



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

**REQUEST FOR OFFER**

**LIVE AUDIO-VISUAL STREAMING SERVICES  
for  
THE RAILROAD COMMISSION OF TEXAS (RRC)  
OPEN MEETINGS**

**RFO #455-18-8453A**

**REPOSTING DATE: September 21, 2017**

**Deadline for Submission:  
OCTOBER 16, 2017 at 3:00 PM Central Time**

## **TABLE OF CONTENTS**

|   |                |
|---|----------------|
| <b>DEFINITIONS .....</b>  | <b>Page 3</b>  |
| <b>PART I – GENERAL INFORMATION.....</b>  | <b>Page 4</b>  |
| <b>PART II – STATEMENT OF WORK.....</b>   | <b>Page 5</b>  |
| <b>PART III – GENERAL RESPONSE INFORMATION AND MANDATORY RESPONSE<br/>REQUIREMENTS .....</b>          | <b>Page 10</b> |
| <b>PART IV – GENERAL TERMS AND CONDITIONS AND RESPONDENT AFFIRMATIONS<br/>AND CERTIFICATIONS.....</b> | <b>Page 23</b> |
| <b>ATTACHMENTS .....</b>  |                |
| <b>Attachment 1: Execution of Response (Mandatory) .....</b>  | <b>Page 43</b> |
| <b>Attachment 2: HUB Subcontracting Plan (HSP) Form .....</b>   | <b>Page 48</b> |
| <b>Attachment 3: HUB Prime Respondent Progress Assessment Report .....</b>                            | <b>Page 49</b> |
| <b>Attachment 4: Respondent References.....</b>   | <b>Page 50</b> |
| <b>Attachment 5: Identification of Respondent Relatives and Employees.....</b>                        | <b>Page 51</b> |
| <b>Attachment 6: Railroad Commission of Texas Anti-Lobbying Affidavit.....</b>                        | <b>Page 52</b> |
| <b>Attachment 7: Railroad Commission of Texas Sample Contract .....</b>                               | <b>Page 53</b> |

**DEFINITIONS.** For purposes of this RFO, the following definitions apply:

**Addendum:** A modification of the specifications issued by RRC, posted as a package on the solicitation on Electronic State Business Daily (ESBD) posting for the solicitation.

**Best Value:** In accordance with Texas Government Code, Sections 2157.003, 2155.074, and 2155.075, factors considered by RRC to determine lowest overall cost and value in making certain purchases.

**Best and Final Response (BAFO):** A formal request made to acceptable or potentially acceptable Respondents for revision to the originally submitted Response.

**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 RFO, of the respective parties to the arrangement for provision of services.

**Contractor/Awarded Respondent:** An individual or entity qualified to provide the goods and/or services sought by RRC pursuant to this RFO who is ultimately selected to carry out the requirements stipulated in this RFO and any resulting contract.

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

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

**Proposal/Offer:** A response submitted to RRC as a result of this solicitation.

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

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

**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, or subcontractors, or any individuals furnished, referred, or provided by the Respondent for the purposes arising out of or related to this RFO, the Respondent's RFO Response, 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. Introduction and Purchasing Authority.**

In accordance with the provisions of Texas Government Code 2156.121-2156.127, Texas Government Code 2157.121-2157.127 and the Rules and Procedures adopted by for The Railroad Commission of Texas (RRC), RRC is seeking Competitive Sealed Responses to provide a live-audio-video broadcast (webcast) of Commissioner's Conference open meetings for viewing in real time, or on-demand from video archived in accordance with all requirements stated herein. The Contractor/Awarded Respondent will provide all required video and audio equipment, and staff onsite for any set up, broadcast execution, and video archiving on Contractor-hosted website. Additionally, RRC may request webcasts of certain hearings, rules workshops, internal training and agency town hall meetings. The Contractor will maintain an archive of all open meetings, and other meetings as requested by RRC, on a Contractor-hosted website and provide all the required equipment to do so.

RRC will select a Respondent based on demonstrated overall experience, comparable work experience, knowledge, ability, reasonableness of proposed fees, and references from past clients.

### **1.2. Background.**

The RRC is headed by three statewide, independently elected officials who set the policies and standards for the regulation of the oil and natural gas industry, pipeline transporters, natural gas and hazardous liquid pipeline industry, natural gas utilities, the LP-gas industry, and coal and uranium surface mining operations in Texas. Open meetings are the forums in which the Commissioners convene to set policies and standards. Meetings are held on the first floor of the William B. Travis State Office Building, located at 1701 N. Congress, Austin, TX 78701. Each meeting is open to the public, except for executive sessions, which are carried out in private and restricted by law to specific topics.

In accordance with Texas Government Code, Chapter 551, the Railroad Commission of Texas (RRC) provides a live-audio-video broadcast (webcast) over the internet of open meetings held by the agency and webcast archive available through links on its website to a Respondent-hosted website dedicated solely to the open meetings of RRC.

RRC anticipates webcasting thirty-four (34) Commissioners' Conference Open Meetings, ten (10) hearings, and eight (8) Executive Director town hall meetings for agency staff during the initial contract term, from the estimated start date of November 1, 2017 to August 31, 2019. RRC anticipates webcasting approximately forty (40) Commissioners' Conference Open Meetings, ten (10) hearings, and eight (8) Executive Director town hall meetings for agency staff during subsequent renewal terms. The term dates for and one-year contract renewals will start on September 1<sup>st</sup> and end on August 31<sup>st</sup>.

### **1.3. Contract Term.**

The initial two (2) year term of the contract will be from date of award, or the last signature date, whichever is later, and shall expire on August 31, 2019. The Contract may be renewed for two (2) additional two (2) year periods, provided the 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.

### **1.4. 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 1<sup>st</sup>, and ends on August 31<sup>st</sup>. There are official national and state holidays recognized by Texas State agencies in which the RRC may not be officially opened for business or may be closed. Respondents submitting Responses in response to this RFO should refer to the Texas State Auditor's website at the

following link, 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 Fiscal Year by the Texas State Auditor's Office.

For the purposes of this RFO and the term of any resulting contract, the official business hours of RRC are Monday through Friday, 8:00 a.m. to 5:00 p.m. Saturday or Sunday may also be considered as a workday at the sole discretion of the RRC authorized representative.

#### **1.5. Protest Procedure.**

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

#### **1.6. RRC Responsibilities.**

- a. RRC will coordinate the installation of required equipment with the Respondent and the Texas Facilities Commission.
- b. RRC representative shall represent RRC on site and will monitor the quality and quantities of the work.

### **PART II - STATEMENT OF WORK**

#### **2.0. General Overview.**

The Respondent shall provide all labor, equipment, materials, services, coordination and supervisory activities required provide live-audio-video broadcasts (webcasts) of Commissioner's Conference Open Meetings, certain hearings, and additional meetings as deemed appropriate by RRC for streaming video live, for viewing in real time, or on-demand from video archived. The services include internet connectivity for webcasting the meetings, a private dedicated data circuit to link a video server, software licenses required to operate the webcasting system, operation of the storage media for archiving meeting and operation of video and web servers.

Respondents shall provide a segment to the response providing options for closed captioning and/or a transcript of the live-broadcasted and archived meetings.

#### **2.1 Project Based Services.**

The responsibilities of the Respondent for the duration of the Contract are to:

- a. Provide on-site staff, software and equipment to internet live-audio-video broadcast (webcast) services in rooms 1-100, 1-104, and 1-111 of the William B. Travis State Office Building, located at 1701 N. Congress Ave, Austin, TX, 78701.
- b. Webcast approximately twenty (20) Commission Open Meetings per year, along with other hearings, rules workshops and RRC internal events that may be added throughout the year. Five hearings (5) and four (4) Executive Director town hall meetings are estimated for Fiscal Year 2018 (September 1, 2017-August 31, 2018).
- c. Provide multiple cameras in each meeting room. The largest room, room 1-104 requires a minimum of four (4) cameras. Room 1-100 requires at least two (2) cameras. Room 1-111 requires at least three (3) cameras. The location of the cameras must enable to on-site operator to position speakers in camera range from anywhere in the room. In addition, the system should allow the ability for an input for other uses, such as a feed from a PowerPoint projector or a second video feed of a sign-language interpreter.
- d. Provide and host a website, dedicated solely to webcasts of the RRC, to view and access both live and archived video files. This page will also include a copy of the meeting agenda, agenda tools such as the live agenda marker, agenda clips, and notes with important information or updates.
- e. Publish archive of each webcasted meeting on Respondent-hosted website within 24 hours of

meeting conclusion.

- f. Maintain online video archives of meetings for two years following the date of the meeting. The archives will contain an individual video segment for each agenda item.
- g. Maintain copies of archives, either on or off line, for seven (7) years and furnish a copy to RRC at no additional cost and in any format requested by RRC.
- h. Provide webcasts in high definition over the internet, available for viewing on the latest versions of Chrome, Firefox, Internet Explorer and Safari on desktops and laptops and the latest versions of Android Native, Chrome, Safari and additional interest services as may be identified, on mobile devices such as smartphones and tablets.
- i. Provide all equipment and staff to live broadcast hearings in an adjacent room when attendance at the hearing is expected to exceed room capacity.
- j. Verify and check camera focus and range capabilities, audio levels and feeds, and confirm functionality of other equipment onsite before each meeting.
- k. Provide technical support to RRC staff or its customers accessing meeting content.
- l. Communicate with RRC personnel (via email) of any relevant technical information, including firewall or network adjustments.
- m. Post meeting agenda during live-broadcasted open meetings using an interactive marker to indicate the agenda item currently being discussed.
- n. Ensure adequate bandwidth to support reasonable access by the agency's staff and customers.
- o. Provide a system with redundant backup. If the live stream is interrupted, the meeting video will be restored for archival purposes using a designated redundant path.
- p. Provide coverage for a webcasted meeting within 14 calendar days of RRC request.
- q. Provide independent data circuits, separate from the RRC network, to the video server.
- r. Provide the RRC with an automated method to post a URL for live broadcasts on the RRC website, [www.rrc.texas.gov](http://www.rrc.texas.gov). The script will automatically populate the RRC webpage with live and archive links, as well as notices, as they are made available on the Respondent-hosted website.
- s. Provide a mobile broadcast solution, if RRC's primary facility, the William B. Travis building, becomes uninhabitable. Respondent will supply all required equipment and staff to provide webcast coverage. If no internet connection is available at the temporary facility, Respondent will produce and save a video to be uploaded as an archive.

## **2.2 Project risks, assumptions and constraints.**

- a. Respondent must detail the pricing for the services as required to perform this Contract. Respondents may submit pricing as indicated in **Section 3.3, Response Instructions/Documents**.
- b. Respondent will provide an inventory of all equipment required of this RFO or modified as needed to provide a summary of assumptions and exclusions.
- c. Respondent and subcontract staff will sign Non-Disclosure Agreements and security agreements prior to implementation of the Contract and any Subcontracts between the Respondent and third-party providers fulfilling tasks under the scope of this RFO.
- d. There must be a Prime Respondent ("Respondent") legally and financially responsible for all the required scope to perform this Project. One consolidated cost section must be provided by any Respondent acting as a Respondent on behalf of multi-Respondent responses. The Prime Respondent assumes total responsibility for the performance of the work as specified in this RFO.
- e. Subcontractors providing the scope under the Contract shall meet the same requirements and level of experience as required of Respondent. No subcontract under the Contract shall relieve Respondent of responsibility for ensuring performance of the requested services. Respondents

planning to subcontract all or a portion of the work to be performed shall identify the proposed Subcontractors.

### **2.3 Respondent Roles and Responsibilities.**

- a. Responsible for planning and scheduling activities to accomplish work as needed to complete the work described in this RFO.
- b. Provide personnel who have identifiable work experience and education to perform their assigned work. Detailed experience and qualifications for the Respondent's staff members will be provided to RRC prior to the staff commencing any work.
- c. Comply with all records retention requirements and schedules as required by Texas state law (13 Texas Administrative Code § 6.94). Respondent understands the video archive files are considered electronic records.
- d. Retain video archive files and maintain any software, hardware, or documentation required to retrieve and view such files. Respondent will recopy or reformat archive files as required to ensure availability and usability until the expiration of the retention period of the electronic record. Respondent will provide individually accessible files based on meeting- and date-specific file naming convention. In the event of termination for convenience or non-performance, contract expiration, or business failure of the Respondent, all data will transfer to the RRC in a format usable by a succeeding Respondent or system.
- e. Address known cybersecurity risks associated with the technology and any costs associated with addressing identified cybersecurity risks.
- f. Ensure recording and transmission services provides content integrity to all users in a manner that the website and its content contains what the end user intends to access, as specified in this RFO.
- g. Assume responsibility for the cost, maintenance and security of all equipment and software required to perform the scope of services as specified in this RFO. The equipment includes but is not limited to: pan-tilt zoom cameras, data circuits, editing boards and software. Any equipment, software, or services that the Respondent is unable to provide should be described in the response.
- h. Conform to requirements of 1 Texas Administrative Code §209 as well as Department of information Resources SRPUB05 Video Conferencing Guidelines where applicable.
- i. Meet or exceed the standards of the International Telecommunications Union for video conferencing, as applicable, with the equipment and software version utilized for encoding the video stream.
- j. Utilize H.264 streaming protocol for the video stream:
  - i. Mixed video and audio signals are sent to an encoding computer and the video is compressed and sent to the Respondent's video servers that deliver the H.264 content to the end user via live or on-demand streaming.
  - ii. The stream delivered will not require a specific player (i.e., the video plays embedded in an HTML window) and will scale to the maximum bandwidth available on the end user side.
- k. Communicate with the agency point of contact for any scheduling clarifications or requests outside of the calendar postings or email notifications. The Respondent understands that the schedule can change and will check the calendar frequently to ensure complete coverage.
- l. Maintain a continuity of disaster recovery plan providing for restoration of service. This plan will include maintenance of mobile equipment; transport over a self-healing network; routers that can be rebooted remotely or by onsite staff; backup power generators for power outages at Respondent's network operations center (NOC); and co-location of network equipment. Respondent will provide a copy of its disaster recovery plan to RRC upon request.
- m. Perform test of the disaster recovery plan on an annual basis and provide RRC with the results and any remediation plans.
- n. Comply with the Texas Department of Information Resources (DIR)'s Electronic and Information Resources (EIR) Accessibility Policy in its compliance with accessibility rules as mandated by

Texas Administrative Code Title 1, Section 206 and Section 213 and Texas Government Code 2054, Subchapter M.

- o Respondent shall provide, when applicable, the Texas Department of Information Resources (“DIR”) with the universal resource locator (“URL”) to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). Respondents not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.
- o. Certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security’s E-Verify system, in accordance with the U.S. Department of Homeland Security’s rules, to determine the eligibility of:
  - i. all persons employed to perform duties within the State of Texas, during the term of the Contract; and
  - ii. all persons, including Subcontractors, assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.
- p. Perform all services required under the scope of the contract at an acceptable service level and in a manner consistent with the acceptable Project Management Institute (PMI) standards. RRC will have the right of inspection and testing.
- q. Provide 100% service availability during open meetings and public hearings. Respondent’s circuit network should have an Multiprotocol Label Switching (MPLS) backbone, or equivalent, providing low-latency routing. MPLS is a scalable, protocol-independent transport. MPLS circuits on the carrier network are fully-routed connections. If part of the internet network goes down, the traffic will be automatically re-routed without Respondent having to actively do any reconfiguring of physical equipment. If the circuit goes down at the RRC facility, Respondent can send the stream to its server over an Internet connection. Respondent should have added redundancy at its server connections. Respondent must provide its own Network Operating Center (NOC), have co-located equipment at other NOC’s. Respondent shall have established automatic fail-overs to those co-locations if its network is compromised. If unforeseen technical issues arise to compromise the live video stream which are not resolved with redundancy, automatic re-routing, and alternate methods to connect, backup recordings will ensure full coverage of the meeting for the archive.
- r. Contact the RRC by e-mail or phone as soon as practical once Respondent is aware of any unplanned system outage. The onsite operator will monitor the outgoing stream from the encoding computer; the stream will also be monitored by 1-2 offsite staff. If an outage occurs during a meeting broadcast, Respondent will provide frequent updates to the RRC, at least every 15 minutes.

## **2.4 Reports and Meetings**

RRC may schedule a Post Award meeting with the Contractor after Contract award to ensure a clear and mutual understanding of all Contract terms and conditions and the respective responsibilities of all parties.

Contractor shall report directly to the RRC Contract Monitor and shall perform all activities in accordance with reasonable instructions, directions, requests, rules and regulations issued during the term of this Agreement as conveyed to Respondent by the RRC Contract Monitor and the RRC Technical Point of Contact.

## 2.5. Insurance Requirements.

**2.5.1.** 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.

**2.5.2.** 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 currently has in place; and
- b. include a Waiver of Subrogation Clause.

**2.5.3.** 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.

**2.5.4.** The Respondent will, within five (5) business days of a Notice of Award or Executed Contract, provide RRC with current certificates of insurance on an AcordTM form or equivalent. Respondent shall maintain the required insurance during the entire term of the Contract.

### 2.5.5. Minimum Required Amounts of Insurance Coverage.

| <b>Table 1. Minimum Required Amounts of Insurance Coverage</b>  |  |
|---|--|
| <b>Type of Insurance</b>  | <b>Each Occurrence/Aggregate</b>   |
| 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<br>Bodily Injury by Disease Bodily Injury by Disease         | \$1,000,000 Each Accident<br>\$1,000,000 Each Employee<br>\$1,000,000 Policy Limit   |
| Commercial General Liability<br>(occurrence based)  | Bodily Injury and Property Damage<br>\$1,000,000 Each Occurrence Limit<br>\$2,000,000 Aggregate Limit<br>\$5,000 Medical Expense each person<br>\$2,000,000 Products/Completed Operations Aggregate Limit<br>\$1,000,000 Personal Injury and Advertising Liability |
| Automobile Liability<br>All Owned, Hired and Non-Owned Vehicles   | \$1,000,000 Combined Single Limit (for each accident)  |
| <b>Name of Insured: Railroad Commission of Texas</b><br>(Requires separate AcordTM for or equivalent form). |  |

**2.5.6. 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 Respondent to suspension or termination of Contract for cause, in addition to all other available remedies provided by law.

**2.5.7. Respondent Costs.**

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

**PART III - GENERAL RESPONSE INFORMATION AND MANDATORY RESPONSE REQUIREMENTS**

**3.1. Schedule of Events.**

Respondent must submit its Response to RRC in time for verification and confirmation that each Response is received and documented in accordance with the due date and time indicated in Table 2 below.

| <b>TABLE 2. RFO Schedule of Events</b>  |   |
|---|---|
| <b>DATE</b>   | <b>EVENT</b>                                  |
| Thursday, September 28, 2017  | RFO re-issued; published on the ESBD          |
| Friday, October 6, 2017 at 3:00 PM CT   | Deadline for Submission of Written Questions  |
| Monday, October 9, 2017 or as soon thereafter as practical  | 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. |   |
| <b>Monday, October 16, 2017<br/>at 3:00 PM CT</b>   | <b>Deadline for Submission of Responses</b>   |
| Wednesday, November 1, 2017   | Anticipated Contract Award                    |

**3.1.1. 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 RFO prior to submitting a Response. 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. Response Instructions/Documents.**

All Respondent's documents submitted in response to this RFO, including all required documents, the Acknowledgements of any posted Addenda, and any warranty documents, are collectively referred to as

“Respondent Documents”. Respondent Response 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.

- a. Submissions: Respondents shall submit one (1) paper original, four (4) paper copies and one (1) electronic copy of the RFO Response in Portable Document Format (PDF). Respondents should submit response in the following TABS (Description of the content for each TAB can be found in the section below)
  - TAB A – Cover Page – Signed cover page of RFO
  - TAB B – Executive Summary
  - TAB C – Company Information
  - TAB D – Experience and Qualifications
  - TAB E – Technical Approach
  - TAB F – Pricing
  - TAB G – Terms and Conditions Exceptions
  - TAB H – Vendor Equipment
  - TAB I – Miscellaneous
  - TAB J – Attachments 1, 4-7
  - TAB K – HUB Subcontracting and Supporting Documentation
- b. Contents: Listed below is a summary of the information to be included in the Response to this RFO.
  - TAB A – Cover Page – Provide a Cover page for the RFO response.
  - TAB B – Executive Summary – Provide a one (1) – two (2) page summary of the RFO Response.
  - TAB C – Company Information – Provide:
    - Texas Identification Number System (TINS) number,
    - Full firm name (formal name and all assumed names used by the business entity)
    - Address of Respondent;
    - Structure of business entity (i.e. sole proprietorship, partnership, corporation, etc.);
    - State in which business entity exists (was formed or incorporated;)
    - physical address and mailing address;
    - Principal place of business;
    - Whether, and to what extent, Respondent has established a physical presence in the State of Texas, including relevant timeframes;
    - Name, title, address, telephone number, facsimile number, e-mail address of Respondent’s primary contact; and
    - Respondent’s Texas agent for service of process, including name, title address and telephone number.
    - Respondent’s name should appear on each continuation page of a RFO Response, in the Upper right-hand corner.

In addition, provide relevant historical and background information on the organization, primary location of Company and workforce, including how many years has your organization been in the IT business, type of IT work your organization typically performs and

- TAB D – Experience and Qualifications – Describe services your organization has provided in the past five (5) years that demonstrate your organization’s capability to carry out the services proposed in your response to this RFO. Provide relevant examples of three (3) specific projects in the past five (5) years which the Respondent has completed and references to be contacted to verify the information provided. Also, provide any experience in performing similar services for public entities. Include resumes for all personnel who will be responsible for the management and day-to-day operations of the services solicited in this RFO.

List of all personnel who will fill positions designated as key personnel and provide the following information for each:

- Detailed description of educational qualifications and work experience prior to becoming employed by Respondent.
- Time employed/worked with Respondent.
- Detailed description of work experience, training and dates for each position held during employment by Respondent.

Respondent must submit a staffing plan for this project. If all positions are not currently filled, the Respondent must submit the qualification requirements for that position. In addition, a project organizational chart with all positions proposed for this project must be submitted.

- TAB E – Technical Approach – Describe how the Scope of Work objectives would be achieved, including additional components or services which the Respondent believes RRC should require and the proposed methodologies to be used for any such additional component or service.

The response must include, at a minimum:

- Description of the Respondent’s approach for gaining understanding of the requirements and specifications to be implemented.
- Description of the Respondent’s approach for the implementation of these requirements and specifications (development methodologies or customization/configuration techniques).
- Description of the Respondent’s approach for integration to existing RRC architecture.
- Testing and Quality Control depth and approach.

The objective of the technical portion of Respondent's RFO Response is to demonstrate Respondent's experience, the expertise of its personnel who will provide the requested in this RFO, Respondent's demonstration of its ability to plan and complete the project, and Respondent's ability to successfully deliver.

RRC follows the State of Texas (DIR Project Delivery Framework including Framework Extensions); therefore, the RFO Responses for this RFO must consider these requirements.

- TAB F – Pricing – Provide pricing information as requested in Table 3 below and be inclusive of all activities proposed on the Respondent’s technical approach:

| Table 3. Pricing Information |  |       |
|------------------------------|--|-------|
| Task                         | Meeting Type   | Price |
| 1                            | Commissioners' Conference Open Meetings  |       |
| 2                            | Hearings, including up to 8 hours of coverage.                                   |       |
| 3                            | Rules Workshops  |       |
| 4                            | Executive Director Town Halls  |       |
| 5                            | RRC Internal Meetings requiring webcasting & archiving                           |       |
| 6                            | Hourly rate for webcasting & archiving meetings                                  |       |
|                              | Hourly rate for recording & archiving meeting (live-broad-casting not included). |       |
| 7                            | Displaying webcast in room adjacent to the live-webcast meeting room             |       |
| 8                            | Hourly rate for transcription/closed-captioning                                  |       |

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- TAB G – Exception to Provisions – **If Respondent takes any exceptions to any provisions of this RFO, these exceptions must be specifically and clearly identified by Section in Respondent's RFO Response in response to this RFO.** Respondents cannot take a blanket exception to this entire RFO. If any Respondent takes a blanket exception to this entire RFO or does not provide proposed alternative language, the Respondent's RFO Response may be disqualified from further consideration. Any exception may result in a contract not being awarded to the Respondent.
- TAB H – Vendor Equipment – Describe any equipment, software, or services that the Respondent will provide. Additionally, provide any equipment, software, or services the Respondent is unable provide to perform the requirements of this RFO.
- TAB I – Miscellaneous – Provide any other miscellaneous information that the Respondent considers relevant and important to provide to RRC.
- TAB J – Attachments 1, 4-7 – Signed, completed copies of:
  - Attachment 1: Execution of Response
  - Attachment 4: Respondent References
  - Attachment 5: Identification of Respondent Relatives and Employees
  - Attachment 6: Railroad Commission of Texas Anti-Lobbying Affidavit
- TAB K – HUB Subcontracting and Supporting Documentation

### **3.2.1. RRC Sole Point of Contact and Inquiries.**

Respondents must direct all inquiries and communications concerning this RFO 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 3.5.3. Delivery of Responses** for proper submission. The sole Point-of-Contact for this RFO is:

Sandy Williams, CTPM/CTCM  
1701 N. Congress Ave  
Mail Code: 10.180C  
Austin, TX 78701

[sandy.williams@rrc.texas.gov](mailto:sandy.williams@rrc.texas.gov)

Phone: 512-463-7680

Fax: 512-936-6402

#### **3.2.1.1. Inquiries.**

Respondents must send all questions regarding this RFO in an editable format, i.e. Microsoft Word, or standard email, to the RRC Point-of-Contact identified in **Section 3.2.1., RRC Sole Point of Contact and Inquires**. Respondents must reference the appropriate RFO 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 Response submission deadline.

**3.2.1.2.** Respondents must notify RRC of any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error in the RFO in the manner required and by the deadline for submitting questions. If a Respondent fails to notify RRC of such issues, Respondent submits its Response at its own risk, and if awarded a Contract: (1) waives any claim of error or ambiguity in the RFO 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.

#### **3.3. Historically Underutilized Businesses (HUB) Requirements.**

Historically Underutilized Businesses (HUBs) are strongly urged to respond to this RFO. 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).

##### **3.3.1. HUB Subcontracting Plan.**

RRC has determined subcontracting opportunities are probable with this RFO. **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 7**, must be submitted with the RFO Response to be considered responsive. Respondents must complete and return the HUB Subcontracting Plan (HSP) documentation with the Response to be considered responsive. RRC will reject responses received without the HSP as a material failure to comply with the requirements of this RFO and renders the Respondent **ineligible for contract award**.

**3.3.2.** The HUB Subcontracting Prime Respondent Progress Assessment Report (PAR), **Attachment 8**, shall be submitted by the awarded Respondent on a monthly basis after a contract award has been issued.

**3.3.2.1.** 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:

<http://comptroller.texas.gov/procurement/tools/comm-book/>

##### **3.3.3. Probable HUB Subcontracting Opportunities.**

Probable subcontracting opportunities and the corresponding NIGP Class and Item Codes identified in Table 4 below. 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 HUB Subcontracting Plan for further instructions that require Respondents to identify the specific areas intended for subcontracting.

| <b>Table 4 - NIGP Class- Item Code/Commodity Description</b> |                       |  |
|--|-----------------------|--|
| <b>NIGP Class Code</b>                                       | <b>NIGP Item Code</b> | <b>Subcontracting Description</b>  |
| 840  | 14                    | Audio Equipment and Accessories, Television, Microphones, Mixers, and Amplifiers |
| 840  | 34                    | Editing, Titling, and Special Effects Systems, Accessories, and Parts            |
| 840  | 56                    | Teleconference Systems, Audio/Video, Including Video on Demand Systems           |
| 915  | 25                    | Hearing Impaired Captioned Services  |
| 915  | 82                    | Video Production Services  |
| 915  | 84                    | Video Recording Services   |

**3.3.4.** Respondents are highly encouraged to contact the RRC’s HUB Administration at 512-463-7680 or [hub@rrc.texas.gov](mailto: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.

### **3.4. Response Submission.**

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

#### **3.4.1. Number and Form of Submission Copies.**

Respondent must submit **one (1) original and three (3) copies** of its Response, and must sign the original copy in ink. Respondent must also submit **one (1) electronic copy** of its Response 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 required to encrypt the disc or flash drive, Respondent must immediately provide RRC’s point-of-contact person listed in Section 3.2.1.

**3.4.1.1.** Responses should be placed in a separate envelope/package and correctly identified with **RFO number, Response 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 Response to RRC by the specified date and time. Receipt of all addenda to this RFO must be acknowledged by Respondent through the return of a signed copy of each addendum, with the submission of the Respondent’s Response.

#### **3.4.2. 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 Response and other information submitted to the RRC by the Respondent are subject to release as public information by the RRC. The Response 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 Response 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 Response is protected from disclosure because it contains some proprietary information is not acceptable, and will make the entire Response 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 Response 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 have 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 Response.

Respondent 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 Texas Public Information Act, 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 RFO Response 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:

- a. Two (2) CDs containing complete copies of all of Respondent's submissions pursuant to this RFO. Respondent must mark these **"Complete Response Documents, [Respondent's Name], Railroad Commission of Texas RFO 455-18-8453 CONTAINS CONFIDENTIAL INFORMATION."**
- b. 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 RFO 455-18-8453."**

### 3.4.3. Delivery of Responses.

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

| U.S. Postal Service  | Overnight/Express Mail   | Hand Deliver  |
|--|--|---|
| RFO #455-18-8453<br>Railroad Commission of Texas<br>Procurement and Contract<br>Management<br>P.O. Box 12967<br>Austin, Texas 78711-2967<br>Attn: Sandy Williams,<br>CTPM/CTCM | RFO #455-18-8453<br>Railroad Commission of Texas<br>1701 N. Congress Ave.<br>Austin, Texas 78701<br>Attn: Sandy Williams,<br>CTPM/CTCM<br>Room 10.180B<br>Attn: Sandy Williams,<br>CTPM/CTCM | Railroad Commission of Texas<br>William B Travis Building<br>1701 N. Congress Ave.<br>Austin, Texas 78701<br>Attn: Sandy Williams,<br>CTPM/CTCM<br>Room 10.180C<br>Hours – 8:00 AM to 5:00 PM<br>(CT) |

**Emailed and facsimile Responses will not be accepted.**

### 3.5. Exception to Provisions.

If Respondent takes any exceptions to any provisions of this RFO, these exceptions must be

**specifically and clearly identified by Section in the Respondent's Response to this RFO.** Respondents cannot take a blanket exception to this entire RFO. If any Respondent takes a blanket exception to this entire RFO or does not provide proposed alternative language, the Respondent's RFO Response may be disqualified from further consideration. Any exception may result in a contract not being awarded to the Respondent.

### **3.7.5. Reservation of Rights.**

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

- a. RRC is under no legal requirement to execute a contract on the basis of this RFO.
- b. RRC reserves the right to reject a Response or response submitted that does not fully comply with the instructions and criteria outlined in this RFO.
- c. RRC reserves the right to reject any or all Responses and call for new Responses 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.

### **3.8. Response Attachment Submission Checklist.**

The RFO package also Attachments, identified in Table 5:

| <b>TABLE 5. RFO ATTACHMENTS</b>   | <b>MANDATORY</b>   |
|---|--------------------|
| <b>Attachment 1:</b> Execution of Response (Mandatory)                    | <b>Yes</b>         |
| <b>Attachment 2:</b> HUB Subcontracting Plan (HSP) Form                   | <b>Yes</b>         |
| <b>Attachment 3:</b> HUB Prime Respondent Progress Assessment Report      | N/A-Reference Only |
| <b>Attachment 4:</b> Respondent References                                | <b>Yes</b>         |
| <b>Attachment 5:</b> Identification of Respondent Relatives and Employees | <b>Yes</b>         |
| <b>Attachment 6:</b> Railroad Commission of Texas Anti-Lobbying           | <b>Yes</b>         |
| <b>Attachment 7:</b> Railroad Commission of Texas Sample Contract         | N/A-Reference Only |

### **3.9. Response Evaluation and Contract Award.**

If the RFO is awarded, RRC will issue a notice of award to the successful Respondent(s) in response to this RFO. However, there is no guarantee that an award or any Contract will result from this solicitation.

#### **3.9.1. 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.

#### **3.9.2. Evaluation Criteria.**

Each evaluated Response will be reviewed and scored according to the table set out below in Table 6. The relative weight of each criterion is indicated in the right-hand column.

RRC will determine best value by applying the following criteria and assigned weighted values for the entire Response. Information regarding the prospective Respondent should be separately stated in regard to each of the following criteria. See Section 3.2., Response Instructions/Documents, for detailed descriptions of each of the following criteria:

| <b>Table 6 – Evaluation Criteria</b> |               |
|--------------------------------------|---------------|
| <b>Criteria</b>                      | <b>Weight</b> |
| Company Information                  | 3%            |

|                               |             |
|-------------------------------|-------------|
| Experience and Qualifications | 10%         |
| Technical Approach            | 45%         |
| Pricing                       | 40%         |
| References                    | 2%          |
| <b>Total</b>                  | <b>100%</b> |

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

### **3.9.3. RFO Review Process.**

- RRC reserves the right to conduct studies and other investigations as required to evaluate any Response. RRC reserves the right to waive any minor or immaterial response requirements noted in the submission process. Submission of Responses confers no legal rights upon any Respondent. RRC will determine whether negotiations or Best and Final Responses are required and may invite selected Respondents to provide oral presentations of their Responses. RRC may determine if Best and Final RFO Responses are required. Award of a Contract may be made without Best and Final RFO Response. RRC may, at its sole discretion, elect to require Respondents to provide oral presentations or to respond in writing to inquiries from RRC related to their RFO Responses. A request for a Best and Final RFO Response is at the sole discretion of RRC and will be extended in writing.
- RRC reserves the right to make final selection from a short list of top candidates.

### **3.9.4. Review of Responses for Minimum Requirements Compliance.**

Responses will be reviewed by Procurement Department to ensure the Respondents met the minimum requirements required for submission, as outlined in the RFO, and to ensure the required documents are properly organized and submitted.

#### **3.9.4.1. Review and Initial Evaluation by the Evaluation Committee.**

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

- a. The committee may request clarification of information or representations made in a Response or in all Responses 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 Procurement 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 Responses.

### **3.10. Respondent Oral Presentations.**

If Offered, 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 RFO response, as well as to address any questions from the Evaluation committee. Respondent Oral presentations are not guaranteed. Scoring of the oral presentation may replace part or all the scoring of the RFO response.

### **3.11. Best and Final Response (BAFO).**

Following the initial scoring of Responses according to the Evaluation Criteria outlined in **Section 3.9.2, Evaluation Criteria**, 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 Response (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 Response. BAFOs would then be re-evaluated by Procurement Department.

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

### **3.12. 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.

### **3.13. Evaluation Process Overview/Summary.**

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

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

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

Respondent 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 Respondent Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), RRC may examine other sources of Respondent performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of Contracts. Such sources of Respondent 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 Respondent 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.

## **Part IV - GENERAL TERMS AND CONDITIONS AND RESPONDENT AFFIRMATIONS AND CERTIFICATIONS<sup>1</sup>**

**4.0.** This Section contains the standard terms and conditions and shall be incorporated for all purposes into this RFO 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 Response survive the RFO 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 RFO.

#### **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

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<sup>1</sup> General Terms and Conditions and Respondent Affirmations and Certifications as of March 14, 2015

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.

**4.1.6.** Respondent 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. Respondent 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 Respondent's RFO Response or termination of the Contract after award.

**4.1.7. 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.

**4.1.8. 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.

**4.1.9. 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.

**4.1.10. 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.

**4.1.11. 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.

**4.1.12. 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.

#### **4.1.13. 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 RFO 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 RFO 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.

#### **4.1.14. 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.

#### **4.1.15. 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 subcontract 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.

#### **4.1.16. Warranties.**

Notwithstanding any disclaimers in any RFO response or other Respondent document, and notwithstanding any other provision of this RFO 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 RFO.

#### **4.1.17. False Statements, Breach of Representations.**

If Respondent signs the RFO 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 RFO and any resulting contract, the Respondent shall be in default under this RFO 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.**

Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act

of 1988 is incorporated by reference and the Respondent shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

#### **4.2.2. Contract Award, Copyright, Reissuance.**

A response to an RFO is a Response to contract with the State based upon the specifications, terms, and conditions contained in the RFO. Responses 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 Responses, 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 Responses will not constitute a modification of this RFO and will not preclude RRC from asserting all rights against Respondent for failure to fully comply with all terms and conditions of this RFO. Copyrighted Responses 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 Response that asserts any copyright on any RRC-created form that is specifically designated by this RFO to be a form that must be completed and included in a Response submitted in response to this RFO. RRC may reissue or issue another RFO for the requested items described in this RFO or similar items at any time.

#### **4.2.3. Indemnification.**

##### **4.2.3.1. Acts or Omissions.**

Respondent shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, RESPONDENTS, 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 Respondent 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 RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

##### **4.2.3.2. Infringements.**

- a. Respondent shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, RESPONDENTS, 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 RESPONDENT PURSUANT TO THIS CONTRACT. RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

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

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

- a. RESPONDENT AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, RESPONDENT SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF RESPONDENT'S AND RESPONDENT'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. RESPONDENT 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 RESPONDENT, 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. RESPONDENT AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, RESPONDENTS, 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. RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. RESPONDENT AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

#### **4.2.4. Respondent Identification.**

Responses 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 Response After Deadline.**

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

**4.2.6. Tie Responses.**

Consistent and continued tie Responses could cause rejection of Responses by RRC's Procurement 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 Response as part of the Response unless the Respondent specifically and prominently refers to each of them in the Transmittal Letter with its Response. 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 Response.

**4.2.10. Incorporation of Entire RFO.**

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 RFO, this entire RFO 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 required 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 RFO, the entire agreement between RRC and Respondent shall consist of the following documents: The Contract, Purchase Order, Change Notices, if any, the RFO, and Respondent's Response.

**4.2.12. Conflicting Provisions.**

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

**4.2.13. Unacceptable Terms in Respondent's Response.**

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 Response; 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 RFO. 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 RFO.

- 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 RFO include:
  - i. Responses that incorporate the laws of a state other than Texas, requirements for prepayment
  - ii. limitations on RRC's remedies
  - iii. requirements that RRC indemnify the Respondent
  - iv. requirements that Respondent's documents control in case of conflicts
  - v. requirements that Respondent's documents control even if Respondent accepts or acknowledges the contract, and
  - vi. disclaimer of warranties.

#### **4.2.14. Statement of Work/Performance.**

Respondent will provide the requested services in the manner described in this RFO. Respondent's failure to conform to all requirements of this RFO 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 RFO 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 RFO and any resulting contract, in whole or in part, and may not assign any right or duty required under this RFO 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 RFO 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 RFO 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:
  - i. Respondent name
  - ii. Respondent address
  - iii. bill to information
  - iv. remit payment to information
  - v. invoice date
  - vi. invoice number
  - vii. RRC Contract number
  - viii. Respondent Texas Identification Number (TIN), as assigned by the Texas Comptroller of Public Accounts
  - ix. date and time of services
  - x. description of services, and
  - xi. 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 RFO 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:

**4.2.22.1. Mutual Agreement.**

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

**4.2.22.2. 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.

**4.2.22.3. 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.

**4.2.22.4. Respondent Nonperformance.**

If the Respondent 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 Respondent will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the agency based on the seriousness of the default.

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

**4.2.22.5. 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.

**4.2.22.6. 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.

**4.2.23. 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, subcontract, 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.

**4.2.24. 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.

**4.2.25. 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.

**4.2.26. 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.

**4.2.27. Legal Obligations.**

Respondent shall procure and maintain for the duration of this RFO 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 RFO 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 subcontract during performance of this resulting contract.

**4.2.28. Assignments and Subcontractors.**

Respondent shall neither assign, transfer, nor delegate any rights, obligations, or duties under this RFO 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.
  - i. Subcontractors providing service under the resulting contract shall meet the same requirements and level of experience as required of the Respondent.
  - ii. No subcontract under the resulting contract shall relieve the Respondent of responsibility for the service. If Respondent uses a subcontract for any or all of the work required, the following conditions shall apply under the listed circumstances:
    - (a) Respondents planning to subcontract all or a portion of the work to be performed under this Contract shall identify the proposed subcontract on Attachment 3, HUB Subcontracting Plan Form.
    - (b) Subcontracting shall be at the Respondent's expense.

- (c) RRC retains the right to check any subcontract's background and make the determination to approve or reject the use of submitted Subcontractors.
- (d) Respondent shall be the only contract for RRC and subcontract. Respondent shall list a designated point of contact for all RRC and subcontract inquiries.

#### **4.2.29. 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/hub/>.

Definitions for State of Texas HUB certifiable businesses can be found in 34 Texas Administrative Code Chapter 20, Subchapter D, which is available at:

[http://texreg.sos.state.tx.us/public/readtacSext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=34&pt=1&ch=20&rl=282](http://texreg.sos.state.tx.us/public/readtacSext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=34&pt=1&ch=20&rl=282).

A HUB Subcontracting Plan Form must be filled out and returned with the Response to be considered responsive. If the Response does not include a HUB Subcontracting Plan, RRC will reject the Response as a material failure to comply with advertised specifications.

RRC identified probable subcontracting opportunities in Section 3.3.3 of this RFO. 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 Respondents to identify the specific areas intended for subcontracting.

Search the State of Texas HUB Database for HUB Respondents by the NIGP class and item at by clicking the 'HUBs Only' option 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>.

#### **4.2.30. 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.

#### **4.2.31. 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.

#### **4.2.32. 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.

Respondent 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>). Respondents not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at: <http://www.section508.gov/>.

#### **4.2.33. 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 Respondent. 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.

#### **4.2.34. Compliance with Other Laws.**

In the execution of this RFO 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.

#### **4.2.35. Notices.**

Any notice required or permitted to be delivered under this RFO 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.

#### **4.2.36. Governing Law and Venue.**

This RFO 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 RFO 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 RFO and any resulting contract or any document related hereto. Nothing in this Section shall be construed as a waiver of sovereign immunity by RRC.

#### **4.2.37. Severability.**

If any provision contained in this RFO and any resulting contract is held to be unenforceable by a court of law or equity, this RFO 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.

#### **4.2.38. Force Majeure.**

Any delays in or failure of performance by either party, except in respect of the obligation of payments under this RFO 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.

#### **4.2.39. 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 Response is no ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification inaccurate.

#### **4.2.40. 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.

#### **4.2.41. Dispute Resolution.**

The dispute resolution process provided for in Texas Government Code Chapter 2260 shall be used by RRC and Respondent 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.

#### **4.2.42. Counterparts.**

Any contract issued pursuant to this RFO 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.

**4.2.43. 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 RFO and resulting Contract specifically displays a mutual intent to amend a particular part of this RFO and resulting Contract, general conflicts in language between any such attachment and this RFO and resulting Contract shall be construed consistently with the terms of this RFO and resulting contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension, or amendment to this RFO and resulting contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

**4.2.44. 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.

**4.2.45. 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.

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

**4.2.45.2.** 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 RFO and any awarded contract without the prior written consent of RRC.

**4.2.45.3.** 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.

**4.2.45.4.** 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.

**4.2.45.5.** Nothing in this RFO 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):

**4.2.46.5.1.** previously known to it without obligation of confidence;

**4.2.46.5.2.** independently developed by it;

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

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

**4.2.45.6.** 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.

**4.2.45.7.** Notwithstanding any provisions of this RFO 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.

**4.2.46. 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 RFO, 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.

**4.2.47. 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, Respondents, or subcontractors providing Services or Work Product pursuant to any contract issued pursuant to this RFO, 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 RFO, 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.

**4.2.48. 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.

**4.2.49. No RRC Obligations for Costs.**

RRC accepts no obligations for costs incurred in responding to this RFO 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 RFO, 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 RFO is withdrawn by RRC.

#### **4.2.50. Misunderstanding or Lack of Information.**

Respondents who respond to this RFO must be thoroughly informed concerning all relevant facts, data, and estimates, which are required for the purpose of assembling a Response, 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 RFO, 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.

#### **4.2.51. Compliance with RFO 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 RFO. A response to this RFO is a Response to contract with RRC based upon the terms, conditions, and specifications contained in this RFO. Responses 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 RFO are incorporated as part of any resulting contract for all purposes. RRC, at its sole discretion, may disqualify a Response from consideration if RRC determines a Response is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFO.

#### **4.2.52. Binding Effect of Response.**

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

#### **4.2.53. Rejection of Response and Cancellation of RFO.**

Issuance of this RFO 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 RFO. RRC maintains the right to reject any or all Responses and to cancel this RFO 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 RFO 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 RFO and will not preclude RRC from asserting all rights against Respondent for failure to fully comply with all terms and conditions of this RFO.

**4.2.54. Ambiguity, Conflict, Exclusionary Specification, or Omission.**

If a Respondent discovers any ambiguity, conflict, discrepancy, exclusionary specifications, omission, or other error in this RFO, 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.

**4.2.55. Right to Amend, Modify, or Withdraw the RFO.**

RRC reserves the right to alter, amend, or modify any provisions of this RFO or to rescind, revoke, or withdraw this RFO, 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.

**4.2.56. Accessibility of Public Information.**

Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Respondent 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.

**4.2.57. 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, Respondent 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.

**4.2.58. 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 Vendor'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 Respondent Performance System,
- b. Currently under a Corrective Action Plan through the CPA,
- c. Having repeated negative Respondent 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.).

Respondent 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 Response.**

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

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY**

### **ATTACHMENTS**

- Attachment 1: Execution of Response (Mandatory)
- Attachment 2: HUB Subcontracting Plan (HSP) Form
- Attachment 3: HUB Prime Respondent Progress Assessment Report
- Attachment 4: Respondent References
- Attachment 5: Identification of Respondent Relatives and Employees
- Attachment 6: Railroad Commission of Texas Anti-Lobbying Affidavit
- Attachment 7: Railroad Commission of Texas Sample Contract

**ATTACHMENT 1**  
**EXECUTION OF RESPONSE**  
**(MUST SIGN AND RETURN WITH RESPONSE)**

By signature hereon, Respondent represents and warrants:

1. The provisions in this Request for Offer (RFO) apply to Respondent and all of respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, Subcontractors, independent Respondents, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFO or any contract resulting from it.
2. Its intent to furnish the requested goods and/or services at the prices quoted in its Response.
3. Its prices include all costs of Respondent in providing the requested items that meet all specifications of this RFO, and that its prices will remain firm for acceptance for a minimum of one hundred eighty (180) days from deadline for submission of Response.
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 RFO.
5. It has no actual or potential conflicts of interest in providing the requested items to RRC under the RFO and any resulting contract, if any, and that Respondent's provision of the requested items under the RFO 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 Response.
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 Response 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 RFO are current, complete and accurate.
10. The individual signing this document and the documents made part of this RFO and Response 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 Response.
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 Response 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 Response. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

|              |             |
|--------------|-------------|
| <b>NAME:</b> | <b>SSN:</b> |
| <b>NAME:</b> | <b>SSN:</b> |
| <b>NAME:</b> | <b>SSN:</b> |

**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), 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 RFO has received compensation for participation in the preparation of specifications for this RFO. In addition, under Section 2155.004, Texas Government Code, Respondent certifies that the individual or business entity named in this Response or any contract resulting from this RFO 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 Responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity 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 Response 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 RFO Response in response to this RFO that would or could impair Respondent's performance under any contract resulting from this RFO, relate to the solicited or similar goods or services, or otherwise be relevant to RRC's consideration of Respondent's Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under any contract resulting from this RFO, relate to the solicited or similar goods or services, or otherwise be relevant to RRC's consideration of Respondent's Response. 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 RFO.
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 Response 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 Response.
21. It has read and agrees to all terms and conditions of this RFO, unless Respondent specifically takes an exception and Responses an alternative provision in Respondent's RFO Response 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](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](mailto: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 Respondent 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, Respondent 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. Respondent 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. Respondent will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through the Respondent 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.
26. 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 Response is not ineligible to receive the specified contract and acknowledges that any contract resulting from this RFO may be terminated and payment withheld if this certification is inaccurate.
27. In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Respondent certifies that it does not boycott Israel and will not boycott Israel during the term of the Contract.
28. In accordance with Section 2252.151-2252.153 of the Texas Government Code, by signature hereon, Respondent certifies that it does not do business with Iran, Sudan, or foreign terrorist organizations as defined by 8 U.S.C. Section 806.001.
29. 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  | <input type="checkbox"/> Products and services from economically                                   |

equipment

- ☐ Products of persons with mental or physical disabilities
- ☐ Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- ☐ Energy Efficient Products

depressed or blighted areas

- ☐ Respondents that meet or exceed air quality standards
- ☐ Recycled or Reused Computer Equipment of Other
- ☐ Foods of Higher Nutritional Value

Failure to sign the Execution of Response or signing it with a false statement shall void the submitted Response 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**

---

**Physical Address**

---

**City, State, Zip Code**

**ATTACHMENT 2**

**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 RFO materials)**

**ATTACHMENT 3**

**HUB PROGRESS ASSESSMENT REPORT FORM**

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

**ATTACHMENT 4**  
**RESPONDENT REFERENCES**  
**(Must sign and return with Response)**

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 Response under "Experience". Providing the name and telephone number of a Reference constitutes permission to contact Reference

|           |  |  |
|-----------|--|--|
| <b>1.</b> | <b>REFERENCE – Check Box if Project Reference is/was with a Governmental State Agency - <input type="checkbox"/></b> |  |
| 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  |  |
| <b>2.</b> | <b>REFERENCE – Check Box if Project Reference is/was with a Governmental State Agency - <input type="checkbox"/></b> |  |
| 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  |  |
| <b>3.</b> | <b>REFERENCE – Check Box if Project Reference is/was with a Governmental State Agency - <input type="checkbox"/></b> |  |
| 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  |  |

\_\_\_\_\_  
**Name and Title**

\_\_\_\_\_  
**Respondent Company**

\_\_\_\_\_  
**Signature of Person Completing Form**

\_\_\_\_\_  
**Date**

**ATTACHMENT 5**  
**RESPONDENT IDENTIFICATION OF RELATIVES/EMPLOYEES**

**(Must sign and return with Response)**

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 RFO.
- (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.

|           |  |   |
|-----------|--|---|
| <b>1.</b> | 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"/> |

|           |   |   |
|-----------|---|---|
| <b>2.</b> | 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.

---

\_\_\_\_\_  
**Name and Title**

\_\_\_\_\_  
**Respondent Company**

\_\_\_\_\_  
**Signature of Person Completing Form**

\_\_\_\_\_  
**Date**

**(Must sign and return with Response)**

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 Response to:

**Request for Response No. 455-18-8453**

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

From and after the posting of this RFO for the above-noted requisition, the entity, its employees, officials, agents and subcontracts, may not communicate or attempt to communicate about this requisition and the entity's Response, 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 subcontracts 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 Response 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 Response, as a violation of the terms and conditions of the procurement process.

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**Signature**

---

**Printed Name**

---

**Company Name**

---

**Title**

---

**Date**

**ATTACHMENT 7**

**RAILROAD COMMISSION OF TEXAS  
SAMPLE CONTRACT**

**MASTER SERVICE AGREEMENT CONTRACT  
FOR  
[REDACTED]  
BETWEEN  
RAILROAD COMMISSION OF TEXAS  
AND RESPONDENT**

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

**I. CONTRACTED SERVICES/CONTRACT DOCUMENTS.**

**1.01. SERVICE REQUIREMENTS.** Qualified licensed Respondent to perform [REDACTED]. Services shall be performed in accordance with the following:

- a. Service Contract - RRC Contract No. [REDACTED] and all executed Amendments;
- b. Exhibit A, RRC’s Request for Offer No. [REDACTED] thereto including all associated Attachments, Appendices, and Addenda;
- c. Exhibit B, Respondent’s Offer response submitted as modified by responses to Respondent Questions and Best and Final Offer, if any;
- d. Exhibit C, Respondent’s approved HUB Subcontracting Plan (HSP); and
- e. Exhibit C-1, Respondent’s HUB Progress Assessment Report (PAR) Template.

**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. [REDACTED] 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. [REDACTED] and all executed Amendments;
- b. Exhibit A, RRC’s Request for Offer No. [REDACTED] (including all associated Attachments, Appendices, and Addenda);
- c. Exhibit B, Respondent’s Offer response submitted as modified by responses to Respondent Questions and Best and Final Offer, if any;
- d. Exhibit C, Respondent’s approved HUB Subcontracting Plan (HSP); and
- e. Exhibit C-1, Respondent’s HUB Progress Assessment Report (PAR) Template.

#### 1.04. CONTRACT MONITOR.

- a. RRC shall designate a "Contract Monitor" for this Contract who will serve as the point of contact between RRC and the Respondent. The instructions of the RRC Contract Monitor ("or designated representative") are to be strictly and promptly followed by Respondent 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. Respondent agrees to conduct all its services under this Contract by and through appropriate communications with the RRC Contract Monitor. No services shall be undertaken by Respondent except with the prior written direction of the RRC Contract Monitor. Respondent 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 Respondent'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, 2019 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 two (2) 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 Respondent of such termination if the Respondent 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, Respondent 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 Respondent's non-performance. The defaulting Respondent will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the 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 Respondent 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, Respondent 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.** Respondent 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 required and be compensated only for such work as may be required, as determined by RRC's Contract Monitor or their designated representative to preserve the work in progress. In the event of termination by RRC, RRC shall pay Respondent 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 Respondent 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 is  .

**3.02. PAYMENTS TO RESPONDENT.**

- a. Payments to Respondent, if any, will be made at the completion of a project under a Notice to Proceed (NTP) 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. Respondent will be paid for completion of work accepted and approved by RRC's Contract Monitor or their designated representative.
- b. Respondent shall invoice monthly for services performed, as outlined in RRC's Request for Offer No. 455-18-8453, Section 4.2.21. Address for submission is: Railroad Commission of Texas, Accounting – Mail Code 108-3A, P.O. Box 12967, Austin, Texas 78711-9104; or by email: [invoices@rrc.texas.gov](mailto: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. RESPONDENT PERSONNEL.**

**5.01. REQUIRED QUALIFICATIONS.** At all times during the term of the Contract, Respondent 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 emailed or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to RRC or Respondent at the address set forth below:

#### **For RRC:**

Attention:  
Phone:  
Fax:  
Email:

#### **For Respondent:**

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 per, 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. 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 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. Respondent acknowledges Contract is effective for the period specified in the Contract. Any services performed by Respondent before this Contract is effective or after it ceases to be effective are performed at the sole risk of Respondent.

**7.04. SOVEREIGN IMMUNITY.** The parties agree and acknowledge that nothing contained in Respondent's offer 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, Respondent makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Respondent signs this Contract with a false statement or it is subsequently determined that Respondent has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Respondent 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 including electronically submitted signatures, each signatory represents and warrants that they have the authority to enter into this Contract on behalf of the respective party. The parties agree that electronically submitted signatures are acceptable. This agreement is to be effective as of the date of the last party to sign.

**RAILROAD COMMISSION OF TEXAS**

**RESPONDENT, LLC**

By: \_\_\_\_\_  
Kimberly Corley  
Executive Director

By: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Div. Director: \_\_\_\_\_  
PCM Director: \_\_\_\_\_  
OGC: \_\_\_\_\_