered will be accepted as an excuse for any failure or omission on the part of the Respondent to fulfill in every detail all of the requirements of the contract or will be accepted as a basis for any claim whatsoever for additional compensation.
- (b) By submitting a response, each Respondent acknowledges and agrees that it fully understands and will abide by the terms and conditions of this RFP, and that it will not make any claims for, or has any rights to, cancellation or relief without consequences because of any misunderstanding or lack of information.

4.2.58. Compliance with RFP and Contract.

By submitting a response, acknowledging and accepting the Contract, or delivering any services under the Contract, Respondent acknowledges, accepts, and agrees to all terms, conditions, specifications, provisions, statements, and guidelines of the contract, including, but not limited to, this RFP. A response to this RFP is a Proposal to contract with RRC based upon the terms, conditions, and specifications contained in this RFP. Proposals and responses do not become part of a contract or agreement with RRC unless and until they are accepted and agreed to by RRC. All parts of this RFP are incorporated as part of any resulting contract for all purposes. RRC, at its sole discretion, may disqualify a Proposal from consideration if RRC determines a Proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

4.2.59. Binding Effect of Proposal.

Unless otherwise agreed in writing and signed by RRC, each Respondent agrees to and is bound by the information and documentation provided with the Proposal, including prices quoted for services. By submitting a Proposal or response, the Respondent commits to providing the goods and services required at the prices set forth in its Proposal. Proposals must be valid for 180 calendar days following the Proposal/response receipt date. Proposed rates must be firm and guaranteed for the entire contract period.

4.2.60. Rejection of Proposal and Cancellation of RFP.

Issuance of this RFP does not constitute a commitment on the part of RRC to award a contract. RRC is under no obligation to award any contract as a result of this RFP. RRC maintains the right to reject any or all Proposals and to cancel this RFP if it considers it in the best interests of RRC to do so. RRC reserves the right to reject, in its

sole discretion, any or all RFP responses and all or any part of any response, and waive minor technicalities. RRC will award a contract, if any, to serve the best interests of RRC and the State of Texas. RRC's waiver of any deviations in any response will not constitute a modification of this RFP and will not preclude RRC from asserting all rights against Respondent for failure to fully comply with all terms and conditions of this RFP.

4.2.61. Ambiguity, Conflict, Exclusionary Specification, or Omission.

If a Respondent discovers any ambiguity, conflict, discrepancy, exclusionary specifications, omission, or other error in this RFP, Respondent must immediately notify, in writing, the RRC contact person identified above. If a Respondent fails to notify the RRC contact person of any error, ambiguity, conflict, discrepancy, exclusionary specification, or omission, the Respondent must submit a response at its own risk; and, if awarded a contract, the Respondent is not entitled to additional compensation, relief, or time by reason of the error or its later correction.

4.2.62. Right to Amend, Modify, or Withdraw the RFP.

RRC reserves the right to alter, amend, or modify any provisions of this RFP or to rescind, revoke, or withdraw this RFP, in whole or in part, at any time prior to the award of any Contract if it is determined by RRC to be in the best interest of RRC or the State to do so.

4.2.63. Accessibility of Public Information.

Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

4.2.64. Buy Texas.

In accordance with Texas Government Code, Section 2155.4441, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.

4.2.65. Vendor Performance.

State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the RRC or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exemption from CPA/TPASS procurement rules and procedures.

Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:

- (a) A score of less than 90% in the Vendor Performance System,
- (b) Currently under a Corrective Action Plan through the CPA,
- (c) Having repeated negative Vendor Performance Reports for the same reason,
- (d) Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.).

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

4.3 Public Disclosure.

No public disclosures or news releases pertaining to this contract shall be made without prior written approval of RRC.

4.4 Execution of Proposal.

Respondents must sign and return the Execution of Proposal form, attached hereto as **Attachment 1**, which will become part of any resulting contract. This document is Mandatory, and failure to return this document shall automatically render the Respondent's proposal as nonresponsive.

ATTACHMENTS

Attachment 1	Execution of Proposal
Attachment 2	Mandatory Price Sheet
Attachment 3	Respondent Qualifications Form
Attachment 4	Experience and Qualification Statement
Attachment 5	Qualification Score Sheet
Attachment 6	HUB Subcontracting Plan Form
Attachment 7	HUB Progress Assessment Report Form (reference only)
Attachment 8	Respondent References
Attachment 9	Respondent Identification of Respondent Relatives & Employees
Attachment 10	Railroad Commission of Texas Anti-Lobbying Affidavit
Attachment 11	Railroad Commission of Texas Sample Contract

ATTACHMENT 1
EXECUTION OF PROPOSAL
(Must sign and return with Proposal)

By signature hereon, Respondent represents and warrants:

1. The provisions in this Request for Proposal (RFP) apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFP or any contract resulting from it.
2. Its intent to furnish the requested goods and/or services at the prices quoted in its Proposal.
3. Its prices include all costs of Respondent in providing the requested items that meet all specifications of this RFP, and that its prices will remain firm for acceptance for a minimum of one hundred eighty (180) days from deadline for submission of Proposal.
4. Each employee, including replacement employees' hired in the future, will possess the qualifications, education, training, experience and certifications required to perform the services in the manner required by this RFP.
5. It has no actual or potential conflicts of interest in providing the requested items to RRC under the RFP and any resulting contract, if any, and that Respondent's provision of the requested items under the RFP and any resulting contract, if any, would not reasonably create an appearance of impropriety.
6. Pursuant to Section 2155.003, Texas Government Code, it has not given, 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 Proposal.
7. It is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code.
8. Pursuant to 15 U.S.C. Section 1, et seq. and Texas Business and Commerce Code Section 15.01, et seq., neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal laws, nor communicated directly or indirectly the Proposal made to any competitor or any other person engaged in such line of business.
9. All statements and information prepared and submitted in response to this RFP are current, complete and accurate.
10. The individual signing this document and the documents made part of this RFP and Proposal is authorized to sign such documents on behalf of the company and to bind the company under any contract which may result from the submission of this Proposal.
11. If a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Bidder as defined by 34 Tex. Admin. Code §20.32(68).
12. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Respondent certifies that the individual or business named in the Proposal 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 Section 231.006, Texas Family Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Proposal. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

NAME:	SSN:
NAME:	SSN:
NAME:	SSN:

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your SSN is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

13. It is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency. Respondent must complete the following, marking "N/A" if not applicable:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Respondent: _____

Date of Employment with Respondent: _____

14. Pursuant to Section 2155.004(a), Texas Government Code Respondent represents and warrants that neither it nor any person or entity which will participate financially in any contract resulting from this RFP has received compensation for participation in the preparation of specifications for this RFP. In addition, under Section 2155.004, Texas Government Code, Respondent certifies that the individual or business entity named in this Proposal or any contract resulting from this RFP is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
15. Pursuant to Section 2155.4441, Texas Government 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.
16. The offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and 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 <http://www.sam.gov>.
17. If submitting a Proposal for the purchase or lease of computer equipment, then Respondent hereby certifies its compliance with Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 Tex. Admin. Code Chapter 328.
18. It is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent, within the five (5) calendar years immediately preceding the submission of Respondent's Proposal in response to this RFP that would or could impair Respondent's performance under any contract resulting from this RFP, relate to the solicited or similar goods or services, or otherwise be relevant to RRC's consideration of Respondent's Proposal. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Proposal a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under any

contract resulting from this RFP, relate to the solicited or similar goods or services, or otherwise be relevant to RRC's consideration of Respondent's Proposal. In addition, Respondent represents and warrants that it shall notify RRC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update RRC shall constitute breach of contract and may result in immediate termination of any agreement resulting from this RFP.

19. It and each of its subcontractors have the requisite resources, qualifications and independence to conduct the services free from outside direction, control, or influence, and subject only to the accomplishment of RRC's objectives.
20. Neither Respondent or any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, proposed in the Proposal has been convicted of a felony criminal offense, or that if such a conviction has occurred Respondent has fully advised RRC of the facts and circumstances in its Proposal.
21. It has read and agrees to all terms and conditions of this RFP, unless Respondent specifically takes an exception and offers an alternative provision in Respondent's Proposal as provided in the Letter of Transmittal (See Section 3.5.12.).
22. Pursuant to Section 2252.908, Texas Government Code, compliance with the "Disclosure of Interested Parties" requirement mandated by HB 1295, as implemented by the Texas Ethics Commission. Refer to Texas Ethics Commission (TEC) online portal to create a username and password. The portal and instructional video can be found at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. Log into the TEC portal, complete the "Certificate of Interested Parties" form and return the notarized form to contracts@rrc.texas.gov.
23. Certifies and affirms that it utilizes and will continue to utilize, for the term of any resulting contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
 - a) All persons employed to perform duties within Texas, during the term of the resulting contract; and
 - b) All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the resulting Contract, within the United States of America.

The Respondent shall provide, upon request of RRC, an electronic or hard copy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Respondent, and Respondent's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the resulting contract may be immediately terminated, at the discretion of the State and at no fault to the State, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated contract.

24. Pursuant to Texas Government Code Section 2262.003, Contractor understands that acceptance of funds under a resulting contract acts as acceptance of the authority of the State Auditor's Office, agency or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirements to cooperate is included in any subcontract it awards.
25. Agrees any payments or other amounts due under any resulting contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full and agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

Check below if preference claimed under 34 Tex. Admin. Code §20.38:

- | | |
|---|--|
| <input type="checkbox"/> Supplies, materials or equipment produced in TX or offered by TX bidder or TX bidder that is owned by a service disabled veteran | <input type="checkbox"/> Rubberized asphalt paving material |
| <input type="checkbox"/> Agricultural products produced or grown in TX | <input type="checkbox"/> Recycled motor oil and lubricants |
| <input type="checkbox"/> Agricultural products and services offered by TX bidders | <input type="checkbox"/> Products produced at facilities located on formerly contaminated property |
| <input type="checkbox"/> USA produced supplies, materials or equipment | <input type="checkbox"/> Products and services from economically depressed or blighted areas |
| <input type="checkbox"/> Products of persons with mental or physical disabilities | <input type="checkbox"/> Vendors that meet or exceed air quality standards |
| <input type="checkbox"/> Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel | <input type="checkbox"/> Recycled or Reused Computer Equipment of Other |
| <input type="checkbox"/> Energy Efficient Products | <input type="checkbox"/> Foods of Higher Nutritional Value |

Sections 2155.006 and 2261.053, Texas Government Code, prohibit state agencies from awarding a contract 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 Section 418.004, Texas Government Code, occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, Respondent certifies that the individual or business entity named in its Proposal is not ineligible to receive the specified contract and acknowledges that any contract resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.

Failure to sign the Execution of Proposal or signing it with a false statement shall void the submitted Proposal or any resulting contracts.

Authorized representative on behalf of Respondent must complete and sign the following:

Signature of Authorized Representative

Date Signed

Printed Name & Title of Authorized Representative

Phone Number

Company Name

Fax Number

Federal Identification Number

Email Address

Mailing Address

City, State, Zip Code

ATTACHMENT 2 MANDATORY PRICE SHEET

The estimated quantities stated in the line items are not guaranteed, are estimates and are for evaluation purposes only. The values do not represent anticipated maximum or minimum quantities, contractual requirements, or contractual obligations.

Payments under this contract will be based on the unit prices accepted by the RRC multiplied by the actual quantities resulting from performance of the services.

Unit prices for line items may be used, as necessary, to cover work included in the Work Scope. Any unforeseeable items not specifically identified in the line items below will be a reimbursable item. Blank Unit Prices are not acceptable. A no charge for a unit price is acceptable and must be noted under the Unit Price section.

Failure to bid a unit price or leaving a unit price blank will result in disqualification of bid.

Times Defined:

Normal: The Contractor shall provide analytical results within seven to ten working days from when the samples were received.

Expedited: The Contractor shall provide analytical results by close of business, the next working day after the receipt of the samples.

Item No.	Description	Quantity/Unit		Unit Price	Total
1	Total Petroleum Hydrocarbons (TCEQ-1005 extended to C-35) SOIL				
	Normal	200	Samples		
	Expedited	20	Samples		
2	Total Petroleum Hydrocarbons (TCEQ-1005 extended to C-35) WATER				
	Normal	50	Samples		
	Expedited	10	Samples		

Item No.	Description	Quantity/Unit		Unit Price	Total
3	Fractionation of TPHs into Aliphatics and Aromatics including analysis (TCEQ 1006) SOIL				
	Normal	50	Samples		
	Expedited	10	Samples		
4	Fractionation of TPHs into Aliphatics and Aromatics including analysis (TCEQ 1006) WATER				
	Normal	30	Samples		
	Expedited	5	Samples		
5	BTEX (EPA 8021 B) SOIL				
	Normal	10	Samples		
	Expedited	5	Samples		
6	BTEX (EPA 8021 B) WATER				
	Normal	10	Samples		
	Expedited	5	Samples		
7	BTEX (EPA 8021 B) Plus Total Petroleum Hydrocarbons (TCEQ-1005 extended to C35) SOIL				
	Normal	200	Samples		
	Expedited	20	Samples		
8	BTEX (EPA 8021 B) Plus Total Petroleum Hydrocarbons (TCEQ-1005 extended to C35) WATER				
	Normal	50	Samples		
	Expedited	10	Samples		
9	Dissolved Gas – Methane (RSK 175) WATER				
	Normal	15	Samples		
	Expedited	5	Samples		
10	TCLP Volatiles (EPA 1311/8260B) SOIL/LIQUID				
	Normal	25	Samples		
	Expedited	5	Samples		

Item No.	Description	Quantity/Unit		Unit Price	Total
11	TCLP Semi-volatiles (EPA 1311/8270C) SOIL/LIQUID				
	Normal	25	Samples		
	Expedited	5	Samples		
12	TCLP Metals (8 RCRA metals) (EPA 1311/6010B) and Mercury 7471A SOIL/LIQUID				
	Normal	25	Samples		
	Expedited	5	Samples		
13	Total Metals (8 RCRA metals) (EPA 6010B or 6020A/3050B), Mercury 7471B SOIL				
	Normal	10	Samples		
	Expedited	5	Samples		
14	Total Metals (8 RCRA metals) (EPA 6010B or 6020A/3005A, 3015, or 3020A), Mercury 7470A WATER				
	Normal	10	Samples		
	Expedited	5	Samples		
15	NORM Radium – 226, 228, and Individual Radionuclides by Gamma Spectroscopy (EPA 901.1 modified for soil) SOIL				
	Normal	50	Samples		
16	8 anions/cations (EPA 300.0) – calcium, carbonate, chlorides, magnesium, potassium, sodium, sulfate, and bicarbonate plus bromide WATER				
	Normal	100	Samples		
	Expedited	25	Samples		
17	Reactivity (SW-846, Ch 7.3), Corrosivity (pH or coupon), Ignitability (1010/1020-A) SOIL/LIQUID				
	Normal	25	Samples		
	Expedited	5	Samples		

Item No.	Description	Quantity/Unit		Unit Price	Total
18	Chloride (EPA 300.0 Ion Chromatography) SOIL				
	Normal	100	Samples		
	Expedited	10	Samples		
19	Chloride (EPA 300.0 Ion Chromatography) WATER				
	Normal	50	Samples		
	Expedited	10	Samples		
20	Specific conductance (electrical conductivity) (1:1 Paste Extract) SOIL				
	Normal	10	Samples		
	Expedited	5	Samples		
21	E. Coli (Colisure – presence/absence)				
	Normal	100	Samples		
	Expedited	25	Samples		
22	Fecal Coliform (Colisure – presence/absence) WATER				
	Normal	100	Samples		
	Expedited	25	Samples		
23	pH (EPA 150.1 or 9045C) SOIL				
	Normal	10	Samples		
	Expedited	5	Samples		
24	TOX (EPA 9020B/9023) LIQUID				
	Normal	10	Samples		
	Expedited	5	Samples		
25	EOX (EPA 9023B/9023) SOLID				
	Normal	10	Samples		
	Expedited	5	Samples		
TOTAL OF ALL LINE ITEMS:					

Signature of Authorized Representative

Date Signed

Company Name

ATTACHMENT 3
RESPONDENT QUALIFICATIONS FORM
Pass/Fail

RESPONDENT NAME _____

Instructions: Respondents shall answer all questions in Attachment 3. Attachments offering further explanation or elaboration of qualifications that pertain to each question in Attachment 3 are allowed but are limited to three (3) pages. **When including attachments, Respondents should:**

1. Clearly label attachments with the question number and header as it correlates to each question in Attachment 3, of Respondent Qualification.

QUESTION 1).

Company

Company Name: _____

Address: _____

Total number of years for company of environmental testing experience: _____

Note: Failure of the company to have minimum of five years of environmental testing experience shall result in disqualification of bid.

QUESTION 2).

Laboratory Manager

Name and title of Respondent's Laboratory Manager: _____

Name of school and discipline for Bachelor's degree (chemistry or related scientific/engineering discipline)

Total number of years of laboratory analytical experience: _____

Total number of years of applied experience with QA principles and practices in an analytical laboratory:

Notes:

¹ Failure of the laboratory manager to have a Bachelor's degree in chemistry or related scientific field/engineering discipline shall result in disqualification of bid.

² Failure of the laboratory manager to have a minimum of three years of laboratory experience shall result in disqualification of bid.

³ Failure of the laboratory manager to have at least one year of applied experience with quality assurance (QA) principles and practices in an analytical laboratory shall result in disqualification of bid.

QUESTION 3).

Quality Assurance Officer

Name and title of Respondent's Quality Assurance Officer: _____

Name of school and discipline of Bachelor's degree (chemistry or related scientific/engineering discipline):

Total number of years of laboratory analytical experience: _____

Total number of years applied experience with QA principles and practices in an analytical laboratory:

Notes:

¹ Failure of the QA Officer to have a Bachelor's degree in chemistry or related scientific field/engineering discipline shall result in disqualification of bid.

² Failure of the QA Officer to have a minimum of three years of laboratory experience shall result in disqualification of bid.

³ Failure of the QA Officer to have at least one year of applied experience with quality assurance (QA) principles and practices in an analytical laboratory shall result in disqualification of bid.

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ATTACHMENT 4

EXPERIENCE AND QUALIFICATION STATEMENT

All respondents are required to include this form, properly completed, WITH THEIR PROPOSAL. Failure to answer any question or provide required information may be grounds for disqualification and rejection of your submitted proposal. If a question or request for information does not pertain to your organization in any way, use the symbol "NA" (Not Applicable). Use additional 8 ½" x 11" sheets with your letterhead as necessary.

<u>Company Qualifications</u> Work by Contractor's Company which best illustrates current qualifications relevant to this project. <i>List no more than six projects.</i>			
Name of Respondent's Company: _____ COMPANY'S Total number of YEARS of Analytical Laboratory Services EXPERIENCE: _____			
Project Name and Location	Nature of Company's responsibility and types of services performed	Cost - Total Project *	Cost - Company performed *
Example: XYZ Project, Odessa, TX	<i>Performed Analytical Laboratory Services as prime contractor</i>	<i>\$100,000</i>	<i>\$100,000</i>
1.			

Company Qualifications – (continued)

Project Name and Location	Nature of Company's responsibility and type of services performed and managed	Cost - Total Project *	Cost - Company performed *
2.			
3.			
4.			
5.			
6.			

*Cost may be identified as a range as follows: \$10,000 to \$25,000, \$25,000 to \$50,000, \$50,001 to \$75,000, \$75,001 to \$100,000, \$100,001 to \$150,000, and greater than \$150,000.

<u>Lab Manager Qualifications</u> Work by Lab Manager which best illustrates that individual's knowledge and management experience on projects of similar scope. Only that individual's experience should be listed. List no more than six projects.			
Name and Title of Contractor's Lab Manager: _____			
Lab Manager's total number of YEARS of environmental and/or oil field EXPERIENCE: _____			
Project Name and Location	Nature of Company's responsibility and type of services performed and managed	Cost - Total Project *	Cost - Company performed *
<i>Example: S&T Project, Houston, TX</i>	<i>Subcontractor; performed Analytical Laboratory Services</i>	<i>\$200,000</i>	<i>\$110,000</i>
1.			
2.			

Lab Manager Qualifications - (continued)

3.			
4.			
5.			
6.			

*Cost may be identified as a range as follows: \$10,000 to \$25,000, \$25,000 to \$50,000, \$50,001 to \$75,000, \$75,001 to \$100,000, \$100,001 to \$150,000, and greater than \$150,000.

Additional Information:

The forms submitted as Respondent's Qualifications will provide a summary of Respondent's qualifications in performing projects similar in size and scope to this project as described in the Statement of Work. Bidders shall only respond on the forms provided. Please present your responses in the space provided. Failure to submit the information on the forms provided may result in disqualification; failure to submit all the information requested may result in a minimal score for this section. Company brochures, pre-prepared Statements of Qualification and resumes are not requested and will not be considered if submitted.

COMPANY QUALIFICATIONS: Provide the **company's name**, total number of **years** of analytical laboratory services, and a description of six projects the company has performed which were of similar size and scope.

Two points will be scored for each year over 5 years of analytical laboratory services experience up to a maximum of ten points. Two points will be scored for each project the company has performed which illustrates current qualifications relevant to this project up to a maximum of ten points.

The maximum Total Company Points is twenty.

LAB MANAGER QUALIFICATIONS:

Provide the **individual's name**, total number of **years** of analytical laboratory services experience, and a description of six projects the individual has managed which illustrate that individual's knowledge and management experience on projects of similar scope.

Two points will be scored for each year over 5 years of analytical laboratory services experience up to a maximum of ten points. Two points will be scored for each project which illustrates the lab Manager's knowledge and management experience on projects of similar scope up to a maximum of ten points.

The maximum Total Lab Manager Points is twenty.

EVALUATION TEAM:

The evaluation team which will evaluate and score Respondent's qualifications is comprised of Commission employees with expertise in this or related fields. The evaluation team will consist of one non-voting team leader and three voting members from the technical staff.

Each voting member of the evaluation team will act independently in reviewing, evaluating and scoring each Bidder Qualifications submittal. Evaluators may discuss any questions with the team leader but shall not discuss their evaluation, scores or the contents of the Bidder Qualifications with anyone else.

RESPONDENT'S QUALIFICATIONS POINTS:

Each evaluator will use a Bidder Qualification Score Sheet, below, to evaluate and score each Bidder. The Total Qualification Points given by each evaluator will be averaged together. That average becomes the Bidder Average Qualification Points and is recorded on the Bid Tabulation and Scoring Sheet for that Bidder. The maximum number of points which can be awarded to a Bidder for Company Points is ten and for Lab Manager Points is ten. The maximum number of points which can be awarded to a Bidder for Bidder qualifications is 40.

ATTACHMENT 5 QUALIFICATION SCORE SHEET

RESPONDENT'S NAME _____

EVALUATOR'S NAME _____

<u>Company Qualifications</u>	Points
Company's Years of Analytical Laboratory Services (0 – 10 PTS)	
Number of projects relevant to this project (0 – 10 PTS)	
Total Company Points (Max 20 pts)	

<u>Lab Manager Qualifications</u>	
Lab Manager's Years of Analytical Laboratory Services (0 – 10 PTS)	
Number of lab manager's projects illustrating knowledge and management experience on projects of similar scope (0 – 10 PTS)	
Total Lab Manager Points (Max 20 pts)	

Total Qualifications Points (Max 40 pts)	
---	--

ATTACHMENT 6

HUB SUBCONTRACTING PLAN FORM

Contained in Package 2 of ESBD Posting

IMPORTANT NOTE:

**Respondents must use an electronic version listed in ESBD to respond.
(Available as a .PDF file download with the RFP materials)**

ATTACHMENT 7

HUB PROGRESS ASSESSMENT REPORT FORM

**IMPORTANT NOTE:
(Included for Reference Only)**

HUB Progress Assessment Report (PAR) available at:
<http://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>

ATTACHMENT 8
RESPONDENT REFERENCES
(Must sign and return with Proposal)

Respondent must provide a minimum of three (3) references for RRC to contact to verify Respondent's experience with projects of similar size, value, and nature and performance. References may be the same as those associated with the projects described in the Respondent's Business Proposal under "Experience". Providing the name and telephone number of a Reference constitutes permission to contact Reference

1.	REFERENCE – Check Box if Project Reference is/was with a Governmental State Agency - <input type="checkbox"/>	
a	Company/Governmental EntityName	
b	Company Address (include city, state, and zip code)	
c	Name of Project	
d	Start & End Date of Project	
e	Contact Name and Title (Person who can discuss Respondent's Performance on Project)	
f	Contact Telephone	
g	Email Address	
2.	REFERENCE – Check Box if Project Reference is/was with a Governmental State Agency - <input type="checkbox"/>	
a	Company/Governmental EntityName	
b	Company Address (include city, state, and zip code)	
c	Name of Project	
d	Start & End Date of Project	
e	Contact Name and Title (Person who can discuss Respondent's Performance on Project)	
f	Contact Telephone	
g	Email Address	
3.	REFERENCE – Check Box if Project Reference is/was with a Governmental State Agency - <input type="checkbox"/>	
a	Company/Governmental EntityName	
b	Company Address (include city, state, and zip code)	
c	Name of Project	
d	Start & End Date of Project	
e	Contact Name and Title (Person who can discuss Respondent's Performance on Project)	
f	Contact Telephone	
g	Email Address	

Signature of Person Completing Form

Date

Name and Title

Respondent Company Name

ATTACHMENT 9
RESPONDENT IDENTIFICATION OF RELATIVES/EMPLOYEES
(Must sign and return with Proposal)

State law imposes restrictions on certain contracts with former or retired employees. Respondent must provide a list of all of the following on this **Attachment**.

Relatives of the Respondent who are currently working or have worked for RRC.

- (a) Employees of the Respondent who are current, former, or retired employees of RRC. Respondent must notify RRC of any prospective employee who is a former employee of RRC, prior to prospective employee's performance or receipt of compensation under any contract resulting from this RFP.
- (b) Respondent must notify RRC of any prospective employee who is related to a RRC employee, prior to placement, and must notify RRC of any prospective employee who holds any license or certificate related to the Insurance Industry.

If none, specify by marking an "X" in the "None" box for each category. Failure to complete this form will cause Respondent to be non-responsive.

1.	Relative(s) of Respondent (current, former or retired RRC employee(s))	None - <input type="checkbox"/>
	Name (First and Last)	Relationship to RRC
a		current - <input type="checkbox"/> former - <input type="checkbox"/> retiree - <input type="checkbox"/>
b		current - <input type="checkbox"/> former - <input type="checkbox"/> retiree - <input type="checkbox"/>
c		current - <input type="checkbox"/> former - <input type="checkbox"/> retiree - <input type="checkbox"/>

2.	Non-relative Employee(s) of Respondent (current, former or retired RRC employee(s))	None - <input type="checkbox"/>
	Name (First and Last)	Relationship to RRC
a		current - <input type="checkbox"/> former - <input type="checkbox"/> retiree - <input type="checkbox"/>
b		current - <input type="checkbox"/> former - <input type="checkbox"/> retiree - <input type="checkbox"/>
c		current - <input type="checkbox"/> former - <input type="checkbox"/> retiree - <input type="checkbox"/>

Use the additional lines below, as necessary for additional employees not listed above.

Signature of Person Completing Form	Date
Name and Title	Respondent Company Name

**ATTACHMENT 10
ANTI-LOBBYING AFFIDAVIT
(Must sign and return with Proposal)**

On behalf of the entity named below, I, an official with authority to bind such entity, execute this Affidavit as a part of the entity's Proposal to:

Request for Proposal No. 455-18-8656

By executing this Affidavit, the entity agrees to the following terms and conditions of this requisition.

From and after the posting of this RFP for the above-noted requisition, the entity, its employees, officials, agents and subcontractors, may not communicate or attempt to communicate about this requisition and the entity's Proposal, with RRC personnel, the evaluation committee members and the other RRC officials involved in making recommendations or decisions for award of contracts arising from this requisition; provided, however, entity, its employees, officials, agents and subcontractors will be allowed to participate in the RRC-sponsored evaluation process, in the form authorized.

Further, the entity may not, through indirect means of unpaid associates, volunteers or other persons, communicate or attempt to communicate about the entity's Proposal to any RRC personnel, the evaluation committee members or other RRC officials involved in making recommendations or decisions for award of contracts arising from this requisition. The entity understands and agrees that violation of this Affidavit may result in rejection of its Proposal, as a violation of the terms and conditions of the procurement process.

Signature

Printed Name

Company Name

Title

Date

ATTACHMENT 11

RAILROAD COMMISSION OF TEXAS
SAMPLE CONTRACT

CONTRACT FOR
(XXXXXX(list what service is))
BETWEEN
RAILROAD COMMISSION OF TEXAS
AND CONTRACTOR

The Railroad Commission of Texas (hereinafter referred to as “RRC”), a state agency located at 1701 N. Congress Ave., Austin, Texas 78701 and [REDACTED] (hereinafter referred to as “Contractor”), located at [REDACTED] enter into a contract agreement (hereinafter referred to as “Contract”) for a [REDACTED] (hereinafter referred to as “Contractor”) pursuant to TEX. GOV’T CODE Chapters 2155 and 2156.

I. CONTRACTED SERVICES/CONTRACT DOCUMENTS.

1.01. SERVICE REQUIREMENTS. Qualified Contractor to perform_____. Services shall be performed in accordance with the following:

- (a.) Service Contract - RRC Contract No. 455-17-xxxx
- (b.) Exhibit A, RRC’s Request for Proposal No. 455-18-8656 thereto including all attachments, appendices and subsequent addenda;
- (c.) Exhibit B, Contractor’s Proposal response submitted as modified by responses to Contractor Questions and Best and Final Offer, if any;
- (d.) Exhibit C, Contractor’s approved HSP (if applicable); and
- (e.) Exhibit C-1, Contractor’s HUB Progress Assessment Report (PAR) Template (if applicable).

1.02. INCORPORATED BY REFERENCE. All elements listed in 1.01. (b) through (e) are attached and hereby incorporated by reference and become part of the contract as if fully set forth.

1.03. ORDER OF PRECEDENCE. In interpreting this Contract and resolving any ambiguities, this Service Contract - RRC Contract No. 445-17-xxxx shall take precedence over the Additional Documents (Section 1.01. (b) – (e) above), and any inconsistency among the documents shall be resolved in the order in which they are listed below:

- (a.) Executed Service Contract – Contract No. 455-17-xxxx;
- (b.) Exhibit A, RRC’s Request for Proposal No. 455-18-8656 (including all associated Attachments, Appendices, and Addenda);
- (c.) Exhibit B, Contractor’s Proposal response submitted as modified by responses to Contractor Questions and Best and Final Offer, if any.

1.04. CONTRACT ADMINISTRATOR.

- (a.) RRC shall designate a “Contract Monitor” for this Contract who will serve as the Point-of-Contact between RRC and the Contractor. The instructions of the RRC Contract Monitor (“or designated representative”) are to be strictly and promptly followed by Contractor at all times. RRC’s Contract Monitor will decide any and all

questions that may arise as to the quality and acceptability of work performed and as to the manner of performance and rate of progress of the work. RRC's Contract Monitor will determine the amount of work performed which are to be paid under the Contract. Failure of the RRC Contract Monitor during the progress of the Contract to discover or reject unacceptable work or work not performed in accordance with the Contract or to exercise any remedies shall not be deemed an acceptance or a waiver of RRC's right to full performance of the Contract. RRC's Contract Monitor does not have any express or implied authority to vary or amend the terms of the Contract or to waive strict performance of the terms or conditions of the Contract.

(b.) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with the RRC Contract Monitor. No services shall be undertaken by Contractor except with the prior written direction of the RRC Contract Monitor. Contractor understands and agrees that services performed without the prior written direction of the RRC Contract Monitor is work outside the scope of this Contract and shall be performed exclusively at Contractor's risk and own expense.

II. TERM.

2.01. CONTRACT AWARD.

(a.) This Contract shall be effective as of the date executed by the parties and shall continue through August 31, 2017 unless extended by the parties by amendment to this Contract or terminated earlier, as provided in Section 2.02 set forth below. RRC reserves the right to renew the contract for two (2) additional one (1) year terms.

(b.) Notwithstanding the termination or expiration of this contract, the provisions (if applicable) regarding indemnification, confidentiality, dispute resolution, intellectual property rights, audit rights, limitation of liability, tool development, limitation of distribution and warranties, will survive the termination or expiration dates of this Contract.

2.02. TERMINATION.

(a.) **Termination with Default.** RRC may terminate this Contract immediately for default by providing written notice to Contractor of such termination if the Contractor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of abandonment or default, the Contractor will be responsible for paying damages to RRC, including but not limited to, the cost to re-solicit this Contract and any consequential damages to the State of Texas or RRC resulting from the Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the scope of work is significantly changed.

(b.) **Termination without Default.** RRC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (the "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by RRC under this subsection, the Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 2.02(c).

(c.) **Implementation of Termination.** Contractor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary, as determined by RRC's Contract Administrator or his/her designated representative to preserve the work in progress. In the event of termination by RRC, RRC shall pay Contractor for all work satisfactorily performed up to the effective date of termination.

2.03. NO LIABILITY UPON TERMINATION. If this Contract is terminated for any reason, RRC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from

or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.

III. CONSIDERATION.

3.01. CONTRACT LIMIT AND FEES AND EXPENSES. The total amount of fees to be paid under this Contract during the initial term must not exceed [REDACTED] (\$ [REDACTED]).

3.02. PAYMENTS TO CONTRACTOR.

(a.) Payments to Contractor, if any, will be made at the completion of a project under a Delivery Release Change Notice and within thirty (30) days from receipt of a correct invoice or billing statement in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by RRC. Contractor will be paid for completion of work accepted and approved by RRC's Contract Administrator or his/her designated representative.

(b.) Contractor shall invoice RRC for work performed by vendor identification number, building, and purchase order number. Invoices must include the purchase order number and contract number. Address for submission is: Railroad RRC of Texas, Accounting – Mail Code 108-3A, P.O. Box 12967, Austin, Texas 78714-9104; or by email: invoices@rrc.texas.gov.

IV. STATE FUNDING.

4.01. STATE FUNDING. It is understood that all obligations of RRC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

V. CONTRACTOR PERSONNEL.

5.01. REQUIRED QUALIFICATIONS. At all times during the term of the Contract, Contractor shall have available, under direct employment and supervision, the required qualified personnel to properly fulfill all the terms and conditions of this Contract.

VI. NOTICES.

6.01. NOTICES.

(a.) Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to RRC or Contractor, as the case may be, at the address set forth below:

For RRC:

Railroad Commission of Texas
1701 N. Congress Ave., P.O. Box 12967
Austin, TX 78701

Attention: [REDACTED]

Phone: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]

For Contractor:

[REDACTED]

Attention:	
Phone:	
Fax:	
Email:	

(b.) Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as hereinprovided.

VII. MISCELLANEOUS PROVISIONS.

7.01. GOVERNING LAW AND VENUE. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this Section shall be construed as a waiver of sovereign immunity by RRC.**

7.02. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

7.03. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges Contract is effective for the period specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

7.04. SOVEREIGN IMMUNITY. The parties agree and acknowledge that nothing contained in Contractor's proposal response or this contract will in any manner be construed as a waiver of sovereign immunity or official immunity by RRC, its employees, or the state of Texas. RRC and the state of Texas retain all legal defenses and immunities available to each. RRC does not waive any privileges, rights, defenses, remedies, or immunities, available to RRC as an agency of the state of Texas or otherwise available to RRC.

7.05. FALSE STATEMENTS; BREACH OF REPRESENTATIONS. By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract, and RRC may terminate or void this Contract for cause and pursue other remedies available to RRC under this Contract and applicable law.

7.06. ENTIRE CONTRACT & MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

7.07. EXECUTION SIGNATURES. By the signatures below, each signatory represents and warrants that they have the authority to enter into this Contract on behalf of the respective parties.

RAILROAD COMMISSION OF TEXAS

CONTRACTOR

By: _____
Wei Wang
Interim Executive Director

Title: _____

Date of Execution: _____

Date of Execution: _____

Div. Director: _____

CM Director: _____

Legal: _____