

**Department of Information Resources
Deliverables-Based IT Services (DBITS) Contract
Statement of Work (SOW)
for
IT Assessments/Planning and
IT Procurement Assistance**



RAILROAD COMMISSION OF TEXAS

Solicitation No. 455-20-1027

**Review and Assessment of
Selected Regulatory Processes**

SOLE POINT OF CONTACT:
Cliff Calley, Contract Manager
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Email: Cliff.Calley@rrc.texas.gov

ISSUE DATE: February 13, 2020
RESPONSE DUE: NO LATER THAN
March 2, 2020 3:00PM (CT)

1. INTRODUCTION

The Railroad Commission of Texas (“RRC”) intends to enter into a contract (“Contract”) for Deliverables-Based IT Services (“DBITS”) within the IT Assessments/Planning and IT Procurement Assistance categories (“Vendor’s DIR Contract”) with a Texas Department of Information Resources (“DIR”) Vendor (“Vendor”) to continue the ongoing review and documentation of Pipeline Safety Department business operations with the intent to streamline or optimize processes and maximize future process alignment with strategic technology roadmaps while maintaining stewardship of natural resources and the environment; our concern for personal and community safety; and our support of enhanced development and economic vitality for the benefit of Texans.

This request is necessary to assess, optimize, and eliminate unnecessary business processes to inform technology planning and assessment efforts and investment plans before beginning new information technology projects. Much of the data used to track and calculate agency performance measures are stored within and reported by automated information technology systems maintained by the RRC. The RRC desires to optimize business processes prior to beginning additional technology systems modernization efforts (beginning to exit mainframe technologies) such that as technology is modernized, only needed and efficient processes are modernized.

2. BACKGROUND

The Railroad Commission, through its Pipeline Safety Department (“Division”), regulates and enforces compliance with federal and state laws and regulations by pipeline operators. These regulatory responsibilities extend to operators of intrastate gathering, transmission, distribution, and master-metered systems. The Commission continues to lead the nation in adopting and enforcing safety rules to enhance the integrity of pipelines throughout the state. The Commission is authorized by the [Texas Utilities Code](#) and [Texas Natural Resources Code](#) to regulate the safety of intrastate gas, hazardous liquid and CO2 pipelines in the state. The Commission is also certified by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration for the enforcement of federal pipeline safety regulations for intrastate pipeline facilities under the federal [Pipeline Safety Act](#). In addition, the Pipeline Safety department enforces compliance by intrastate pipeline operators with federal and state laws and regulations and promotes public safety and awareness through the pipeline damage prevention program for Texas. Its statutory role is to:

- Conduct inspections through a risk-based evaluation model,
- Investigate accidents and complaints involving pipeline facilities
- Enforce of damage prevention regulations involving the movement of earth (excavation) surrounding pipeline facilities.
- Acceptance of pipeline mileage fees for new permits and annual permit renewals

The Pipeline Safety Department is headquartered in Austin, Texas with seven regional offices spread over the state. The regional offices are responsible for ensuring compliance with the Texas Utilities Code, the Texas Natural Resources Code, and the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration for the enforcement of federal pipeline safety regulations for intrastate pipeline facilities under the federal [Pipeline Safety Act](#). In addition, the Pipeline Safety department enforces compliance by intrastate pipeline operators with federal and state laws and regulations and promotes public safety and awareness through the pipeline damage prevention program for Texas., Pipeline Safety conducts approximately 3500 inspections per year using a risk-based evaluation model as well as specialized inspections. Additionally, staff investigates accidents and complaints involving pipeline facilities.

For additional information relating to Pipeline Safety and regulation in Texas, the regulatory responsibilities of the RRC and our performance measures/metrics, please refer to the Railroad Commission of Texas’ Agency Strategic Plan.

3. PERIOD OF PERFORMANCE

The performance period for completion of all work under a Contract arising from this SOW shall be 180 calendar days from date of fully executed Contract or date stated within RRC’s written Notice to Proceed, whichever is later.

RRC in its sole discretion and determination may include an optional extension period of up to 30 additional calendar days to the original contract performance period.

4. SCOPE OF SERVICES

Vendor shall review, analyze, and make recommendations for changes, if needed, to RRC's Pipeline Safety functions that govern or contribute to the performance of our regulatory responsibilities ("Services"). Some specific functions include rulemaking, permitting and application review, pipeline damage prevention compliance and pipeline inspections. Pipeline Safety regulation of the Texas Utilities Code and Texas Natural Resources Code to regulate the safety of intrastate gas, hazardous liquid and CO2 pipelines. Vendor tasks performed under a Contract arising from this solicitation shall include, but not be limited to, the review and assessment of the following:

- Mission;
- Strategies;
- Statutes (state or federal);
- RRC rules;
- Other mandates or commitments (such as grants or delegations of authority);
- Agency performance measures;
- Unit-level and individual performance measures/metrics;
- Business processes implementing or supporting all the above items (including stakeholder engagement/involvement), as well as:
 - Intrastate Pipeline Permitting and Fees Tracking
 - Pipeline Construction reporting and tracking
 - Pipeline Damage Prevention Compliance
- Associated interdepartmental business processes; and
- Technology systems implementing or supporting all the above items.

4.1 PROJECT RISKS, ASSUMPTIONS AND CONSTRAINTS

- a) Prior to beginning work on the project all Vendor staff (including but not limited to employees, contract employees, and subcontractors) assigned to or otherwise working on RRC's project shall sign a "Vendor Information Security Agreement" (see Attachment 3). After project start, any Vendor staff added to the project shall also sign RRC's Vendor Information Security Agreement prior to Vendor's added staff member(s) starting work on the project.
- b) Pipeline Safety is comprised of two distinct areas and therefore the size and scope should be considered.
- c) Departmental business process mapping for Pipeline Safety is needed as a part of Mainframe Transformation effort.
- d) The end product will conform to all applicable standards established by the RRC.

4.2 ROLES AND RESPONSIBILITIES

- a) The Vendor shall be responsible for planning and scheduling activities to accomplish work as needed to complete the work described in this SOW. The Vendor shall create, update (weekly at minimum), and provide the RRC with a project schedule throughout the life of the Project.
- b) The Vendor shall use all standard project management lifecycle artifacts and provide these project artifacts in the formats approved by the RRC Project Manager.
- c) The Vendor shall provide personnel who have identifiable work experience and education to perform their assigned work. Detailed experience and qualifications for the Vendor's staff members will be provided to the RRC prior to the staff commencing any work.
- d) The Vendor shall identify points of contact for resolving any key questions or issues that may arise. The Vendor Project Manager shall be responsible for making those individuals available to respond to issues in a timely manner.
- e) The Vendor shall provide deliverables on the dates in the agreed upon project schedule. Any changes to the delivery date(s) must have prior written approval by the RRC Project Manager. The Vendor shall update the project schedule to reflect any such changes.
- f) The Vendor shall use agreed upon RRC documentation templates, standards, and sign-off requirements for project documentation when applicable.

- g) Vendor shall be on site during specific times as requested by the RRC.
- h) At time of submitting a response to this Solicitation, Vendor shall be a DIR Vendor with a current (not expired) DIR DBITS contract within the IT Assessment/Planning category. Vendors meeting this qualification and submitting a Response shall provide within their Response their Vendor's DIR Contract number and expiration date.
- i) Vendor staff working off-site shall access the repository using the RRC approved tools for remote access.

4.3 DELIVERABLE ACCEPTANCE CRITERIA

- a) Deliverables will be complete when the RRC has signed-off in writing on the acceptance and understanding of each of the deliverables. Deliverable acceptance criteria will be specified for each deliverable in the Work Plan (defined within Deliverables section, below) and in the executed Contract. The RRC will provide the form for Deliverable Acceptance sign-off. All deliverables must have acceptance criteria established and a time period for review, inspection and acceptance.
- b) When the Vendor considers that a Deliverable is complete and has met the agreed upon acceptance criteria, the Vendor may provide RRC with a Notice of Completion, in which the Vendor represents that, based on their review, the Deliverable complies with all applicable requirements.
- c) The RRC will inspect each deliverable within the agreed upon timeframe and accept as complete if it meets agreed upon acceptance criteria. If the RRC submits the list of deficiencies, the Vendor must resolve, correct, and resubmit the Deliverable for the RRC's reconsideration within 15 working days and within the work plan budget for the related Deliverables. This procedure may continue until the Deliverable is considered Complete and Accepted in writing or the Deliverable is rejected in writing by the RRC.

5. DELIVERABLES

This section describes the minimum deliverables required to be produced by Vendor under a Contract arising from this SOW. Vendor is encouraged to recommend additional deliverables that Vendor deems valuable and complementary to the required deliverables identified within this section.

The vendor will lead all activities within scope required to achieve the above goals. Some anticipated activities include, but are not limited to:

- Lead kick-off activities including review and facilitation to determine immediate areas of focus;
- Facilitate workshops, information gathering and review sessions;
- Document high-level process flows/lifecycles for Pipeline Safety business processes;
- Develop proposal of enhanced or revised business models, processes, techniques, or rules to achieve additional efficiencies;
- Document proposed business processes, techniques, rules or other internal governing mandates that can be eliminated; and
- Develop a plan outlining how to achieve efficiencies.

Anticipated activities should be planned in phases and addressed as separate deliverables based on a methodology proposed by the vendor. As a necessary first step, the vendor would be responsible for reviewing rules, statutes, business processes, and other internal guiding mandates, facilitating prioritization with RRC and other stakeholders, and proposing areas of focus for the project.

This work will result in clearly cataloguing the in-scope business processes (in phases), developing matrices to trace back to the strategies and rules governing the organization, and defining a recommendation for each process or process component. Conversely, the work must identify business processes currently in place that are obsolete or do not directly trace back to a current business strategy or rule governing the organization.

VENDOR'S RESPONSE TO THIS SOLICITATION SHALL INCLUDE VENDOR'S RECOMMENDED APPROACH AND PROJECTED TIMELINE AND COSTS ASSOCIATED WITH ALL WORK NECESSARY TO PROVIDE EACH RRC REQUIRED DELIVERABLE AS WELL AS EACH OF VENDOR'S RECOMMENDED ADDITIONAL DELIVERABLES, IF ANY.

5.1 WORK PLAN

Contents of the Work Plan shall include details related to Vendor's approach to meeting the objectives of this solicitation's scope. At a minimum, the Work Plan shall contain:

- 5.1.1** Overview, scope, and detailed description of Vendor's approach, including Vendor's goals and objectives, applicable to the Services;
- 5.1.2** Description of Vendor's proposed resources including
 - 5.1.2.1** Templates that Vendor intends to use during Vendor's delivery of the services;
 - 5.1.2.2** Processes and techniques, including common and unique, that Vendor intends to use during Vendor's performance of the Services; and
 - 5.1.2.3** Vendor's key personnel; and
- 5.1.3** Detailed schedule reflecting proposed timelines and timeline-relativity for Vendor's processes, milestones, reporting, and deliverables.

5.2 REPORTS

Vendor's reports delivered under a Contract arising from this solicitation shall include draft and final versions, as determined necessary by RRC. Vendor shall deliver both Analysis and Project Related Reports.

5.3 ANALYSIS REPORT

Vendor's Services shall include providing to RRC a comprehensive analysis report ("Analysis Report") that details Vendor's findings of strengths and weakness related to RRC's executed and planned Project planning and procurement tasks. The Analysis Report shall include:

- 5.3.1** Vendor's high-level summary analysis of RRC's Project objectives and Project planning and procurement tasks performed, ongoing, and planned;
- 5.3.2** Vendor's detailed analysis of RRC's IT strategic plan and in relation to achieving the Project objectives;
- 5.3.3** Vendor's detailed analysis of RRC's adherence to defined and accepted industry standards and compliance with best practices, statutes, policies, and procedures, as applicable; and
- 5.3.4** Vendor's detailed analysis of the Project management plan and procurement plan effectiveness to obtain best the information technology services solutions for the Project at the best value to the state.

5.4 PROJECT RELATED REPORT(S)

Vendor's Services shall include providing to RRC one or more Project Related Reports grounded in Vendor's findings articulated within the Analysis Report. Vendor may submit one all-inclusive report or two or more complementary reports resulting in comprehensively addressing requirements of this section. Vendor's Project Related Reporting must include, without limitation, the following:

5.4.1.1 Vendor's recommendations reporting: shall include but not be limited to detailed recommendations for improvement to RRC's executed and planned Project planning and management activities and Project procurement activities to increase efficiency, quality, and successfulness of the Project.

5.4.1.2 Project evaluation reporting shall include detailed guidance and/or recommended instructions for evaluation of responses to the Project solicitation. At a minimum, Vendor's reporting within this section shall include: a high-level, step-by-step checklist and accompanying explanation of steps to guide the RRC evaluation team when conducting evaluation of Project solicitation responses, including evaluation of the following:

- Responsiveness to solicitation;
- Pricing and value, for best value;
- Solutions, for best value;

- Vendors, including Vendor qualifications and expertise for alignment with minimum and preferred Vendor qualifications. This information must be provided on the Vendor's Qualification Statement (see Attachment 2); and
- Recommendations on evaluation criteria and sub-criteria and accompanying weights for scoring.

5.4.1.3 Project Deliverables Acceptance Criteria reporting shall include Vendor's suggested deliverables and related acceptance criteria for each deliverable recommended to be included within the Project. At a minimum, Vendor's reporting within this section shall include recommendations for major deliverables and related acceptance criteria for a business intelligence/data warehouse IT services project. Vendor's recommendations in this section shall be based on industry standards and best practices and Vendor's knowledge and experience in business intelligence/data warehouse project planning, execution, and management as well as preparation of solicitation documents for a business intelligence/data warehouse project.

6. ASSUMPTIONS

6.1 DIR VENDOR STATUS

Vendor shall be a DIR Vendor with a current DIR DBITS contract within the IT Assessments/Planning and IT Procurement Assistance categories at time of submission of a Response to this solicitation. Vendor shall include within the Vendor Response the Vendor's DIR Contract number and expiration date.

6.2 KICKOFF MEETING

Upon execution of a Contract arising from this solicitation, a project kickoff meeting shall be held at RRC's headquarters offices, Austin, TX, at a date and time acceptable to both Parties. The kickoff meeting shall provide a high-level overview of Vendor's work under the Contract as well as opportunity for introductions of Vendor's and RRC's teams.

6.3 VENDOR INFORMATION SECURITY AGREEMENT

Prior to start of work under the Contract all Vendor staff (including but not limited to employees, contract employees, and subcontractors) assigned to or otherwise performing work under the Contract shall sign an *RRC Vendor Information Security Agreement* (see SOW Attachment 3). After project start and prior to start of assignment, any new Vendor staff assigned to work under the contract shall sign an *RRC Vendor Information Security Agreement*.

6.4 ONSITE WORKSPACE, BADGES, PARKING

RRC shall provide temporary office space, meeting room(s), security badges and parking permits for Vendor staff while on site to conduct meetings or work sessions.

6.5 VENDOR EQUIPMENT

Vendor shall provide all equipment required for Vendor staff to perform and complete all work required under the Contract.

6.6 VENDOR'S ONSITE PRESENCE

Vendor staff shall be on site at RRC headquarters during specific times required by RRC.

6.6.1 Vendor shall perform all critical Contract activities on site at RRC headquarters, 1701 N. Congress Avenue, Austin, TX. RRC, in its sole discretion, shall determine "critical" and "non-critical" project activities. Non-critical project activities may be performed from remote locations within the United States. No remote work shall be conducted or performed outside of the United States, and all data shall remain in the United States.

6.6.2 Vendor staff working off-site shall access to RRC's repository using RRC approved tools for remote access. Through RRC's Access Request procedure, RRC shall provide to the Vendor project team network and systems credentials necessary to complete work under the Contract.

7. VENDOR RESPONSIBILITIES

7.1 TIMELY DELIVERY

All deliverables shall be provided on the dates included within the bilaterally approved Work Plan. If a deliverable cannot be provided timely and in accordance with the approved project schedule, Vendor shall provide RRC's designated project manager written notice of delay prior to the deliverable due date and include a proposed revised schedule plus an analysis and conclusion of impact on related tasks and the overall project. Alterations or deviations from the approved schedule shall not occur unless Vendor receives written approval from RRC's designated project manager.

7.2 SCHEDULE UPDATES

Vendor shall be responsible for planning and scheduling activities to accomplish completion of all necessary work described in the SOW and executed Contract. Vendor shall create and update (weekly at minimum) a project schedule that shall be maintained throughout the project lifespan. Vendor shall provide to RRC's designated project manager the schedule and updates thereto.

7.3 PROJECT MANAGEMENT

Vendor shall be responsible for project management and diligent prosecution and execution of all work required under the Contract, including work stated within this SOW.

7.3.1 Vendor shall use RRC approved templates, standards, and sign-off requirements for project documentation.

7.3.2 Vendor shall use current, standard project management lifecycle artifacts.

7.3.3 Vendor shall provide to RRC's designated project manager the Vendor points of contact for resolution of key questions or issues.

7.3.4 Vendor's project manager shall be solely responsible for Vendor's key points of contact availability and timely response to RRC questions and issues.

7.4 PROGRESS COLLABORATION

Vendor and RRC shall collaborate on the procedural, reporting, and communication processes and structures for managing Vendor's provided services. Such processes and structures shall be documented and maintained by Vendor (in a repository accessible to RRC project management), approved by RRC, and modified and updated by Vendor on a periodic and continuous basis to reflect changes to the business and operational relationship.

7.5 STATUS REPORTING

Vendor shall provide RRC's designated project manager with written status reports.

7.5.1 Status reports shall be formatted in accordance with RRC requirements.

7.5.2 Vendor's status reports shall be due weekly, no later than the weekday and time specified by RRC's designated project manager.

7.5.3 Status reports shall include recapitulation of work performed and completed during the 7 calendar days immediately preceding the date of submission of the status report and shall also include projected work to be performed during the subsequent week.

7.5.4 Status reports shall identify any problems encountered or that remain outstanding from the prior week's status report and include explanation of the cause of the problem and a proposed resolution to the problem.

7.6 PROGRESS MEETINGS

7.6.1 Vendor shall be responsible for conducting weekly progress and status meetings with RRC's designated project manager and include by invitation such other individuals as deemed necessary for the scope of the meeting.

7.6.2 RRC's designated project manager shall designate the regular day, time, and location of the meetings, as well as format of the meetings (on site or remote via phone or other telecommunications).

7.7 MEETING MINUTES

Vendor shall be solely responsible for documenting meeting minutes, including meeting summaries, for all meetings with RRC staff.

7.7.1 Vendor shall provide meeting minutes, including meeting summaries, to RRC's designated project manager within two (2) business days following the meeting.

7.7.2 Upon Vendor request, and at RRC's sole discretion and written approval, RRC's designated project manager may authorize an alternate timeframe for delivery of meeting minutes.

8. SERVICES DELIVERABLE ACCEPTANCE

8.1 ACCEPTANCE CRITERIA

All deliverables defined within the bilaterally approved Work Plan shall have well-defined acceptance criteria.

8.2 ACCEPTANCE SUBMISSION PROCESS

8.2.1 Upon Vendor's determination a deliverable is complete, Vendor shall use RRC's Deliverables Acceptance Voucher ("DAV") (see Attachment 7) to submit the deliverable to RRC's designated project manager for review and approval.

8.2.2 Within ten (10) business days of RRC's receipt of a submitted DAV, RRC's project team shall inspect each deliverable, evaluate the deliverable for conformance to the applicable deliverable's acceptance criteria, and return to the Vendor the DAV indicating thereupon RRC's acceptance or rejection of the deliverable. Vendor may consider a deliverable as accepted if RRC fails to deliver to the Vendor a rejection of the deliverable within ten (10) business days of receipt of the submitted DAV. In event of rejecting a deliverable, RRC shall provide within or attached to the applicable DAV an explanation of deficiencies warranting rejection of the deliverable.

8.2.3 Not later than three (3) business days from receipt of RRC's written rejection of a deliverable, Vendor shall resolve, correct, and resubmit the deliverable for RRC's re-evaluation and determination of acceptance. Resubmission of deliverables for evaluation and acceptance shall be performed using the DAV. This procedure may allow the deliverable resubmission process to repeat and/or continue until the deliverable is considered complete and accepted in writing or the deliverable is rejected in writing and RRC commences termination of the Contract in accordance with the terms and conditions of the Contract.

9. RESPONSE: GENERAL INFORMATION, REQUIREMENTS, INSTRUCTIONS

9.1 STRICT ADHERENCE TO SUBMISSION DEADLINE

RESPONSES MUST BE RECEIVED IN THE CONTRACT MANAGEMENT SECTION, RAILROAD COMMISSION OF TEXAS, AUSTIN, TEXAS NO LATER THAN THE DATE AND TIME SPECIFIED WITHIN THIS SOW, OR AS REVISED BY ADDENDA, IF ANY, TO THIS SOW. RESPONSES RECEIVED AFTER THE DEADLINE DATE AND TIME WILL NOT BE CONSIDERED AND WILL BE RETURNED UNREVIEWED. VENDORS ARE ADVISED RRC HEADQUARTERS OFFICES DO NOT OPEN UNTIL 8:00AM (CT). VENDORS SHOULD PLAN THEIR DELIVERY METHOD ACCORDINGLY.

9.1.1 SCHEDULE OF EVENTS

TABLE 1: SOW No. 455-20-1027 Schedule of Events represents a list of critical dates applicable to this SOW. At the sole discretion of RRC, the Schedule of Events may be revised through written addendum emailed directly to any and all prospective Vendors, no later than the Response due date and time. Award Date is estimated only; at sole discretion of RRC award may occur at any time after due date of Response and completion of evaluation of Responses received.

TABLE 1: SOW No. 455-20-1027 Schedule of Events

Event	Date
Issuance of SOW	February 13, 2020
Deadline for Submission of Written Inquiries (no later than 3:00PM CT)	February 19, 2020
Response to Written Inquiries, if any (Addendum emailed to prospective vendors)	February 25, 2020
Response Due Date (no later than 3:00PM CT)	March 2, 2020
Award Date (estimated only)	March 9, 2020

9.2 RESPONSE LABELING/PACKAGING

RESPONSES SHALL BE PLACED IN AN ENVELOPE/PACKAGE AND LABELED WITH SOW No. 455-20-1027, CONTRACT MANAGER'S NAME (SEE SECTION 9.2.1 OF THIS SOW), AND THE RESPONSE DUE DATE AND TIME. IF SUBMITTING RESPONSES TO MULTIPLE SOWs, EACH SOW RESPONSE MUST BE SUBMITTED IN A SEPARATE ENVELOPE/PACKAGE WITH CORRECT LABELING ON THE OUTSIDE OF EACH RESPONSE ENVELOPE/PACKAGE. IT IS THE VENDOR'S RESPONSIBILITY TO PROPERLY LABEL AND DELIVER THE RESPONSE TO RRC BY THE SPECIFIED DATE AND TIME APPLICABLE TO THIS SOW.

9.2.1 RESPONSE DELIVERY

ANY RESPONSE SUBMITTED BY EMAIL OR BY FACSIMILE WILL BE REJECTED. Responses shall be submitted to RRC either by US Postal service, overnight delivery, or hand delivery. It is the sole responsibility of a Vendor to

select their preferred method of delivery from the delivery methods permitted herein. Vendors using hand delivery method are reminded RRC's Austin office does not open until 8:00AM (CT). Vendors shall use the following address labeling information most applicable to Vendor's chosen delivery method:

US Postal Service: SOW No. 455-20-1027 Railroad Commission of Texas Contract Management Section Cliff Calley, Contract Manager PO Box 12967 Austin, TX 78711-2967	Overnight or Hand Delivery: SOW No. 455-20-1027 Railroad Commission of Texas Contract Management Section Cliff Calley, Contract Manager 1701 N. Congress Ave. Austin, TX 78701
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9.3 PROHIBITED COMMUNICATIONS; SOLE POINT OF CONTACT

Upon issuance of this SOW, RRC, its representative(s), and partners (if any) will not answer questions or otherwise discuss the contents of this SOW with any Vendor or their representatives(s), except for the written inquiries submitted in accordance with section 9.4 of this SOW. Attempts to ask questions by phone or in person will not be allowed or recognized as valid. ***FAILURE TO ADHERE TO THIS RESTRICTION MAY DISQUALIFY VENDOR AND VENDOR'S RESPONSE.***

Vendors shall rely only on written statements issued through or by RRC's Contract Management Section. This restriction does not preclude discussions between affected parties for the purposes of conducting business not related in any way to this SOW.

The sole point of contact for this SOW No. 455-20-1027 is Cliff Calley, Contract Manager, whose contact information is:

Mailing Address	Hand Delivery Address	Email
Railroad Commission of Texas Contract Management Section Cliff Calley, Contract Manager PO Box 12967 Austin, TX 78711-2967	Railroad Commission of Texas Contract Management Section Cliff Calley, Contract Manager 1701 N. Congress Avenue Austin, TX 78701	Cliff.Calley@rrc.texas.gov VENDORS MAY <u>NOT</u> USE THIS EMAIL TO SUBMIT A RESPONSE TO THIS SOW!
		Phone
		512-463-6737

9.4 INQUIRIES AND ADDENDA

9.4.1 Vendor is solely responsible for thoroughly understanding the SOW and all attachments, exhibits, forms, and addenda, if any, issued. Should any Vendor find any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error in the SOW, or should Vendor be in doubt as to the exact meaning of information within the SOW, Vendor should immediately notify in writing via email or email with editable attachment (i.e., MS Word® document) RRC's sole point of contact for this solicitation (see section 9.3 of this SOW). RRC shall not be responsible for oral instructions or for misinterpretation of the SOW and Contract documents.

9.4.2 Vendors submitting inquiries must reference the relevant SOW page and section and should submit all questions by the inquiry deadline stated within **TABLE 1** of this SOW. RRC reserves the right to respond to questions received after deadline for submission of written questions. When issuing response to questions submitted, RRC shall issue Addenda to the solicited DIR Vendors.

9.4.3 Addenda issued, if any, shall be provided to the DIR Vendors solicited. RRC in its sole discretion may respond to questions received after the deadline. RRC reserves the right to amend answers prior to the Response submission deadline.

9.5 NUMBER OF RESPONSE ORIGINALS AND COPIES

Vendor must submit one (1) paper original, plus five (5) paper copies of the Response. The paper original must include an original ink signature (electronic signatures will not be accepted), and the name and title of the individual signing who must possess the authority to legally bind the Vendor. RRC reserves the right to require the Vendor to furnish documentary evidence of Vendor's signature authority. Vendor must also submit one (1) electronic copy of

the Response on either compact disc (CD) or USB storage device; the Response file must be readable using Adobe Acrobat Reader DC®, and neither the file nor the electronic storage device (CD, USB) shall be encrypted. CDs and USBs must be labeled with Vendor's name.

9.6 CONFIDENTIAL INFORMATION; PUBLIC INFORMATION ACT DISCLOSURES

RRC is a governmental body subject to the Texas Public Information Act ("PIA"), Texas Government Code Chapter 552. Any Response and other information submitted to RRC by Vendor are subject to release as public information by RRC. A Response and other submitted information are presumed subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for Vendor to include proprietary or otherwise confidential information in its Response or other submitted information, the Vendor 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 Vendor to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified by the Vendor as proprietary or confidential will be deemed subject to disclosure pursuant to the PIA. Vendor will be deemed to have irrevocably waived, and to have agreed to fully indemnify the State of Texas and the RRC against, any claim of infringement by RRC regarding the intellectual property rights of Vendor or any third party for any materials appearing in the Response.

Vendor 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 and/or RRC: *.pdf format compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).

If Vendor's Response contains any information which Vendor claims is confidential and not subject to release under the PIA Vendor must prepare and deliver to RRC four CDs or USB storage devices containing the following information:

Two (2) CDs or USB storage devices containing complete copies of all of Vendor's submissions pursuant to this SOW. Vendor must mark these **"Complete Response Documents, [Vendor's Name], RRC SOW No. 455-20-1027. CONTAINS CONFIDENTIAL INFORMATION."**

Two (2) CDs or USB storage devices, each containing copies of all of Vendor's submissions with all information claimed as confidential excised, blacked out, or otherwise redacted. Each of these CDs or USB storage devices must also contain an Appendix which contains clear references to all redacted information including a general description of the redacted information. Vendor must mark these CDs or USB storage devices **"For Public Release: Redacted version of [Vendor's Name], RRC SOW No. 455-20-1027."**

9.7 EXCEPTION TO PROVISIONS

VENDOR IS STRICTLY PROHIBITED FROM TAKING BLANKET EXCEPTION TO THIS ENTIRE SOW. ANY RESPONSE THAT INCLUDES BLANKET EXCEPTION TO THIS ENTIRE SOW OR THAT DOES NOT INCLUDE PROPOSED ALTERNATIVE LANGUAGE TO EXCEPTIONS TAKEN, MAY BE DISQUALIFIED FROM CONSIDERATION OF CONTRACT AWARD. ANY EXCEPTION TAKEN MAY RESULT IN A CONTRACT NOT BEING AWARDED TO VENDOR. WITHIN THE EXECUTIVE SUMMARY OF THE RESPONSE, VENDOR MUST EXPLICITLY STATE EITHER "VENDOR TAKES NO EXCEPTION TO ANY PART OF THIS SOW" OR SPECIFICALLY AND CLEARLY DECLARE ANY AND ALL EXCEPTIONS TAKEN.

9.8 ORGANIZATION OF RESPONSE

All Responses shall be complete, concise, and include all required information; vague and general Responses shall be deemed nonresponsive and disqualified from Contract award. Vendor's Response shall include page numbering, be well organized, emphasize conciseness and clarity of content and include all information Vendor believes would be helpful to RRC in establishing Vendor's ability to perform the requested Services in accordance with the

specifications described in this SOW. Vendor's Response shall be bound, organized as described within this section, and include without limitation:

9.8.1 TITLE PAGE

Response title page shall include the RRC solicitation reference: SOW 455-20-1027, Vendor's name and Vendor's DIR DBITS Contract No.

9.8.2 EXECUTIVE SUMMARY

The executive summary should include a brief, high-level description of Vendor's qualifications, experience in delivery of projects of similar scope and size to that of this solicitation, Vendor's understanding of the Project, Vendor's proposed approach to the Services, and Vendor's exceptions (if any) to the terms and conditions of this SOW.

9.8.3 PROJECT APPROACH

Vendor's Response shall clearly demonstrate Vendor's ability to plan, deliver, and complete all Services required under the Contract. Vendor shall include description of Services and the deliverables, including required and recommended (if any), with the relationship of each to achieving the intended objectives of this SOW. Vendor shall also include a projected timeline of delivery of the Services and each deliverable with reasonable milestones identified to assess progress and quality of Services and work.

9.8.4 PRICING

Vendor shall provide firm fixed pricing for each required deliverable and each additional deliverable, if any, recommended by Vendor. Pricing shall be stated within Vendor's Response using a table substantially similar to **TABLE 2** of this SOW, with any Vendor alterations reflecting additional rows necessary to articulate required and recommended deliverables and order of delivery, if applicable.

TABLE 2: Deliverables Pricing

Deliverable No.	Deliverable Name	Price
1	Work Plan	
2	Analysis Report	
3	Project Related Report(s)	
Grand Total Price →		

9.8.5 VENDOR'S SUBMITTALS

9.8.5.1 Required RRC SOW Attachments. Vendor's Response shall include a section titled "Vendor's Submittals" consisting of properly completed, Required RRC SOW Attachments. Failure to include each and all the Required RRC SOW Attachments may result in the Response being deemed nonresponsive and disqualified for Contract award. The Required RRC SOW Attachments applicable to this SOW include:

- SOW Attachment 1: Vendor's Statements and Covenants
- SOW Attachment 2: Vendor's Qualifications Statement

9.8.5.2 RRC SOW Attachments. **TABLE 3** of this SOW is provided *as a general guide only* so that Vendor may note certain RRC SOW Attachments that may be required to be returned with Vendor's Response. **TABLE 3 of this SOW is not intended as a minimum, comprehensive, or exhaustive checklist of required elements of a Response.** Vendor is solely responsible for review and understanding of the entire SOW including all terms, conditions, specifications, attachments, and addenda, if any, issued and for ensuring Vendor's Response contains all required elements and forms to be considered responsive to the SOW.

TABLE 3: RRC SOW ATTACHMENTS

Attachments	Return with Offer?
Attachment 1: Vendor's Statements and Covenants	Yes
Attachment 2: Vendor's Qualifications Statement	Yes
Attachment 3: Vendor Information Security Agreement	No
Attachment 4: Progress Payment Affidavit	No
Attachment 5: Final Payment Affidavit	No
Attachment 6: Sample RRC Contract	No
Attachment 7: Deliverable Acceptance Voucher	No

9.8.5.3 In addition to the Required RRC SOW Attachments, a Vendor shall include within the "Vendor's Submittals" section any additional statements, including any statements arising from section 9.9 of this SOW, or such other information Vendor deems necessary, valuable, and appropriate to fully inform RRC of Vendor's qualifications, expertise, and superiority in selection as Vendor for Contract award.

9.9 MANDATORY DISCLOSURES

9.9.1 CONFLICTS OR POTENTIAL CONFLICTS OF INTEREST

Vendor must provide a statement of any conflicts or potential conflicts of interest for the Vendor or the Vendor's employees who will or may provide services under the Contract. Failure to disclose all conflicts or potential conflicts of interest may result in the Vendor being disqualified and may result in cancellation of any Contract awarded.

9.9.2 CHANGES IN OWNERSHIP CONDITIONS

Vendor's Response must include Vendor's certification that Vendor will notify the RRC of any ownership change. If Vendor experiences a substantial change in ownership during the period prior to Contract award, or if Vendor experiences a substantial change in ownership during the term of the Contract or any extension thereof, Vendor must notify the RRC in writing, immediately on or before the change in ownership occurs or is identified. Failure of Vendor to notify the RRC as required herein shall be sufficient grounds for rejection of a Vendor's Response and/or termination of the Contract.

9.9.3 LEGAL ACTIONS

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

9.10 RESPONSE EVALUATION AND CONTRACT AWARD

9.10.1 EVALUATION CRITERIA

In evaluation of responsive Responses, RRC shall consider the best value standard for purchases of automated information goods or services as set forth in Texas Government Code §2157.003. Factors considered in determining best value shall include pricing, compliance with advertised specifications, terms and conditions, and Response requirements, and the qualifications of the Vendor and its personnel. The evaluation will include review and scoring using evaluation criteria listed in **TABLE 4** of this SOW. Scoring shall include relative weight of each criterion as indicated by the maximum possible score, in points, as indicated within **TABLE 4** of this SOW.

9.10.1.1 The Response with the lowest price shall receive 100% of 20 maximum points possible for Price. All other Responses shall be awarded Price points based on the following formula:

$$(\text{Lowest price Response} / \text{Vendor's price}) \times \text{available points} = \text{Response Price score}$$

Example: Response with lowest price (Response A) offers price of \$65,000, and Response B offers price of \$100,000, and the total points available = 30, Price points are allocated as follows:

Response A (lowest price Response) receives 30 points;

Response B = $(\$65,000/\$100,000) \times 30 = 19.5$ points.

9.10.1.2 Evaluation and scoring of Vendor's Approach to SOW shall include, but not be limited to, examination of Vendor's approach to organization and presentation of Response, including without limitation, Vendor's demonstration of understanding of SOW requirements; and shall include, but not be limited to, examination of Vendor's approach to the project in accordance with SOW specifications.

9.10.1.3 Evaluation and scoring of Vendor's Qualifications shall include, but not be limited to, examination of qualifications of Vendor's key personnel, Vendor's comparable (as judged by RRC) experience and success, Vendor's subcontractor's comparable (as judged by RRC) experience for roles assigned, Vendor's Texas CPA Vendor Performance Tracking System score (if any).

TABLE 4: EVALUATION CRITERIA

Criteria	Maximum Possible Score
Experience and Qualifications	40
Vendor's Approach to SOW	40
Price	20
Total Base Points	100

9.10.2 EVALUATION BY RRC EVALUATION COMMITTEE

Each member of RRC's evaluation committee shall conduct an independent review of each responsive Response submitted and shall score each responsive Response in accordance with the Evaluation Criteria provided in **TABLE 4** of this SOW. The RRC evaluation committee may request clarification of information or representations made in one Response or in all Responses before completing evaluation and scoring. Any/all requests for clarification and responses to requests for clarification shall be made in writing and shall become part of the evaluation record. RRC's Contract Management Section shall compile scores put forth from the evaluation committee members and determine the final average score for each Vendor to establish a competitive range based upon all Response scores.

9.10.3 PAST PERFORMANCE

A Vendor's past performance will be measured in compliance with applicable provisions of Texas Government Code Chapters 2155 and 2156. Vendors may fail this selection criterion should one or more of the following conditions apply to Vendor:

- i. A score of less than C or Legacy Unsatisfactory in the Texas Comptroller's Vendor Performance Tracking System at comptroller.texas.gov/.../vendor-performance.../;
- ii. Currently under a Corrective Action Plan through RRC;
- iii. Having repeated negative Vendor Performance Reports for the same reason;
- iv. Having a record of repeated non-responsiveness to Vendor Performance issues; and/or
- v. Having one or more purchase orders that have been cancelled for non-performance in the previous 12 months for non-performance.

To evaluate Vendor's past performance, RRC may also contact other entities including any federal, state, or local government agency. RRC may initiate examinations of Vendor performance based upon media reports. RRC may conduct research and investigation as deemed necessary to fully evaluate Vendor's past performance and may consider notices of termination, cure notices, assessment of liquidated damages, litigation, audit reports, contract non-renewals, and other performance related facts, reports, actions, or information. 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 Vendor.

9.10.4 VENDOR ORAL PRESENTATIONS

Vendor oral presentations shall be at sole discretion of RRC. Oral presentations, if any, shall provide Vendors an opportunity to highlight the entity's strengths and unique aspects of Vendor's approach contained within the Response, as well as to address any questions put forth by RRC's evaluation committee members. Vendor oral presentations are not guaranteed and may, but not must, include demonstration of product or solutions proposed as part of the Response.

- 9.10.4.1** After initial scoring of responsive Vendors, RRC may, but not must, determine it is necessary to interview short-listed Vendors prior to making a final recommendation of award. Short-listed Vendors shall be deemed those falling within a competitive range, as determined by RRC. The competitive range refers to Responses determined to be reasonably considered for award selection and is an objective means of narrowing the field of Vendors that will participate in subsequent evaluation activities such as oral presentations.
- 9.10.4.2** RRC shall employ the following guidelines when determining the competitive range for invitations, if any, to optional oral presentations:
- a. A “natural break” in the scores will determine the competitive range; or the point difference between the first and second ranked Response is less than three points.
 - b. The number of Vendors, if any, invited to oral presentations shall depend upon closeness of scores following evaluation of submitted Responses.
 - c. In determining number, if any, of Vendors to be invited for oral presentations, RRC staff shall consider significant gaps in point separation between the top ranked Vendors.
 - d. Only those Vendors that are determined by RRC to be qualified to perform all required work may be invited for oral presentations.
 - e. No more than three (3) Vendors shall be invited for oral presentations.
 - f. Oral presentations, if any, shall be held at RRC headquarters in Austin, Texas.
 - g. All expenses associated with responding to and/or attending an oral presentation shall be borne exclusively by the Vendor accepting and/or attending the oral presentation.

9.10.5 BEST AND FINAL OFFER (“BAFO”)

At sole discretion of RRC, after completion of initial evaluation, scoring, and oral presentations (if any), RRC may award a Contract or may request BAFOs from one or more Vendors whose scores are sufficient to qualify the Vendor(s) for further consideration and negotiation as determined exclusively by the RRC evaluation committee. In event RRC issues a request for BAFO, Vendors may be permitted to modify an original Response, and RRC Contract Management shall evaluate the BAFOs received.

9.10.6 VENDOR TO PROVIDE BEST PRICE IN RESPONSE

RRC makes no guarantee of any opportunity to negotiate or provide alternative pricing at any point during the Response evaluation and contract award process. RRC may restrict the competitive range of Responses to those that represent the greatest number of Responses to effect efficient competition among Vendors and in accordance with the specifications and requirements of this SOW. RRC may seek additional information and solicit BAFOs only from those Vendors whose Response has been determined to exist within the competitive range.

9.10.7 CONTRACT NEGOTIATIONS

RRC reserves the option to negotiate with one or more Vendors whose Responses are deemed responsive. Negotiation elements may include, but shall not be limited to pricing, services, terms and conditions. RRC reserves the right to continue negotiations until the best value for RRC and the State has been determined as achieved.

10. TERMS AND CONDITIONS

The terms and conditions herein are in addition to the terms and conditions within the Vendor’s DIR DBITS Contract. In the event that any term or condition herein amends or diminishes the rights of DIR, such conflicting or additional term shall be deemed not applicable only to the extent necessary to preserve the rights of DIR. Vendor shall comply, and Vendor shall require all subcontractors of all tiers to comply, with the terms and conditions of the Contract. In absence of express exclusion in whole or in part from Vendor’s Response, all terms and conditions are deemed incorporated therein.

10.1 GENERAL TERMS AND CONDITIONS

10.1.1 Compliance with SOW and Contract. By submitting a Response, acknowledging and accepting the Contract, or delivering any services under the Contract, Vendor acknowledges, accepts, and agrees to all terms, conditions, specifications, provisions, statements, and guidelines of the Contract, including, but not limited to, the SOW. All parts of the SOW are fully incorporated into and constitute part of the Contract for all purposes intended. RRC, at its sole discretion, may disqualify Vendor’s Response from consideration if RRC determines the Response is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in the SOW.

10.1.2 Misunderstanding or Lack of Information. Vendor must be thoroughly informed concerning all relevant facts, data, site conditions, and estimates required for the purpose of assembling a Response and concerning all difficulties that may be encountered in managing the Project under the Contract.

10.1.2.1 No plea of ignorance of existing site conditions or difficulties that may be encountered during performance of the work under the Contract shall be accepted as an excuse for any failure or omission by Vendor to fulfill in every detail all requirements of the Contract or shall be accepted as a basis for any claim whatsoever for additional compensation.

10.1.2.2 By submitting a response, each Vendor acknowledges and agrees that it fully understands and shall abide by the terms and conditions of the SOW, and that Vendor shall not make any claims for, or has any rights to, cancellation or relief without consequences because of any misunderstanding or lack of information.

10.1.3 Ambiguity, Conflict, Exclusionary Specification, or Omission. If Vendor discovers any ambiguity, conflict, discrepancy, exclusionary specifications, omission, or other error in the SOW, Vendor must immediately notify in writing RRC's point of contact for the Contract. If Vendor fails to notify RRC's point of contact for the Contract of any error, ambiguity, conflict, discrepancy, exclusionary specification, or omission, Vendor's submittal of a Response is done so at Vendor's own risk, and if awarded a contract, Vendor shall not be entitled to additional compensation, relief, or time by reason of the error or its later correction.

10.1.4 Right to Amend, Modify, or Withdraw the SOW. RRC reserves the right to alter, amend, or modify any provisions of the SOW or to rescind, revoke, or withdraw the SOW, in whole or in part, at any time prior to Contract award if such action is determined by RRC to be in the best interest of the State of Texas and/or RRC.

10.1.5 No Alterations or Withdrawals of Response after Deadline. Responses cannot be altered or amended after the Response due date and time specified in the SOW. Any alterations made before the Response due date and time must be initialed by Vendor or Vendor's authorized agent. Responses submitted cannot be withdrawn after submission deadline. However, upon receipt of Vendor's written request to withdraw their Response, RRC may, but not must, in its sole discretion approve the request to withdraw a Response.

10.1.6 Attachments. Any terms and conditions attached to Vendor's Response will not be considered unless specifically referred to in the Response. RRC reserves the right, in its sole discretion, to reject any Vendor terms and conditions or other documents or attachments as part of Vendor's Response.

10.1.7 Binding Effect of Response. Unless otherwise agreed in writing and signed by RRC, Vendor agrees to and is bound by the information and documentation provided with the Response, including prices quoted for Services. By submitting a Response Vendor commits to providing the goods and services required at the prices set forth in the Response and that Response prices remain valid for 180 calendar days following the Response due date and time. Upon award of Contract, prices shall remain fixed and guaranteed for the entire Contract period.

10.1.8 Binding Effect of Contract. An awarded Contract shall inure to the benefit of, be binding upon, and be enforceable against, each party and their respective permitted successors, assigns, transferees and delegates.

10.1.9 Rejection of Response and Cancellation of SOW. Issuance of this SOW 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 SOW. RRC maintains sole right and discretion to reject any or all Responses and to cancel the SOW if RRC deems such action as in the best interest of the State of Texas and/or RRC. RRC's waiver of any deviations in any Response will not constitute a modification of the SOW and will not preclude RRC from asserting all rights against Vendor for failure to fully comply with all terms and conditions of the SOW.

10.1.10 Vendor Costs. Vendor shall bear all costs and expenses associated with preparation and submission of a Response, including costs associated with submission of all required documents and all copies of all documents. Response pricing includes all costs and expenses associated with performance of the Services in accordance with the requirements, terms, and conditions of the Contract documents including any specifications and the SOW; no alternate pricing or additional costs will be paid.

10.1.11 Vendor Identification. Prior to award of Contract, Vendor must provide Vendor's Identification Number issued by the Texas Comptroller of Public Accounts.

10.1.12 Contract Award, Copyright, Reissuance. A response to the SOW is a Response to contract with the State of Texas through RRC based upon the specifications, terms, and conditions contained in the SOW. The Response shall not become a contract with RRC unless, until, and to the extent RRC issues a fully executed Contract and Notice of Award to the successful Vendor. RRC in its sole discretion reserves the right to reject any or all Responses,

all or any part of any Response, waive minor technicalities, negotiate pricing and Contract terms and conditions with Vendor and award a Contract in the best interests of the State of Texas and RRC.

Copyrighted Responses are unacceptable and are subject to disqualification as nonresponsive. RRC reserves the right to disqualify a Response that asserts any copyright on any RRC forms designated by the SOW as a form required to be submitted with Vendor's Response.

Prior to issuance of a Contract, RRC reserves the right to make any corrections or include additional requirements necessary for RRC's compliance with all federal and state laws, regulations, rules, policies, and best practices. RRC reserves the right to at any time reissue the SOW or issue another SOW for the goods and/or services described in this SOW

10.1.13 Limitation on Authority, No Other Obligations. Vendor will have no authority to act for or on behalf of the State of Texas and/or RRC except as expressly provided in the fully executed Contract. No other authority, power, or use is granted or implied. Vendor may not incur any debt, obligation, expenses, or liability of any kind on behalf of RRC or the State of Texas.

10.1.14 No Other Benefits. Vendor has no exclusive rights or benefits other than those set forth within the Contract.

10.1.15 Amendments to the Contract. The Contract may be amended only upon written agreement between RRC and Vendor; however, the Contract may not be amended in a manner that conflicts with the laws of the United States or of the State of Texas. Vendor agrees to amend the Contract and to cooperate in the execution of any contract amendments necessary to effectuate compliance with laws of the State of Texas when such laws require RRC to include additional language in the Contract. During the term of the Contract and any extensions or renewals thereof, RRC reserves the right to request amendments or modifications to the Contract when RRC determines such action to be in the best interests of the State of Texas and/or RRC and for compliance with all applicable state and federal laws, regulations, requirements, and guidelines. Except as otherwise provided in negotiated terms and conditions expressly identified and formalized in the Contract, the entire agreement between RRC and Vendor shall consist of the following documents: Vendor's DIR Contract and any amendments thereto, the Contract, amendments to the Contract, purchase orders, change notices (if any), the SOW (including addenda, if any), and the Response ("Contract Documents".)

10.1.16 Order of Precedence; Prohibited Exceptions

10.1.16.1 Order of Precedence. In event of conflict between the SOW and the Contract Documents, the following documents, in order of precedence, shall apply in resolving such conflicts:

- Vendor's DIR Contract and any amendments thereto;
- The Contract (including expressly identified, negotiated terms and conditions) and any amendments thereto,
- The SOW and addenda (if any), and
- The Response.

10.1.16.2 Prohibited Exceptions. Unless expressly accepted in writing by RRC, the following exceptions within any Vendor's Response shall be rejected:

- Incorporation of laws of a state other than Texas,
- Any requirements for prepayment,
- Any limitations on RRC's remedies,
- Any requirements that RRC indemnify the Vendor,
- Any requirements that Vendor's documents control in case of conflicts,
- Any requirements that Vendor's documents control even if Vendor accepts or acknowledges the Contract,
- Any requirements to reduce or eliminate required insurance coverages, types, endorsements and limits, and
- Any disclaimer of warranties.

10.1.17 Statement of Work, Performance. Vendor shall provide the requested Services in the manner described in this SOW. In event of Vendor's failure to conform to all requirements of this SOW, consequences may include, but not be limited to, 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 Vendor's refund of amounts paid prior to revocation of acceptance.

10.1.18 Time Limits Enforced. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS CONTRACT. Vendor shall strictly comply with all deadlines, requirements, and standards of performance for this Contract and in execution of the work. Vendor acknowledges and accepts all time limits will be strictly construed and rigidly enforced.

10.1.19 Assignments and Subcontractors. Vendor shall not assign Vendor's rights, or delegate the performance of Vendor's duties, under the Contract without prior written consent of RRC. Any attempted assignment in violation of this provision is void and without effect.

10.1.19.1 Vendors planning to subcontract all or a portion of the work to be performed under this Contract shall comply with all of Vendor's DIR Contract terms and conditions related to use of subcontractors and to the State's Policy on Utilization of Historically Underutilized Businesses (HUB), including policy related to HUB Subcontracting Plan and HUB Prime Vendor Progress Assessment Reporting.

10.1.19.2 Vendor must submit to RRC's Authorized Representative any proposed subcontractor and shall receive from RRC's Authorized Representative, written approval of the subcontractor prior to Vendor authorizing subcontractor's performance of any work under the Contract.

10.1.19.3 Subcontractors providing service under the Contract shall meet the same requirements and level of experience as required of the Vendor.

10.1.19.4 No subcontract under the Contract shall relieve the Vendor of responsibility for delivery of work and Services required under the Contract. If Vendor uses a subcontractor for any or all work required, the following conditions shall apply under the listed circumstances:

- Subcontracting shall be at Vendor's expense.
- RRC retains the right to review any subcontractor's background and approve or reject the use of Vendor's proposed subcontractors.
- Vendor shall be the only Vendor for RRC for the Contract.
- Vendor shall manage Vendor's subcontractors, if any.
- Vendor shall provide contact information, including mobile phone number and email address, of Vendor's designated point of contact to which RRC and Vendor's subcontractors shall submit any inquiries.

10.1.20 Payments to Vendor. Vendor shall submit by email to RRC's designated point of contact all requests for payment. Payment requests shall be submitted upon Vendor's completion of and RRC's acceptance of one or more deliverables. When submitting request by email, Vendor shall include Vendor's invoice, all additional documents required by Contract, and a completed "Vendor's Progress Payment Affidavit" or "Vendor's Final Payment Affidavit," as applicable to the payment request, as attachments to the email. Vendor shall also mail within three (3) business days the original, signed and notarized Vendor's Progress Payment Affidavit or Vendor's Final Payment Affidavit, as applicable to the payment request, to RRC's designated Contract Manager. Each Vendor's invoice shall reflect a single Contract and all and only items related thereto which have been delivered, inspected, tested, evaluated, and accepted by RRC within the Contract performance period concluding on the invoice date.

10.1.21 Compliance with Texas Government Code Chapter 2251 required. A Vendor awarded a Contract arising from this SOW, and all Vendor's subcontractors, if any, shall comply with all applicable provisions of Texas Government Code Chapter 2251 relating to prompt payment for goods and services under a contract issued by a state agency. Texas Government Code Chapter 2251 requires, in part, that a Vendor that receives payment from a state agency shall pay a subcontractor the appropriate share of the payment not later than the 10th day after the date the Vendor receives the payment; and, the Vendor's subcontractor who receives a payment from the Vendor shall pay a person who supplies goods or a service for which the payment is made, the appropriate share of the payment not later than the 10th day after the date the subcontractor receives the payment. Vendor's compliance with this provision shall be strictly enforced by RRC. RRC reserves the right to request evidence of Vendor's compliance, and evidence of Vendor's subcontractor's compliance with this condition of the Contract.

10.1.22 Progress Payments. Note: This Contract requires no retainage withheld on all progress payments. Payment requests under the Contract shall be deliverables-based unless otherwise approved in writing by RRC. Upon Vendor's completion of one or more deliverables, and upon RRC's acceptance thereof, Vendor shall submit a properly prepared, itemized invoice accompanied by all additional documents required by Contract, as a Contract progress payment equal to **100%** of the value the invoiced deliverable(s) completed by Vendor and accepted by RRC. Each invoice and all additional documents required by Contract shall be accompanied by a completed "Progress Payment Affidavit" (see SOW Attachment 4.)

10.1.23 Final Payments. Upon Vendor's completion of all final, not previously invoiced, deliverables, and upon RRC's acceptance thereof, Vendor shall submit a properly prepared invoice as Vendor's request for final payment under the Contract. Upon Vendor's submittal of a properly prepared, itemized invoice accompanied by all additional documents required by Contract, final payment may be made by RRC in accordance with Texas Government Code Chapter 2251. Vendor's final payment request shall reflect value for 100% of the value of work performed by Vendor and accepted by RRC, but not previously invoiced by Vendor. Vendor's final payment invoice and additional documents required by the Contract shall be accompanied by a completed "Final Payment Affidavit" (see Attachment 5.)

10.1.24 Invoice requirements.

10.1.24.1 Vendor's invoice must clearly reflect the following:

- RRC Contract Number;
- RRC bill to information;
- Vendor name;
- Vendor address;
- Vendor remit payment to information;
- Vendor Identification Number assigned by Texas Comptroller of Public Accounts;
- Invoice date;
- Invoice number (may not be duplicate invoice number from prior invoice submitted);
- Date(s) of delivery of services and/or goods; and
- Description of services.

10.1.24.2 Vendor's invoices submitted to and received by RRC, but which fail to conform to all invoice requirements stipulated within the Contract Documents will be returned to Vendor unpaid or will be held by RRC until all requirements for submittal of revised invoice and/or additional documents required by the Contract are satisfied.

10.1.25 Authorization of payment. Prior to authorizing payment to Vendor, RRC shall evaluate Vendor's performance in accordance with Contract requirements.

10.1.26 Non-Reimbursable Items. RRC will not reimburse for travel, meals, lodging, or other related expenses unless specifically provided for under the Contract and approved by an RRC representative. In such an event 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. Vendors are required to provide receipts to validate invoicing. State Travel Reimbursement Rates may be found at: <https://fm.xcpa.texas.gov/fmx/travel/texttravel/rates/current.php>.

10.1.27 No Prepayments. RRC will not prepay for any services provided to RRC by Vendor in performance of services or work under the Contract. RRC shall not make down payments, deposits, 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.

10.1.28 Refunds. Upon Vendor's discovery of any erroneous payment from RRC to Vendor of any funds, or upon receipt of written notice of erroneous payments issued by RRC, Vendor shall promptly refund or credit within thirty (30) calendar days any funds erroneously paid by RRC or which are not expressly authorized under the Contract.

10.1.29 Records Maintenance, Retention, and Audit. Vendor shall maintain and retain all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by Vendor for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

Vendor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Vendor pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Agency and the State of Texas.

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection

with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

10.1.30 Indemnification.

10.1.30.1 Acts or Omissions. VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND RRC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, 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 VENDOR OR ITS AGENTS, EMPLOYEES, SUBVENDORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBVENDORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR/VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. VENDOR AND RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

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

10.1.31 INFRINGEMENT: PATENT, TRADEMARK, COPYRIGHT, AND OTHER INTELLECTUAL PROPERTY.

10.1.31.1 Claims. VENDOR SHALL DEFEND, INDEMNIFY, SAVE, AND HOLD HARMLESS THE STATE OF TEXAS AND RRC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, SERVICE MARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL, INTANGIBLE PROPERTY, PUBLICITY, OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) RRC'S AND/OR VENDOR'S USE OF OR ACQUISITION OF ANY SERVICES OR OTHER ITEMS PROVIDED TO RRC BY VENDOR OR OTHERWISE TO WHICH THE STATE OF TEXAS AND/OR RRC HAS ACCESS AS A RESULT OF VENDOR'S PERFORMANCE UNDER THIS CONTRACT. VENDOR AND RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER

OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, VENDOR WILL REIMBURSE AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF VENDOR OR IF AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND VENDOR WILL PAY ALL REASONABLE COSTS OF AGENCY'S COUNSEL.

10.1.31.2 Notice. If Vendor becomes aware of an actual or potential claim, or RRC provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against RRC, shall), at Vendor's sole option and expense; (i) procure for RRC 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 RRC's use is non-infringing.

10.1.31.3 Limitations. Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to RRC's specific instructions, (iv) any intellectual property right owned by or licensed to RRC, or (v) any use of the product or service by RRC that is not in conformity with the terms of any applicable license agreement.

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

10.1.33 Insurance Requirements. TIME IS OF THE ESSENCE. Vendor shall submit to RRC a complete, current, certificate of insurance not later than 10 (ten) calendar days after RRC's issuance of written Notice of Intent to Award. Vendor's certificate of insurance shall be fully compliant with all terms and conditions of the Contract. Vendor shall maintain required insurance coverages in accordance with the terms and conditions of the Contract throughout the entire Contract term (including warranty, if applicable.) Vendor shall not proceed with any work under the Contract without RRC's approval of certificate of insurance.

10.1.33.1 All required insurance coverage must issue from a company or companies that has/have both:

- A Financial Strength Rating of "A" or better from A.M. Best Company, Inc.; and
- A Financial Size Category Class of "VII" or better from A. M. Best Company, Inc.

10.1.33.2 All insurance policies for required coverage must be issued by companies authorized to do business in, and under the laws of, the State of Texas. Certificates of insurance shall be issued on a form approved by the Texas Department of Insurance and be satisfactory to RRC. Certificates of insurance shall specify and/or set forth the following:

- RRC as certificate holder with correct mailing address;
- Insured's name which must match Vendor's legal name on and within this Contract;
- Insurance company(ies) affording each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representative of the insurance company(ies);
- Producer of the certificate of insurance with correct address and phone number listed;
- Additional insured status as required herein;
- Amount of any deductibles and/or retentions;
- A 30day Notice of Cancellation, non-renewal, or reduction in coverage;
- Contractual liability coverages as required herein;

- Primary and non-contributing endorsement. All insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to RRC, with RRC's insurance being excess, secondary, and non-contributing;
- Waiver of Subrogation endorsement; and
- Listing of all exclusions and limitations added by endorsement to general liability coverage; however, no endorsements shall restrict, limit, or exclude in any manner whatsoever, coverage required.

10.1.33.3 All certificates of insurance for required coverage other than workers' compensation and professional liability (as applicable) shall name the State of Texas, RRC, and its officers, directors, and employees as additional insured.

10.1.33.4 Vendor's Proposal shall include proof of minimum required insurance types and limits of coverage. Proof of insurance may be provided in the form of current certificates of insurance (e.g., an Acord™ form).

10.1.33.5 Minimum Contractually Required Insurance Types and Coverage:

Insurance Type	Each Occurrence/Aggregate
<u>Workers' Compensation</u>	Within statutory limits/Texas Workers' Compensation Act.
<u>Employer's Liability</u>	
Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Each Employee
	\$1,000,000 Policy Limit
<u>Commercial General Liability</u>	<u>Bodily Injury and Property Damage</u>
Includes liability arising out of all locations and operations of Vendor, including but not limited to liability assumed under this Contract (including the tort liability of another assumed in a business contract).	\$1,000,000 Each Occurrence Limit
Defense shall be provided as an additional benefit and not included within the limits of liability.	\$2,000,000 General Aggregate Limit
	\$2,000,000 Product-Completed Operations Aggregate Limit
	\$1,000,000 Personal Injury and Advertising Liability
	\$5,000 Medical Expense each person
<u>Automobile Liability</u>	
Must include liability arising out of any auto and be on business auto form.	\$1,000,000 Combined Single Limit (for each accident)

10.1.33.6 Failure to Obtain, Maintain, or Renew Required Insurance. Failure to obtain, maintain, and/or renew the required insurance shall constitute a material breach of and default under this Contract. If Vendor fails to remedy such breach within five (5) business days after written notice by RRC, Vendor shall be liable for any and all costs, liabilities, damages and penalties resulting to the State of Texas and RRC from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Vendor by RRC. In the event of any failure by Vendor to comply with the provisions of this Contract, RRC may, without in any way compromising or waiving any right or remedy at law or in equity, on written notice to Vendor, purchase such insurance, at Vendor's expense, provided that RRC shall have no obligation to do so and if RRC shall do so, Vendor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

10.1.34 Termination and Cancellation. The Contract may be terminated, canceled, or cancellation of Services may occur, in whole or in part, in any one or more of the following circumstances:

10.1.34.1 Termination or Cancellation for Convenience.

- **Mutual Agreement.** Upon the mutual written agreement of RRC and Vendor, the Contract may be terminated or canceled.
- **RRC Cancellation 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 days' written notice to Vendor.

10.1.34.2 Termination or Cancellation for Cause.

- **Breach of Material Term.** Either party may, upon giving thirty (30) calendar days' 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 days' period. In the event of such termination, Vendor will be paid for all services accepted prior to the date of the termination.

No additional charges or fees will be assessed to RRC for the termination or cancellation. Upon termination or cancellation under this provision, Vendor 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.

- **Vendor Nonperformance.** If Vendor defaults on the Contract after award has been made, RRC reserves the right to cancel the Contract without notice and either reissue the SOW or award the Contract to the next qualified, responsive and responsible Vendor offering the best value to the state as determined by RRC. In such event, the defaulting Vendor will not be considered for award for any Contract arising under the re-solicitation and may not be considered in future solicitations for the same type of work unless the specifications or scope of work differ substantially from the work and/or services under the Contract on which Vendor defaulted. The length of any period of suspension shall be determined by RRC based on the seriousness of the default. In the event of nonperformance default, Vendor shall remain liable for all covenants and indemnities under the Contract. Vendor shall be liable for all costs and expenses, including any attorneys' fees and court costs, incurred by RRC with respect to the enforcement of any remedies listed herein.
- **Bankruptcy.** Upon the filing of a petition for bankruptcy, or upon the judgment of bankruptcy or insolvency by or against Vendor, 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.
- **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 Vendor'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 Vendor for any damages which are caused or associated with such termination or cancellation, and RRC will not be required to give prior notice.
- **Legal Remedies and Damages from Breach of Contract.** RRC expressly reserves all legal remedies to which it may be entitled to collect and all damages directly or indirectly resulting from breach of contract by Vendor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of Vendor. RRC reserves the right to pursue all applicable rights and remedies if the Contract is terminated for any reason and RRC expressly waives no such rights or remedies.
- **Substitution of Services.** In the event of RRC's termination or cancellation of the Contract for cause, RRC may procure, upon such reasonable terms and in such manner as RRC deems appropriate, substitute services similar to services terminated or canceled. Vendor 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.

10.1.34.3

Miscellaneous Termination Provisions.

- **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 Vendor'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 all applicable rights and remedies if the Contract is terminated for any reason, and RRC expressly waives no such rights or remedies.

- **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 Vendor of a notice of termination or cancellation specifying that the Contract is terminated or canceled.

10.1.35 Federal, State, and Local Requirements. Vendor shall demonstrate onsite compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Forms W-2 to common law employees. Vendor shall be solely responsible for both federal and state unemployment insurance coverage and standard Worker's Compensation Insurance coverage for Vendor's employees. Vendor shall comply with all federal and state employment tax laws and withholding requirements. The State of Texas shall not be liable to Vendor and Vendor's employees for any unemployment, workers' compensation, or federal or state tax withholding requirements. Vendor shall indemnify the State of Texas and RRC and shall pay all costs, penalties, or losses resulting from Vendor's omission or breach of this section.

10.1.36 Independent Vendor. Vendor shall serve as an independent Vendor in providing services under this Contract. Vendor's employees are not and shall not be construed as employees or agents of the State of Texas. Subject only to the terms of this Contract, Vendor shall have the sole right to supervise, manage, operate, control, and direct performance of its duties under this Contract. Nothing contained in the 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 Vendor or any other party. Vendor shall be solely responsible for, and RRC shall have no obligation with respect to:

- Withholding of income taxes, FICA, or any other taxes or fees;
- Industrial worker's compensation insurance coverage;
- Participation in any group insurance plans available to employees of the State of Texas;
- Participation or contributions by State of Texas to the State Employees Retirement System;
- Accumulation of vacation or sick leave, or
- Unemployment compensation coverage provided by the state.

10.1.37 Force Majeure. Any delays in or failure of performance by either party, except in respect of the obligation of payments under the SOW or 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 Contract immediately upon written notification to the Vendor.

10.1.38 Labor Activity. Notwithstanding the foregoing paragraph, in the event any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against Vendor at RRC's facility and such labor activity results in the curtailment or discontinuation of services performed under the Contract, RRC shall have the right during said period to employ any means legally permissible to have the work performed.

10.1.39 Dispute Resolution. Disputes arising under the Contract shall be resolved in accordance with the dispute resolution process provided in Texas Government Code Chapter 2260 and in accordance with 16 Texas Administrative Code Chapter 20, Subchapter A, Division 2.

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 RRC nor any other conduct of any representative of RRC relating to the Contract shall be considered a waiver of sovereign immunity to suit.

10.1.40 Compliance with Other Laws. Vendor shall comply with all laws, regulations, requirements and guidelines applicable to any vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Contract. RRC reserves the right, in its sole discretion, to unilaterally amend the contract prior to award and throughout the term of the Contract to incorporate any modifications necessary for RRC's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

10.1.41 Permits, Licenses, Certifications. Vendor shall obtain and maintain all permits, licenses, or other authorizations as may be required for performance of the work under the Contract. Upon request by RRC, Vendor shall furnish to RRC certified copies of required permits, licenses, or other required authorizations. Vendor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Vendor shall be responsible for payment of any such government obligations not paid by Vendor's subcontractors during performance of the Contract.

10.1.42 Legal Notices. Any legal notice required or permitted to be delivered under the SOW and/or Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to RRC or Vendor. Notice given in any other manner shall be deemed effective only when received by the party to be notified. Either party may change its address for notice by providing written notice to the other party in accordance with the terms and conditions herein.

10.1.43 Governing Law and Venue. The SOW and Contract shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of law provisions. The venue of any suit brought under the SOW and/or Contract is fixed in any court of competent jurisdiction in Travis County, Texas unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the RRC. Vendor 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.**

10.1.44 No Waiver. Failure of either party to require performance by another party under the Contract will not affect the right of such party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the contract will not be construed as a waiver of any continuing or successive breach.

10.1.45 Confidential Information; Public Information Act Disclosures. Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Texas Government Code Chapter 552 (the "Public Information Act"). In accordance with Texas Government Code §2252.907, Vendor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Specific forms acceptable to RRC include MS Word®, MS Excel®, and *.pdf files.

10.1.46 Disaster Recovery Plan. Upon request of RRC, Vendor shall provide to RRC the descriptions of Vendor's business continuity and disaster recovery plans.

10.1.47 Public Disclosure. Vendor shall not use RRC's name, logo, or other likeness in any press release, marketing material, or other announcement; no public disclosures or news releases pertaining to the RFP or any resulting Contract shall be made without prior written approval of RRC. RRC does not, and shall not, endorse any vendor, commodity, or service. Without obtaining RRC's prior written consent, Vendor shall not, and is not authorized to, make or participate in any media releases or public announcements pertaining to the Solicitation, a contract arising from this RFP, Vendor's Proposal, or the services to which they relate.

10.1.48 Entire Contract and Modification. The Contract and its integrated attachment(s) constitute the entire agreement of the parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements made in connection with the subject matter hereof. Unless an integrated attachment to the SOW and Contract expressly states a mutual intent to amend a specific article, section, item, term, or condition of the SOW and/or Contract, general conflicts in language between any attachment and the SOW and Contract shall be construed in favor of the terms and conditions of the SOW and Contract. Unless expressly authorized by the terms of this Contract, no modification, renewal, extension, or amendment to the SOW and Contract shall be binding upon the parties unless the same is in writing and signed by all Parties through an authorized representative of each Party with authority to bind the Party to the Contract.

10.1.49 Severability. If any provision contained in this SOW and the Contract is held to be unenforceable by a court of law or equity, the SOW and 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.

10.1.50 Counterparts. The Contract issued pursuant to this SOW 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.

10.1.51 Vendor's Statements and Covenants Required. Vendors must sign and return the *Vendor's Statements and Covenants* form (see SOW Attachment 1) which shall be part of Vendor's Response and shall be fully incorporated by reference and constitute part of the Contract if awarded to Vendor. Failure to include a signed *Vendor's Statements and Covenants* form shall result in a Response being deemed nonresponsive and ineligible for Contract award.

10.2 SPECIAL TERMS AND CONDITIONS APPLICABLE TO SOW NO. 455-20-1027.

10.2.1 Electrical Items. All electrical items (if required under the Contract) must meet all applicable OSHA standards and regulations and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

10.2.2 Secure Erasure of Data. All equipment provided to RRC by Vendor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC Chapter 202.

10.2.3 Cybersecurity Training Requirement. Vendor shall ensure that any Vendor employee or subcontractor employee who has access to a state computer system or database shall complete a cybersecurity training program certified under Texas Government Code §2054.519.

10.2.4 Prohibited Use of State Property. Vendor is prohibited from using State Property for any purpose other than performing Services authorized under the Contract.

10.2.4.1 State Property includes, but is not limited to, RRC's office space, identification badges, RRC information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any RRC issued software, and the RRC Virtual Private Network (VPN client)), and any other resources of RRC.

10.2.4.2 Vendor shall not remove State Property from the United States.

10.2.4.3 Vendor may not use any computing device to access RRC's network or e-mail while outside of the United States. Vendor shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of Vendor, Vendor shall be responsible for (i) all repair and replacement charges incurred by Agency that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Vendor's use of State Property that exceeds the contract scope. Vendor shall fully reimburse such charges to RRC within ten (10) calendar days of Vendor's receipt of RRC's notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to RRC under contract, at law, or in equity.

10.2.5 Vendor Identification of Key Personnel. Prior to start of any work required under the Contract, Vendor must receive written approval of Vendor's list of all Vendor's personnel, including subcontractors, who shall be assigned to RRC's project in a project management or operations management role and/or such other assignments to critical project activities and/or segments ("Key Personnel Roles"). Vendor's list shall include, at a minimum, identification of Vendor's senior project staff within the following types of roles: Project Manager, Project Technical Architect, Project Technical Director, Project Business Analyst, Project Quality Assurance Manager, Project Contract Manager.

10.2.5.1 Upon receipt of written approval of Vendor's list under this article, Vendor shall not reassign, transfer, or delegate any Key Personnel Roles, responsibilities, tasks or duties under the Contract, throughout the life of the Contract, without prior written consent of RRC.

10.2.5.2 Vendor shall be solely responsible for ensuring, throughout Contract Term, that Vendor's personnel, including subcontractors, that are assigned to a Key Personnel Role, shall meet all minimum qualifications, certifications, licenses, and experience required by the Contract.

10.2.5.3 In event Vendor receives written approval from RRC to replace any personnel assigned a Key Personnel Role, Vendor shall ensure replacement of the personnel shall be with a qualified individual with equal or better qualifications of the previously approved Vendor personnel.

ATTACHMENTS

Attachment 1	Vendor's Statements and Covenants
Attachment 2	Vendor's Qualifications Statement
Attachment 3	Vendor Information Security Agreement
Attachment 4	Progress Payment Affidavit
Attachment 5	Final Payment Affidavit
Attachment 6	Sample RRC Contract
Attachment 7	Deliverable Acceptance Voucher

VENDOR'S STATEMENTS AND COVENANTS

By signature hereon, Vendor makes and agrees to the following certifications, covenants, representations, statements, and warranties, as applicable:

1. The provisions of RRC Solicitation No. 455-20-1027 apply to Vendor and all of Vendor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in the SOW or any contract resulting from it.
2. Vendor's intends to furnish the requested goods and/or services at the prices quoted in its Response, and notwithstanding any disclaimers in Vendor's Response and notwithstanding any other provision of the SOW or the Contract to the contrary, Vendor warrants and guarantees that all services will meet all specifications of the Contract.
3. Vendor's prices include all costs of Vendor in providing the requested items that meet all specifications of the SOW, and Vendor's prices will remain firm for acceptance for a minimum of one hundred eighty (180) calendar days from deadline for submission of Response.
4. Each of Vendor's employees, 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 the SOW.
5. Vendor represents and warrants that Vendor's provision of goods or services or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
6. Pursuant to Texas Government Code §2155.003, Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
7. Vendor represents and warrants that RRC's payments to Vendor and Vendor's receipt of appropriated or other funds under the Contract are not prohibited by Texas Government Code §§556.005 or 556.0055.
8. Vendor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed to the State of Texas under Texas Tax Code Chapter 171. In addition, if Vendor 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:

Vendor certifies that it holds a permit issued by the Texas 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.
9. Vendor represents and warrants that Vendor 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 Vendor and Vendor's employees. RRC shall not be liable for any taxes resulting from this Contract.
10. Vendor represents and warrants that in accordance with Texas Government Code §2155.005, neither Vendor nor the firm, corporation, partnership, or institution represented by Vendor, nor anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Texas Business and Commerce Code Chapter 15, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Vendor.

11. By submitting a Response, Vendor represents and warrants that the individual submitting this *Vendor's Statements and Covenants* and the documents made part of the Response is authorized to sign such documents on behalf of the Vendor and to bind the Vendor under any contract that may result from the submission of the Response.
12. Vendor certifies that if a Texas address is shown as the address of the Vendor within the Response, Vendor qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.
13. Under Texas Family Code §231.006, regarding child support, Vendor certifies that the individual or business entity named in the Response and any Contract resulting from Vendor's Response to the SOW 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, pursuant to Texas Family Code §231.006, in event of Contract award, Vendor agrees to provide, prior to Contract award, the name and Social Security Number for each person with 25% or greater ownership interest in the business entity.
14. Under Texas Government Code §669.003, Vendor certifies that it does not employ, or has disclosed its employment of, any former executive head of RRC. Vendor must provide the following information (or indicate "N/A" if not applicable) in Vendor's Response.
Name of Former Executive: _____
Name of State Agency: _____
Date of Separation from State Agency: _____
Position with Vendor: _____
Date of Employment with Vendor: _____
15. Vendor has not been the subject of allegations of deceptive trade practices violations under Texas Business and Commerce Code Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit, and Vendor has not been found to be liable for such practices in such proceedings.

Vendor certifies that it has no officers who have served as officers of other entities who have been the subject of 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.
16. In accordance with Texas Government Code §2155.4441, Vendor 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.
17. Pursuant to Texas Government Code §2270.002, Vendor certifies that either (i) it meets an exemption criterion under Texas Government Code §2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. **Vendor shall state in its Response any facts that make it exempt from the boycott certification.**
18. Vendor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code §2252.152.
19. Vendor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
20. If Vendor is submitting a Response for the purchase or lease of computer equipment, then Vendor hereby certifies its compliance with Texas Health and Safety Code Chapter 361, Subchapter Y, and Texas Commission on Environmental Quality rules in 30 Texas Administrative Code Chapter 328.

21. Vendor shall ensure that any Vendor employee or subcontractor employee who has access to a state computer system or database shall complete a cybersecurity training program certified under Texas Government Code §2054.519. Such training is required to occur during the contract term and any renewal period, if applicable. Vendor shall provide RRC with verification of the completion of the requisite training.
22. Within the five (5) calendar years immediately preceding the submission of Vendor's Response, Vendor is not aware of and has received no notice of any court or governmental agency actions, proceedings, or investigations, etc., pending or threatened against Vendor that would or could impair Vendor's performance under any contract resulting from the SOW, relate to the solicited or similar goods or services, or otherwise be relevant to RRC's consideration of Vendor's Response. If Vendor is unable to make such representation and warranty, Vendor 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 Vendor's performance under any contract resulting from the SOW, relate to the solicited or similar goods or services, or otherwise be relevant to RRC's consideration of Vendor's Response. In addition, Vendor 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 the SOW.
23. Vendor and each of Vendor's 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.
24. Neither Vendor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, identified in the Response has been convicted of a felony criminal offense, or that if such a conviction has occurred Vendor has fully advised RRC of the facts and circumstances in its Response.
25. Vendor has read and agrees to all terms and conditions of the SOW, unless Vendor specifically takes an exception and offers an alternative provision in Vendor's Response.
26. Pursuant to Texas Government Code §572.069, Vendor warrants and certifies Vendor will not employ any former RRC officer or employee, who in any manner participated in the procurement or Contract negotiation of the SOW, before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

Vendor 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. Vendor 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 Vendor's Vendor or termination of the Contract.
27. As applicable, prior to submitting the signed Contract to RRC, Vendor shall comply with Texas Government Code §2252.908, relating to Disclosure of Interested Parties, by accessing the Texas Ethics Commission (TEC) portal (https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm), reviewing the instructional video, creating a username and password, and completing and electronically filing with the TEC the "Certificate of Interested Parties".
28. Vendor certifies that for contracts for services Vendor shall utilize the [**U.S. Department of Homeland Security's E-Verify system**](#) during the term of the Contract to determine the eligibility of:
 - a) All persons employed to perform duties within Texas; and
 - b) All persons, including subcontractors, assigned by the Vendor to perform work pursuant to the Contract, within the United States of America.

If it is determined that Vendor has violated the certification set forth in this section, the (1) Vendor shall be in breach of the Contract, (2) RRC shall have the option to terminate the Contract for cause without prior notice, and (3) in addition to any other rights or remedies available to RRC under the Contract, Vendor shall be responsible for all costs incurred by RRC to obtain substitute services to replace the terminated Contract.

29. Vendor acknowledges and agrees that, to the extent Vendor owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Vendor is otherwise owed under the contract may be applied toward any debt Vendor owes the State of Texas until the debt is paid in full. These provisions are effective at any time Vendor owes any such debt or delinquency.
30. In accordance with Texas Government Code §552.372, Vendor agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to RRC for the duration of the Contract, (2) promptly provide to RRC any contracting information related to the Contract that is in the custody or possession of the Vendor on request of RRC, and (3) on termination or expiration of the Contract, either provide at no cost to RRC all contracting information related to the Contract that is in the custody or possession of the Vendor or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to RRC. Except as provided by Texas Government Code §552.374(c), the requirements of Texas Government Code Chapter 552, Subchapter J, may apply to the Contract and the Vendor agrees that the Contract can be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
31. Pursuant to 34 Texas Administrative Code §20.306, if applicable to the SOW, Vendor claims the preference(s) checked below:

- | | |
|--|--|
| <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"/> Foods of Higher Nutritional Value |
| <input type="checkbox"/> Agricultural products and services offered by TX bidders | <input type="checkbox"/> Recycled motor oil and lubricants |
| <input type="checkbox"/> USA produced supplies, materials, or equipment | <input type="checkbox"/> Products produced at facilities located on formerly contaminated property |
| <input type="checkbox"/> Products of persons with mental or physical disabilities | <input type="checkbox"/> Products and services from economically depressed or blighted areas |
| <input type="checkbox"/> Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel | <input type="checkbox"/> Contractors that meet or exceed air quality standards |
| | <input type="checkbox"/> Recycled or Reused Computer Equipment of Other |

32. Pursuant to Texas Government Code §§2155.004, 2155.006, 2155.0061, and 2261.053, Vendor certifies that the individual or business entity named in the Response is not ineligible to receive the Contract and acknowledges that the Contract may be terminated, and payment withheld, if this certification is inaccurate.
33. Vendor currently is, and for the Contract term duration shall remain, in compliance with the requirements of 42 U.S.C. Ch. 126, §12101, et. seq., the Americans With Disabilities Act, and its implementing regulations, as each may be amended.
34. Vendor currently is, and for the Contract term duration shall remain, in compliance with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and shall maintain a drug-free work

environment. 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 fully incorporated by reference and shall constitute part of the Contract, and Vendor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

35. Vendor agrees Vendor shall comply with all applicable provisions found within 41 CFR §60-1.4, related to Equal Employment Opportunity. Applicable provisions include, but are not limited to, the following: Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or age. Vendor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or age.
36. Vendor represents and warrants that all articles and services provided by Vendor and Vendor's subcontractors under the Contract shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15), state, local, and industry related statutes, rules, regulations, and codes.
37. Vendor represents and warrants that Vendor currently does, and for the Contract term duration shall, comply with all requirements of the Immigration and Nationality Act (8 U.S.C. §1101 et seq.) and all subsequent immigration laws and amendments; additionally, Vendor shall not place any Vendor's employee at a worksite and Vendor shall not permit any Vendor employee, or any employee of Vendor's subcontractor to perform any work on behalf of or for the benefit of the State of Texas and/or RRC without first ensuring the employee's authorization to lawfully work in the United States.
38. Vendor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Contractor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the U. S. General Services Administration.
39. Vendor represents and warrants that all statements and information prepared and submitted in this document and Vendor's Response are current, complete, true, and accurate. Submitting a Response with a false statement, and/or material misrepresentations made during the performance of a Contract, are a material breach of the Contract and may void Vendor's Response and the Contract if awarded.

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

_____ Vendor Name	_____ Federal Employer Identification Number
_____ Signature of Authorized Representative	_____ Date signed
_____ Printed Name & Title of Authorized Representative	

VENDOR'S QUALIFICATIONS STATEMENT

THIS FORM MUST BE FULLY COMPLETED AND INCLUDED WITH VENDOR'S RESPONSE. Failure to answer any question or provide the requested information may result in the Response being deemed non-responsive. Complete all blocks; if a question or information request is not applicable to Vendor, complete that item with "not applicable" or "N/A". If additional space is required for a complete response, provide the additional information on 8 x 11 ½ paper with Vendor's letterhead, and include reference to specific page number, item, and section of this Vendor's Qualifications Statement applicable to the information.

FIRM			
ADDRESS			
PHONE		FAX	
E-MAIL			
Is your firm: Individual Partnership Corporation _____			
If incorporated, under the laws of the State of _____ with principal place of business in _____			

Has firm, under its current or former name(s) ever failed to complete a project, defaulted on a contract, or been engaged in litigation over a contract? ____ Yes ____ No. If yes, provide details of most recent occurrence on separate sheet(s) and attach to this form as instructed within the introduction of this form.

VENDOR'S EXPERIENCE RECORD

LIST NO MORE THAN THREE (3) SUCCESSFUL PROJECTS THAT ARE AT LEAST 50% COMPLETE (*50% COMPLETE PROJECTS WILL BE COUNTED TOWARDS SUCCESSFUL PROJECTS*) OR HAVE BEEN COMPLETED WITHIN THE LAST FIVE (5) YEARS MEASURED BACKWARDS FROM THE ISSUE DATE OF THE SOW, AND THAT BEST DEMONSTRATE CURRENT QUALIFICATIONS RELATED TO THE WORK INCLUDED WITHIN THE SOW.

1.

Project Name				
Project Location		Contract Amount	Beginning \$	Ending \$
Project Owner & Type (Private, Gov't)		Address		
City		State	Zip	
Project Owner's Rep familiar with project		Email	Phone	
Contract Start Date (Date of Notice to Proceed)		Contract Duration (Calendar Days)		
If Project is still in progress, provide percentage complete		If completed, date of completion		
If time extensions were added to the contract as a result of Vendor's responsibilities, provide a short explanation of each occurrence/extension.				
Project description, Vendor's types of services delivered under the project contract, and explanation of why project is comparable to this contract.				

VENDOR'S EXPERIENCE RECORD (CONTINUED)

2.

Project Name					
Project Location		Contract Amount	Beginning \$	Ending \$	
Project Owner & Type (Private, Gov't)		Address			
City		State		Zip	
Project Owner's Rep familiar with project		Email		Phone	
Contract Start Date (Date of Notice to Proceed)		Contract Duration (Calendar Days)			
If Project is still in progress, provide percentage complete		If completed, date of completion			
If time extensions were added to the contract as a result of Vendor's responsibilities, provide a short explanation of each occurrence/extension.					
Project description, Vendor's types of services delivered under the project contract, and explanation of why project is comparable to this contract.					

3.

Project Name					
Project Location		Contract Amount	Beginning \$	Ending \$	
Project Owner & Type (Private, Gov't)		Address			
City		State		Zip	
Project Owner's Rep familiar with project		Email		Phone	
Contract Start Date (Date of Notice to Proceed)		Contract Duration (Calendar Days)			
If Project is still in progress, provide percentage complete		If completed, date of completion			
If time extensions were added to the contract as a result of Vendor's responsibilities, provide a short explanation of each occurrence/extension.					
Project description, Vendor's types of services delivered under the project contract, and explanation of why project is comparable to this contract.					

VENDOR'S HUB AND PREVIOUS RRC CONTRACTING EXPERIENCE:

Please indicate if Vendor is a **Texas Certified** Historically Underutilized Business (HUB): ____ YES ____ NO

If yes, please indicate gender and ethnicity: Gender: ____ Male ____ Female

Ethnicity: _____ (Asian Pacific Islander, Black American, Hispanic American, Native American, American Woman, or Service-Disabled Veteran)

Has Vendor ever performed prior work under contract with RRC? ____ YES ____ NO

If yes, list the most recent project contract number(s): _____

VENDOR'S CERTIFICATION:

By my signature below,

I certify that all information provided within and attached to this Vendor's Qualification Statement is true and correct.

I authorize the Railroad Commission of Texas and/or the State of Texas to contact any references listed within this Vendor's Qualifications Statement and authorize release of information from such references to the Railroad Commission of Texas and/or the State of Texas.

I certify that my firm is not debarred or suspended from performing work for the State of Texas or for the U.S.A.

Vendor Name

Signature of Owner or Officer

Title of Person Signing

Date

VENDOR INFORMATION SECURITY AGREEMENT

Purpose

The purpose of the Railroad Commission of Texas ("RRC") Vendor Information Security Agreement is to establish the rules for Vendor access to RRC Information Resources and support services, Vendor responsibilities, and protection of RRC information.

Definition of Vendor

I hereby acknowledge and agree that the term "Vendor representative" throughout this Agreement refers to any employee, subcontractor, subcontractor's employee or any other representative of the primary Vendor.

Vendor Access

I hereby acknowledge and agree that (1) I have read and thoroughly understand the RRC Information Security Guidelines and Policies; (2) I hereby agree to comply with all such Information Security Policies and Guidelines; (3) I have been informed that each of these Policies or Guidelines can be accessed at any time on the RRC Intranet from an RRC internal workstation at <http://inside/divisions/its/security/security.html>; and (4) each such RRC Policy or Guideline is hereby incorporated into this Agreement as if set out in full, including any amendment to any such Policy or Guideline that may be adopted from time to time during the term of the Contract with Vendor.

1. I hereby agree to:
 - A. Only access data that is necessary to address contractual obligations;
 - B. Not retain RRC system, application or user data outside of RRC computer systems;
 - C. Only use RRC information and Information Resources for the purpose(s) stated in the Contract with Vendor;
 - D. Not divulge to any other person or organization or deliver to any other person or organization any credential, badge, access card or any other RRC information acquired by Vendor in the course of doing business with the RRC unless the applicable Contract with Vendor expressly permits such disclosure or, unless prior, express written consent is received from a duly authorized representative of the RRC; and
 - E. Not disclose any configuration, systems management, security, application or associated information to any person or organization outside of authorized RRC representatives unless prior, express written consent is received from a duly authorized representative of the RRC.
2. I hereby agree to direct any request or question regarding the applicable Contract with the Vendor to the following Vendor Contract Manager or to any designated successor:

Name of Contract Manager: _____

E-mail Address for Contract Manager: _____

Telephone Number for Contract Manager: _____

3. I hereby acknowledge and agree that Vendor's authorized representative shall provide the RRC a list of all Vendor employees or other representatives authorized to perform work under the applicable Contract with Vendor. I further acknowledge and agree that this list may be revised from time to time and that the revised list shall be provided to the RRC within 24 hours of any change in Vendor employees or other representatives; and, provided, further, that if my name fails to appear on this list, I shall be deemed separated from employment by or no longer an authorized representative of Vendor and shall immediately surrender the identification badge/access card provided to me as well as surrender any equipment or supplies provided to me by the RRC;
4. I hereby agree to acquire an identification badge/access card from the RRC; and further agree that it shall always be worn and displayed by me while on RRC premises. I further agree to surrender the identification badge/access card as well as any equipment or supplies provided to me by the RRC immediately following (1) the termination date of the Contract with Vendor; (2) RRC's receipt of notice from Vendor that I am no longer employed by or representing Vendor; or (3) receipt by Vendor of a written request by the RRC, issued in the RRC's sole discretion, seeking that I terminate all work on the Contract with Vendor;
5. I hereby agree to immediately report any security incident directly to the designated Vendor Contact and the RRC Information Security Officer;

6. I hereby agree to comply with all State of Texas and Railroad Commission auditing requirements, including, but not limited to, the auditing of the Vendor's work; and
7. I hereby agree that all software used by the Vendor representative in providing goods or services to the RRC is properly licensed.

I hereby agree that my failure to comply with any of the provisions of this Agreement constitutes grounds for the RRC, in its sole discretion, to terminate my services effective immediately; and that without further notice and at the RRC's sole discretion, any such failure on my part to comply with any of the above provisions of this Agreement shall also constitute grounds for termination of the entire Contract with Vendor or Statement of Work issued pursuant to that Contract.

Vendor Printed Name	Vendor Representatives Printed Name
Vendor Representative's Signature	Date Signed

RAILROAD COMMISSION OF TEXAS

PROGRESS PAYMENT AFFIDAVIT

STATE OF TEXAS

SOW NO. 455-20-1027

COUNTY OF _____

CONTRACT NO. 455-20-####

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared

_____ who being duly sworn, on oath,
says that he/she is a duly authorized representative of

_____, VENDOR, and all
terms of the Contract for the completion of certain works described as

SOW No. 455-20-1027/Review and Assessment: Selected Regulatory Process Project

have been satisfactorily completed to the extent indicated on the attached voucher and that ALL sums of money due for payrolls, bills for material and equipment, and other indebtedness connected with the Contract for which State of Texas and the Railroad Commission of Texas, or its property or the real property on which the work was performed, might in any way be responsible, to the best of his/her knowledge and belief have been paid or will be paid or otherwise satisfied within ten days after receipt of the requested payment from the Railroad Commission of Texas or within the period of time required by Title 10, Texas Government Code, Section 2251.022.

Vendor agrees to indemnify and hold the State of Texas and the Railroad Commission of Texas harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through Vendor to the Contract. Vendor further agrees to indemnify and hold harmless all real property on which the work was performed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Vendor to the Contract.

Payments to subcontractors for labor and/or materials which are pending or disputed as of the date hereof are:

<u>Individual or Company Name</u>	<u>Mailing Address</u>	<u>Amount Owed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Affiant's Signature / Date

Notary Public, in and for the County of _____, Texas

Printed Name / Title

Sworn to and subscribed before me this _____ day of _____, 20__.

(SEAL)

RAILROAD COMMISSION OF TEXAS

FINAL PAYMENT AFFIDAVIT

STATE OF TEXAS

SOW NO. 455-20-1027

COUNTY OF _____

CONTRACT NO. 455-20-####

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared

authorized representative of _____ who being duly sworn, on oath,
says that he/she is a duly

_____, **VENDOR**, and all
terms of the Contract for the completion of certain works described as

SOW No. 455-20-1027/Review and Assessment: Selected Regulatory Process Project

have been satisfactorily completed and that ALL sums of money for payrolls, bills for material and equipment, and other indebtedness connected with the Contract for which the State of Texas and the Railroad Commission of Texas or its property might in any way be responsible, to the best of his/her knowledge and belief, have been paid or will be paid or otherwise satisfied within ten days after receipt of final payment from the Railroad Commission of Texas, or within the period of time required by Texas Government Code §2251.022. Final payments to subcontractors for labor and/or materials which are pending or disputed as of the date of this Affidavit are:

<u>Individual or Company Name</u>	<u>Mailing Address</u>	<u>Amount Owed</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Except for those claims listed herein, if any, Vendor hereby waives all claims against the State of Texas and the Railroad Commission of Texas. Vendor agrees to indemnify and hold harmless the State of Texas and the Railroad Commission of Texas from any liens, debts, or obligations which arise from labor or materials provided by or through Vendor to the Contract. Vendor further agrees to indemnify and hold harmless all real property on which the work was performed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Vendor to the project.

Affiant's Signature / Date

Notary Public, in and for the County of _____, Texas

Printed Name / Title

Sworn to and subscribed before me this ____ day of _____, 2020.

(SEAL)

Signature

Instructions: Affidavit must be signed by an individual owner, a partner in a partnership, or by a person authorized by bylaws or Board of Directors to sign for a corporation. If Vendor is a joint venture or partnership of individuals, either may sign, but if a joint venture in which a corporation is a party, separate affidavits must be executed by each corporation and by each individual owner or partnership.

RAILROAD COMMISSION OF TEXAS
SAMPLE CONTRACT NO. 455-20-#### for
DIR DBITS: IT ASSESSMENTS/PLANNING and
IT PROCUREMENT ASSISTANCE
REVIEW AND ASSESSMENT:
BUSINESS INTELLIGENCE/DATA WAREHOUSE PROJECT

THIS AGREEMENT (“Contract”) is made and entered into by the State of Texas, through the **RAILROAD COMMISSION OF TEXAS** (“RRC”), a state agency located at 1701 N. Congress Avenue, Austin, Texas 78701 and **VENDOR LEGAL NAME** (“Vendor”), located at **VENDOR PHYSICAL ADDRESS** (individually “Party”; collectively “Parties”).

WITNESSETH

WHEREAS, Texas Government Code Chapters 2155, 2156, and 2157 provide for RRC’s authority to procure automated information systems goods and/or services and RRC intends to acquire certain automated information systems commodities, namely DIR DBITS: IT Assessments/Planning and IT Procurement Assistance services - Review and Assessment of Business Intelligence/Data Warehouse Project; and

WHEREAS, in accordance with applicable provisions of Texas Government Code Chapters 2155, 2157 and 2261, RRC has selected a vendor to provide the DIR DBITS: IT Assessments/Planning and IT Procurement Assistance services - Review and Assessment of Business Intelligence/Data Warehouse Project referenced within Statement of Work No. 455-20-1027 (“SOW No. 455-20-1027”), and the Vendor has agreed to provide the desired DIR DBITS: IT Assessments/Planning and IT Procurement Assistance services - Review and Assessment of Business Intelligence/Data Warehouse Project, referenced within SOW No. 455-20-1027, subject to the terms and conditions hereinafter set forth; and

WHEREAS, all terms and conditions of SOW No. 455-20-1027, including but not limited to insurance and specifications within SOW No. 455-20-1027, constitute part of this Contract No. 455-20-####.

NOW, THEREFORE, RRC and Vendor, for and in consideration of the mutual promises, obligations, and benefits hereof, contract as follows:

I. CONTRACT DOCUMENTS.

1.01. SERVICES REQUIRED. In accordance with the terms and conditions of the Contract, including all Contract Documents incorporated by reference, Vendor shall deliver throughout the term of the Contract including renewal or extension periods (if any), DIR DBITS: IT Assessments/Planning and IT Procurement Assistance services - Review and Assessment of Business Intelligence/Data Warehouse Project (“Services”), including all labor, qualified personnel, management, coordination, equipment, materials, insurance, and incidentals to fulfill all requirements and deliver all goods and/or services required under the Contract in accordance with applicable method protocols, industry/trade best practices, and all rules, regulations, and laws related thereto. Contract Documents include:

- a. This Contract No. 455-20-####;
- b. Exhibit A, SOW No. 455-20-1027, including all associated attachments, appendices, and addenda;
- c. Vendor’s DIR DBITS Contract No. _____; and
- d. Exhibit B, Vendor’s Response, dated Month dd, yyyy (collectively, “Vendor’s Offer”).

1.02. INCORPORATED BY REFERENCE. All elements listed in 1.01.a. through 1.01.d. are attached hereto and hereby incorporated by reference and constitute part of the Contract as if fully set forth herein.

1.03. ORDER OF PRECEDENCE. For purposes of interpretation of the Contract and in the event of conflict within the Contract Documents, this Contract No. 455-20-#### shall take precedence over the other Contract Documents. Any inconsistency among the Contract Documents shall be resolved applying the order of priority as listed below:

- a. Vendor's DIR DBITS Contract No. _____; then
- b. This Contract No. 455-20-####, and amendments hereto, if any; then
- c. Exhibit A, SOW No. 455-20-1027, including all associated attachments, appendices, and addenda; then
- d. Exhibit B, Vendor's Response.

II. TERM.

2.01. CONTRACT AWARD.

- a. The original term of this Contract shall be from date of the last Party's signature to the Contract or the date stated within RRC's written Notice to Proceed, whichever is later, and shall continue for forty-five (45) days ("Original Term"), unless terminated earlier as provided in SOW No. 455-20-1027 section 10.1.34 and/or section 2.02. set forth below.

This Contract is non-renewable. RRC, in its sole discretion and determination reserves an optional extension period of up to 30 additional calendar days to the Original Term. The optional extension period may be exercised only through written amendment to the Contract, fully executed prior to expiration of the Original Term.

- b. Notwithstanding the termination or expiration of this Contract, any provisions regarding indemnification, confidentiality, dispute resolution, intellectual property rights, audit rights, limitation of liability, limitation of distribution, and warranties shall survive the termination or expiration dates of this Contract.

2.02. TERMINATION.

- a. **Termination for Cause.** RRC may terminate this Contract immediately for cause by providing written notice to Vendor of such termination if Vendor 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, Vendor 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 Vendor's non-performance. Notwithstanding the foregoing, Vendor shall not be liable for damages that Vendor could not reasonably foresee on entry into this Contract. In the event of termination for cause, Vendor will not be eligible for consideration in the re-solicitation, if any, and may not be considered in future solicitations for the same type of work unless the scope of work is significantly changed.
- b. **Termination for Convenience.** 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 ("Notice of Termination") to Vendor 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, Vendor shall be governed by the terms and conditions, and shall perform the acts outlined in section 2.02.c., below.
- c. **Implementation of Termination.** Vendor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary, as determined by RRC to preserve the work in progress. In the event of termination by RRC, RRC shall pay Vendor 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 Vendor 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 AND SERVICES.

3.01. CONTRACT LIMIT, FEES AND EXPENSES. The total amount of fees to be paid under this Contract through the Original Term and extension term, if any, shall not exceed **CONTRACT AMOUNT IN WORDS (\$###,###.##)**. This Contract not-to-exceed amount may be changed only through written amendment to the Contract.

3.02. SERVICES.

- a. Vendor shall provide the goods and services necessary and reasonably inferable to complete the work required by and described in SOW No. 455-20-1027.
- b. Vendor's services shall include all disciplines agreed upon between the Parties and all related usual and customary consultant and other services necessary and reasonably inferable to complete the work in accordance with RRC's specifications and the terms and conditions of this Contract.
- c. Additional goods and services are those services which shall be provided **ONLY** if authorized or confirmed in writing by RRC, and which are in addition to the goods and services contained within the scope and content of RRC's specifications and Vendor's Response in response to SOW No. 455-20-1027. In the event additional goods and services are proposed by Vendor, Vendor shall not proceed therewith except only after Vendor's receipt of RRC's written acceptance of the additional services proposed.
- d. SOW No. 455-20-1027 describes the intended project scope and character. The Parties agree it is Vendor's responsibility to review and understand requirements of SOW No. 455-20-1027 and to provide deliverables, including information resources services, to achieve those objectives.
- e. Vendor agrees and acknowledges that RRC is entering into this Contract in reliance on Vendor's represented professional abilities with respect to performing the services, duties, and obligations under this Contract. Vendor, and Vendor's consultants and subcontractors (if any) shall perform all services pursuant to this contract diligently and shall endeavor to further the interest of RRC in accordance with RRC's requirements and procedures and the standards of care and performance as described herein. Vendor agrees to use its best efforts to perform the Services (i) in accordance with the usual and customary professional standards of care, skill and diligence consistent with industry best practices for vendors that provide services for projects that are similar in size, scope, and budget to that within this Contract, and (ii) in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. There are no obligations, commitments, or impediments of any kind known to Vendor that will limit or prevent performance by Vendor of the services required under the Statement of Work and the Contract. Vendor hereby agrees to correct, at its own cost, any of its services, and the services of its consultants and subcontractors (if any) that do not meet this standard of care.
- f. Vendor's services shall be reasonably accurate and free from any material errors or omissions. Neither acceptance nor approval of Vendor's services by RRC shall relieve Vendor of any of its duties or release it from any liability, it being understood that RRC is, at all times, relying upon Vendor for its skill and knowledge in performing Vendor's services. RRC shall have the right to reject any of Vendor's goods/services in accordance with the terms and conditions of SOW No. 455-20-1027.
- g. Vendor agrees to furnish efficient business administration and superintendence and to use Vendor's best efforts to fulfill the Contract requirements in an expeditious and economical manner consistent with the interest of RRC and Vendor's professional skill and care.
- h. Vendor shall allocate adequate time, personnel and resources as necessary to deliver goods and/or perform services and work under the Contract. Changes of Vendor's key personnel identified in

Vendor's Response shall not be made without prior written approval of RRC. Vendor's day-to-day project team will be led by Vendor's Project Manager unless otherwise directed by RRC or prevented by factors beyond the control of Vendor. Vendor's Project Manager shall act on behalf of Vendor with respect to all phases of Vendor's goods and/or services delivery and shall be available as required for the benefit of the project and RRC.

3.03. PAYMENTS TO VENDOR.

- a. Payments to Vendor will be made in accordance with the terms and conditions of the Contract, and within thirty (30) days from receipt of a complete, correct, and approved invoice or statement of payment in accordance with Texas Government Code Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by RRC. Vendor will be paid for completion of work accepted and approved by RRC.
- b. Vendor shall invoice RRC for work performed and accepted by RRC. Vendor shall submit invoices as specified in SOW No. 455-20-1027.

IV. FUNDING.

4.01. STATE FUNDING. It is understood that all obligations of RRC hereunder are subject to the availability of state funds, federal grant(s) and/or other federal funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In such 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. VENDOR PERSONNEL.

5.01. REQUIRED QUALIFICATIONS. At all times during the term of the Contract, Vendor shall have available, under direct employment and supervision and/or subcontract agreement fully incorporating the terms and conditions of the Contract Documents, the required qualified and properly licensed (as applicable) personnel to properly fulfill all the terms and conditions of the Contract.

VI. NOTICES.

6.01. LEGAL NOTICES.

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

For RRC:

	<u>Railroad Commission of Texas</u>
	<u>Administration Division – Contract Management</u>
	<u>P.O. Box 12967</u>
	<u>Austin, Texas 78711-2967</u>
Attention:	<u>Randall D. Collins, COO</u>
Phone:	<u>512-463-5982</u>
Email:	<u>Randall.Collins@rrc.texas.gov</u>

For Vendor:

Vendor Legal Name

Full mailing address

Attention:

Phone:

Email:

- b. Legal notice given in any other manner shall be deemed effective only if, and when, received by the Party. Either Party may change its address for notice by written notice to the other Party as provided herein.

VII. MISCELLANEOUS PROVISIONS.

7.01. GOVERNING LAW AND VENUE. This Contract shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of law provisions. The venue of any suit brought under this Contract is fixed in any court of competent jurisdiction in Travis County, Texas unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the RRC. Vendor 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 No. 455-20-#### 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. Vendor acknowledges Contract is effective for the period specified in the Contract. Any services performed by Vendor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Vendor.

7.04. SOVEREIGN IMMUNITY. The Parties agree and acknowledge that nothing contained in SOW No. 455-20-1027, Vendor's 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. PROHIBITION ON CONTRACTING WITH COMPANIES ENGAGED IN BUSINESS WITH FOREIGN TERRORIST ORGANIZATIONS. Vendor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code §2252.152.

7.06. FALSE STATEMENTS; BREACH OF REPRESENTATIONS. By signature to this Contract, Vendor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Vendor signs this Contract with a false statement or it is subsequently determined that Vendor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Vendor 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.

7.07. ENTIRE CONTRACT AND MODIFICATION. This Contract No. 455-20-#### and all Contract Documents referenced in section 1.01. herein constitute the entire agreement of the Parties and 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.

EXECUTION SIGNATURES. The Parties agree the Contract and any written amendments thereto necessary for the consummation of the transaction contemplated by the Contract may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act ("UETA") and any applicable state law. Any document accepted, executed, or agreed to in conformity with such laws will be binding on each Party as if it were physically executed. The Parties to this Contract have electronically executed this Contract which shall be deemed an original. By the signatures below, each signatory represents and warrants that they have the authority to enter into this Contract on behalf of the respective Parties.

RAILROAD COMMISSION OF TEXAS

VENDOR NAME

By: _____
Wei Wang,
Executive Director

By: _____
Printed Name:
Title:

Date of Execution: _____

Date of Execution: _____

RRC use only below this line.

Div. Director: _____

CM Director: _____

OGC: _____ (approved as to form only)

DIR use only below this line.

Texas Department of Information Resources SOW No. _____

Authorized Signature Date

Printed Name Title

DELIVERABLE ACCEPTANCE VOUCHER

Vendor Name: _____	Contract No.: _____
Deliverable No.: _____	Resubmit or Final? _____
Original Date Due: _____	Resubmit Date: _____
Orig. Date Submitted: _____	Resubmit No.: _____
Deliverable Price: \$ _____	Retainage? _____
Approved to Pay: \$ _____	

Deliverable Name:

Deliverable description, including contractual acceptance criteria:

If Resubmit, describe changes/improvements put forth in this version of Deliverable:

RRC use only below this line:

Deliverable Accepted: ☐

Deliverable Rejected: ☐

Comments related to rejection (deficiencies, etc.) or acceptance (noted improvements, quality, etc.):

Signature, RRC Project Manager

Printed Name

Date