

## INVITATION FOR BIDS (IFB)



<b>AGENCY INVOICE ADDRESS</b>	<b>REFER INQUIRIES TO:</b>
TEXAS WORKFORCE COMMISSION Accounts Payable Email: <a href="mailto:APPO@twc.texas.gov">APPO@twc.texas.gov</a>	<b>PLEASE SUBMIT ALL QUESTIONS AND PROPOSALS BY E-MAIL TO:</b> : Michael Vogler, CTCD, CTCM Email: <a href="mailto:vendorproposals@twc.texas.gov">vendorproposals@twc.texas.gov</a>
<b>PROCUREMENT NUMBER</b>	<b>BID DUE DATE</b>
<b>3202300141</b>	Date: <b>March 11, 2022 Time: 10:00AM Central Time (CT)</b>

VENDOR NAME:		
*DBA (If Sole Owner):		
VENDOR MAILING ADDRESS:		
VENDOR BILLING ADDRESS: (If different from mailing)		
CITY, STATE, ZIP CODE		
VENDOR CONTACT PHONE NUMBER:		FAX NUMBER:
VENDOR CONTACT E-MAIL ADDRESS:		
VENDOR TEXAS IDENTIFICATION NUMBER: (issued by the Texas Comptroller of Public Accounts)		
VENDOR FEDERAL EMPLOYER IDENTIFICATION NUMBER: (issued by the Internal Revenue Service)		
*If you are a Sole Owner or Individual Recipient, enter your Social Security Number:		

**Check below to claim a preference under statute:**

- Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran.
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran.
- Agricultural products grown in Texas
- Agricultural products offered by a Texas bidder
- Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran.
- Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran.
- Texas Vegetation Native to the Region
- USA produced supplies, materials or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy Efficient Products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or Reused Computer Equipment of Other Manufacturers
- Foods of Higher Nutritional Value

**TWC only accepts emailed bids. If a hard copy of the bid is submitted, it will not be screened and will not be returned. Bids received after the submission deadline will be disqualified.**

LINE ITEM NO.	NIGP CLASS & ITEM	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
<b>1</b>	910/36 941/55 031/26 220/14 270/72 936/29 992/47	<b>Monthly service and maintenance on the Building Automation System at the Criss Cole Rehabilitation Center</b>  -Initial Contract term to expire 8/31/23 -Two (2) one-year renewal options through 8/31/2025	12	\$	\$
<b>FAILURE TO SIGN WILL DISQUALIFY BID - SIGNATURE MUST BE IN INK</b>					
SIGN HERE:				SIGNATURE DATE:	

**1. INTRODUCTION:**

- 1.1 The Texas Workforce Commission (TWC) is requesting a bid for full service and maintenance on the Building Automation System at the Criss Cole Rehabilitation Center (CCRC) located at 4800 North Lamar in Austin, TX.
- 1.2 The individual listed below may be telephoned or visited for clarification of this Invitation for Bids (IFB) specifications. No authority is intended or implied that the specifications may be amended, or alternates accepted prior to bid opening without written approval of the TWC.

Michael Vogler, CTCD, CTCM  
 Purchasing  
 TX Workforce Commission  
 E-mail: [vendorproposals@twc.texas.gov](mailto:vendorproposals@twc.texas.gov)

- 1.3 The individual listed below is assigned by the agency to be the contract administrator.

John Meyer  
 Contract Administrator  
 Texas Workforce Commission  
 101 East 15th Street, Room 109  
 Austin, Texas 78778-0001  
 Phone (512) 463-5659  
 Cell (512) 269-1396  
 E-Mail [john.meyer@twc.texas.gov](mailto:john.meyer@twc.texas.gov)

**2. GUIDANCE FOR BID PREPARATION:**

- 2.1 Each bidder by signing their bid form certifies that their bid meets or exceeds all mandatory specifications set forth in this IFB.
- 2.2 An authorized officer of the vendor must sign bids. Bids must be responsive to the specifications but may contain additional information considered pertinent by the bidder. The state reserves the right to not make an award for this invitation for bids.

### **3. CONTRACT AWARD**

Award will be made to the lowest compliant bid.

### **4. CONTRACT TERM**

4.1 Initial contract will be award date through 8/31/2023.

4.2 Contract renewal: Two (2) one-year renewal options through 8/31/2025.

### **5. TWC BUILDING LOCATIONS:**

Criss Cole Rehabilitation Center - 4800 North Lamar, Austin, TX 78756

- **LOCAL OFFICE:** The awarded contractor must have an office local to the Austin area within a 30-mile radius from project site in order to be eligible to bid. Please provide address if not listed as the main business contact address.

### **6. INSPECTION PRIOR TO SUBMITTING BID:**

Bidders are cautioned to carefully study all parts of this specification and its terms and conditions prior to submitting a bid. Each prospective bidder is encouraged to visit the job site and assess work location and conditions prior to bidding. Bids will, however, be accepted without said site visit. Bidders must make prior appointment to schedule this inspection by contacting the CCRC Maintenance Supervisor, Wayne Weber at (512) 377-0314 (office) or (512) 952-1720 (cell).

Visits are to be scheduled during normal business hours. Normal business hours are 7:00am-3:30pm, Monday.-Friday. Site visit can be schedule between January x, 2023, and January x, 2023; no site visits will be allowed after January x, 2023

### **7. INSURANCE:** After award of contract within 10 days

The Contractor shall procure and maintain insurance at their expense during the term of this contract and any extensions thereof. Insurance shall be written by companies licensed in the state of Texas with an "A" rating from A.M. Best and authorized to provide the corresponding coverage. Vendor shall provide and maintain Insurance in accordance with statutory limits as stated within the **Terms & Conditions Section 3.19 Insurance Requirements** attached hereto as **Attachment 1** and incorporated herein for all purposes. A certificate of such insurance is to be supplied to TWC within two weeks (10 business days) after bids have been awarded. Contractor also agrees to maintain Worker's Compensation and Employer's Liability insurance for the protection of the employees to comply with these statutory requirements.

### **8. WORKING HOURS:**

Work hours are Mon.-Fri., 7:00am-3:30pm.

### **9. MINIMUM EXPERIENCE AND QUALIFICATIONS:**

9.1 These minimum requirements apply to the Contractor and Contractor's personnel and any Subcontractor and Subcontractor's personnel.

9.2 The Bidder shall have relevant experience required for the performance of the services as outlined in this Solicitation. The minimum experience required is five (5) years.

9.3 The Bidder must have a history of successful product service for a minimum of two (2) years and currently be factory trained and/or certified for Niagara 4 working on Lonworks Distech Controls. Bidder must provide certification with bid package to be considered. Bidder's personnel to be assigned to perform the services must be fully trained and, at minimum, have two (2) years relevant experience.



9.4 Required Licensure and Accreditation

- a) TDLR Class A State of Texas Air Conditioning and Refrigeration License
- b) Niagara 4 certified. Lonworks with Distech Controls. Must provide Niagara 4 certification to TWC.

9.5 All Contractor or Subcontractor personnel assigned to perform the services must be at least 18 years of age.

9.6 The Contractor is required to provide current copies of the completed training(s) and of the license or accreditation certificate related to the training upon request by the TWC Contract Manager.

**10. LEGAL REQUIREMENTS AND PERMITS:**

If applicable, the Contractor shall procure, at his own expense, all necessary licenses and permits and shall conform to all laws, regulations, and ordinances regarding the performance of this contract.

**11. PAYMENT TO CONTRACTOR:**

11.1 Payment will be made based on the submission of an invoice to [appo@twc.texas.gov](mailto:appo@twc.texas.gov) with the fixed amount due under the contract for work performed and the purchase order number. Vendor must include PURCHASE ORDER NUMBER on all documents, invoices and correspondence.

11.2 Before the termination date of the contract, TWC will make, or have made, an inspection to determine full compliance in every respect with the contract. Failure of the Contractor to perform under the intent of this contract fully and faithfully shall subject them to the requirement to fully complete the contract. The State of Texas, acting through the Texas Workforce Commission may withhold any moneys due the Contractor or claimed to be due them until the terms of the contract have been fulfilled and the work of the Contractor accepted.

**12. SCOPE OF WORK (Air Handlers and Fan Coil Units):**

12.1 Contractor shall be responsible for providing monthly preventive maintenance and service to the existing LonWorks Software and Distech hardware direct digital control automation system. Service will consist of programming support, diagnostics of control system, and associated equipment problems, programming and/or adjusting operational trends and replacement of control system parts upon approval of authorized TWC CCRC representative.

12.2 Monthly service shall be scheduled within thirty (30) calendar days of the previous service.

12.3 Contractor shall be on-site a minimum of eight (8) man-hours per month conducting inspections and repairs of the direct digital control automation system.

12.4 Contractor must be able to access automation system remotely to provide trouble shooting, check and monitor controls and make temperature adjustments.

12.5 Contractor must have an after-hour call in number to discuss or troubleshoot issues with a qualified technician.

12.6 Contractor shall work closely with TWC IT department in obtaining a VPN to gain system access and must maintain requirements.

12.7 Contractor shall provide replacement parts, which shall be Distech or equivalent (must be compatible with Lonworks software), approved by the Contract Administrator prior to installation. As applicable, all replacement parts shall be provided and installed with a minimum of one year warranty of materials/labor, as part of this maintenance contract. Unless manufacture time warranty exceeds, then that time will take precedence. For repairs that are outside of the scope of this maintenance contract, the Contractor will be paid the bid cost at the time of repair. No work to begin without prior purchase order authorization.

12.8 Contractor will provide a monthly report with a checklist on equipment listed below. Report must include status of equipment; work performed that month, and recommendations with justification for repairs needed or replacement of equipment/parts and a detailed listing of the hours worked. Report will include any failed components associated with the control system and what actions were taken to repair. Contractor shall maintain trend records monthly. The monthly report and all service tickets will be supplied in writing and signed by the contractor's certified representative.

12.9 Preventive maintenance monthly service shall include, but is not limited to the following:

- a) Master panel
- b) All sixty (60) input/output boards
- c) Easy controls (EC) Building Operating System (BOS)

- d) Battery back-up
- e) Wiring/electrical connections
- f) Software/programs
- g) Electronic sensors
- h) Valves
- i) Voltage relays
- j) Thermistors
- k) Unit controller with custom programming
- l) Tighten all wiring connections
- m) Tighten all set screws
- n) Building static pressure
- o) Temperature sensors
- p) Chiller and cooling tower controls
- q) By-pass control/assembly
- r) Chilled water Isolation valves
- s) Remote intervention as required/requested within two (2) hours
- t) Visual inspections, looking for discrepancies
- u) Interact with TWC IT Department for project upgrades or updates
- v) Support other contracted trades (i.e.: HVAC contractors, electricians, and pipe fitters, as in relation to the Building Automation System (BAS).
- w) Train CCRC staff and as required educate HVAC contractors, electricians and/or others that work on the chillers, boilers, fresh air units and air handling units, in the use of the system.

12.10 Contractor shall provide telephone support by a qualified technician during normal working hours. Normal working hours are defined as 7:00 am to 3:30 pm.

12.11 Contractor must respond to any problems concerning the Lonworks Distech system within two hours, seven days a week, and have repair work completed within eight hours, unless otherwise approved by Contract Administrator. Wash metal air filters in Air Handler Unit (AHU) in boiler room and fresh air unit (roof top) of AHU 1-7.

12.12 Contractor shall provide temporary loaner parts on equipment to replace any parts or equipment that must be removed from CCRC's system for an extended period of time. Loaner parts must be compatible with CCRC's system and approved by the Contract Administrator prior to Installation.

12.13 Contractor shall replace back-up battery or capacitors located in controller card at Address I (primary cabinet) annually. Existing back up battery or capacitors is part of controller card.

12.14 All charges for repair services that are not covered by this contract shall be restricted to labor and materials only. No overtime charges shall be allowed. Contractor must provide proof of their cost and provide a proposal for parts/labor prior to the approval of any work; emergencies will be addressed as they arise. No work beyond the scope of the solicitation to begin without prior purchase order authorization.

**13. PRICE ADJUSTMENT CLAUSE:**

Renewal of this contract shall be for the original bid price; however, if the option to renew is exercised, TWC will permit a price adjustment upwardly or downwardly after the end of the first contractual period and each renewal period when correlated with the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, (All items) published by the Bureau Labor Statistics (BLS), Washington D.C. The initial contractual period rate may be adjusted by the latest announced change in the CPI-W for the prior 12-month period, limited to a maximum of 4% increase per contract period or any amount of decrease.

At any time during the contract, in the event of government mandated increases in minimum wages and/or federal FICA or Social Security tax rates, TWC may allow a proportional rate increase.

## ATTACHMENT 1 – TWC Terms & Conditions (12/2022)

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By responding to the solicitation or fulfilling the awarded Purchase Order (PO), the Vendor agrees to the terms and conditions below, which apply to and become a part of every Texas Workforce Commission (TWC) purchase. Only mutual written exceptions will be valid. Where a purchase is made without the Invitation for Bids (IFB), Request for Offers (RFO) or Request for Proposals (RFP) process, IFB/RFO/RFP/Proposal, equates to "Purchase Order" or "Contract" and "Bidder/Offeror/Proposer/Respondent/Contractor" equates to "Vendor." Any specification in the solicitation that conflicts with these standard terms and conditions takes precedence. All references to "days" shall be calendar days unless specified otherwise.

**\*\*\*NOTE TO VENDORS:** Any terms and conditions attached to a Vendor's solicitation response will not be considered unless the Vendor specifically refers to them on the face of the first page of its response.

**\*\*\*WARNING:** Such terms and conditions may result in disqualification of the submitted Vendor's response (e.g., responses with a requirement to apply the laws of a State other than Texas.)

### 1. SOLICITATION RESPONSE REQUIREMENTS

- 1.1. **Written Specifications:** TWC will not be bound by any oral statement or representation contrary to the written specifications contained in the solicitation.
- 1.2. **Incomplete Responses:** Late, illegible, incomplete, and/or unsigned responses may be deemed non-responsive and may not be considered.
- 1.3. **Freight:** Prices quoted are to include freight prepaid, F.O.B. Destination (Free on Board). Enter unit price on quantity and unit of measure specified - extend and show total. In case of errors in extension, unit prices shall govern.
- 1.4. **Firm Pricing:** Prices submitted are expected to be firm for TWC acceptance for one hundred eighty (180) days from the solicitation deadline. "Discount from list" offers are not acceptable unless specifically requested. Cash discounts will not be considered in determining the low offer. All cash discounts submitted will be taken if earned. Prices must remain firm for the duration of the term of the PO/contract.

**The default Firm Pricing timeframe in this section may be superseded by specific Firm Pricing timeframes in the solicitation or in other parts of the contract.**

- 1.5. **Ties:** In the case of tie bids, the award will be made in accordance with the preferences listed under 34 Texas Administrative Code (TAC) § 20.306.
- 1.6. **Preferences:** In making an award, TWC shall apply the preferences listed at 34 TAC §20.306. For purchase or lease of computer equipment TWC shall apply a preference for manufacturers that have a computer recycling program as described in 1 TAC § 217.11.
- 1.7. **Bid Alteration/Withdrawal:** A submitted response to a solicitation cannot be altered or amended after the solicitation deadline, except by formal negotiation via the RFO/RFP processes. Any alteration made before the solicitation deadline is to be initialed by Vendor or the Vendor's authorized agent. Vendors are not allowed to withdraw their submitted response after the solicitation deadline without approval by TWC.
- 1.8. **Rejection of Bids:** In accordance with Texas Government Code §2156.008, TWC reserves the right to reject a bid in which there is a material failure to comply with specification requirements.

TWC may reject all bids or parts of bids if the rejection serves the State's best interest.

- 1.9. **Tax Exempt:** Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.
- 1.10. **Other Entities:** TWC requests that the Vendor extend the same contract prices and conditions to Local Workforce Development Boards (LWDB) and Child Care Management

Services (CCMS) entities contractually linked with TWC if awarded the contract.

**1.11. Identify All Parties:** TWC requires all business partners, equipment, support or maintenance providers who will perform under an awarded contract to be identified prior to contract award for TWC approval. Substitutions of providers shall be submitted in writing for TWC approval during the term of the agreement.

**1.12. No Travel:** TWC will not reimburse a Vendor for travel and expenses unless specifically provided for in the contract documents. In that event, such reimbursement will not exceed the state travel reimbursement rates and limits established by the then current General Appropriations Act.

## **2. GENERAL CONDITIONS**

**2.1. Certain Construction Liability Claims:** TWC will comply with the provisions of Texas Government Code, Chapter 2272 in the event that a claim for damages arises to which that chapter applies.

**2.2. Damage to Grounds and Buildings:** Vendor shall be financially responsible for any or all damage done by its employees, agents and subcontractors to TWC grounds and buildings. Vendor is responsible for the removal of all debris resulting from work performed under the contract.

**2.3. Disclosure of Information:** TWC, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records which are directly pertinent to this procurement.

### **2.4. Texas Public Information Act:**

**2.4.1.** 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").

**2.4.2.** All information submitted in response to the solicitation is subject to public disclosure pursuant to the Public Information Act. In the event of a request for information pertaining to the solicitation, TWC will comply with the provisions of the Public Information Act to protect the interests of the State of Texas. The Public Information Act allows the public to have access to information in the possession of a governmental body. Therefore, the Vendor must clearly identify any confidential or proprietary information on the page on which it appears in the solicitation response and reference the specific exception to disclosure in the Public Information Act that applies. Proprietary information identified by the Vendor in advance will be kept confidential to the extent permitted by state law. Any information not clearly identified as confidential or proprietary shall be deemed to be subject to disclosure pursuant to the Public Information Act.

**2.4.3.** All information, documentation and other material in connection with the solicitation or any resulting contract will be retained by TWC for the period specified in the Records Retention Schedule created under Texas Government Code, Chapter 441. The information will not be returned to the Vendor who submitted it during the retention period time.

**2.4.4.** In accordance with Texas Government Code § 2252.907, Vendor is required to make any public information created or exchanged with the State pursuant to any contract with TWC, 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 TWC.

### **2.5. Award of Contract:**

**2.5.1.** Responding to a solicitation is an offer to contract with the State based upon the terms, conditions, and specifications contained in the solicitation. Submitted responses do not become contracts unless and until they are accepted and an award is made by TWC Procurement and Hub-Services and a PO or a fully executed

contract is issued to the Vendor.

- 2.5.2.** TWC reserves the right to negotiate price and terms with any and all Vendors, to accept or reject all or any part of a Vendor's response, waive minor technicalities, to request Best and Final Offers from all or any Vendors, and make an award that represents Best Value to the agency or the State.
- 2.5.3.** Subsequent to award, TWC may, at its sole option, request the Vendor to negotiate contract amendments or renewals as is determined to be in the best interest of the agency or the State.
- 2.5.4.** TWC reserves the right to use a third party to negotiate price related to any Information Technology solicitation or contract.
- 2.5.5.** TWC reserves the right to make an award on the basis of low line-item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items in the sole discretion of the State.
- 2.6. Changes in Ownership:** During the term of the Contract or any extension or renewal thereof, the Vendor shall notify TWC in writing of any substantial change in the ownership or control of the Vendor as soon as possible, but no later than thirty (30) days before its occurrence.
- 2.7. Vendor Assignments:** No assignment is permitted by the Vendor without prior written consent of TWC. Any written request for assignment must be accompanied by written acceptance of the assignment by the assignee. Except where otherwise agreed in writing by TWC, assignment will not release Vendor from its obligations pursuant to the contract. TWC will comply with the provisions of Texas Government Code § 2262.056, when applicable, by providing notice to the Legislative Budget Board of a proposed assignment prior to approval of the assignment.
- 2.8. TWC Assignments:** TWC may sub-lease or assign equipment and related services provided via the contract to other entities which contract with TWC to provide agency support or services.
- 2.9. INDEMNIFICATION:**
  - 2.9.1. ACTS OR OMISSIONS: VENDOR SHALL INDEMNIFY AND HOLD HARMLESS TWC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**
    - 2.9.1.1. INFRINGEMENTS: VENDOR SHALL INDEMNIFY AND HOLD HARMLESS TWC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD-PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR**



**SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (1) USE OF THE PRODUCT OR SERVICE BY TWC FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (2) ANY MODIFICATION MADE BY TWC TO THE PRODUCT WITHOUT VENDOR'S WRITTEN APPROVAL, (3) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE VENDOR PURSUANT TO TWC'S SPECIFIC INSTRUCTIONS, (4) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TWC, OR (5) ANY USE OF THE PRODUCT OR SERVICE BY TWC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.**

- 2.9.1.2. IF VENDOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TWC PROVIDES VENDOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, VENDOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TWC, SHALL), AT VENDOR'S SOLE OPTION AND EXPENSE; (1) PROCURE FOR TWC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR**
- (2) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALITY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TWC'S USE IS NON-INFRINGEMENT.**

**2.9.2. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY:**

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

**ENTITY CUSTOMER.**

- 2.9.2.2. VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS TWC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS**

**IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

- 2.10. Vendor Performance:** In accordance with Texas Government Code §§2155.074, 2155.075, 2156.007, 2157.003 and 2157.125, Vendor performance may be used as a factor in the award.
- 2.11. Force Majeure:** TWC may grant relief from performance of an awarded contract or PO, or extend a performance period, if the Vendor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault of the Vendor. If the Vendor requests the relief, the burden of proof for the need of such relief shall rest upon the Vendor, who must file a written request for such release or extension. If TWC grants such relief due to circumstances known by the agency, the agency must document such reasons in the contract file.
- 2.12. Dispute Resolution Procedures:**
- 2.12.1. Procurement Disputes:** In accordance with Texas Government Code, § 2155.076, TWC has adopted rules for resolving vendor protests relating to the solicitation, evaluation, or award of a contract for goods and/or services. See 40 TAC, Chapter 800, subchapter H. Such protests must be made via email to [twcvendor@twc.texas.gov](mailto:twcvendor@twc.texas.gov) and/or mail and received in the Director of Business Operations' office within ten (10) business days from the date the protestant knew or should have known of the occurrence of the action that is protested, but not later than ten (10) business days of the date of the announcement of the award. The protest must be in writing and contain: (1) the identifying name and number of the Solicitation being protested; (2) identification of the specific statute or regulation that the Protestant alleges has been violated; (3) a specific description of each act or omission alleged to have violated the statutory or regulatory provision identified above in (2) above; (4) a precise statement of the relevant facts including: (A) sufficient documentation to establish that the protest has been timely filed; and (B) a description of the resulting adverse impact to the Protestant; (5) a statement of the argument and authorities that the Protestant offers in support of the protest; (6) an explanation of the action the Protestant is requesting from the Agency; (7) a statement confirming that copies of the protest have been mailed or delivered to any other Interested Party known to the Protestant; and (8) the protest must be signed by an authorized representative for the Protestant and the signature notarized. TWC will make available to the protestor all requested documents not exempted from disclosure under Texas and federal law.
- TWC will provide copies of these documents upon payment of the fees adopted by TWC for record duplication. The Director will issue the final written decision to the protestor. TWC may move forward with a Solicitation or contract award without delay, in spite of a timely filed protest, to protect the best interests of the Agency or the state.
- 2.12.2. Contract Disputes:** Disputes arising under this Contract shall be resolved in accordance with the dispute resolution process provided in Chapter 2260 of the Texas Government Code.
- 2.13. Debt to the State:** Vendor agrees that any payments due under this contract will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.
- 2.14. Hold-Over Contract Extension:** In the event contract renewal negotiations are not completed prior to the contract expiration date, both parties agree that services shall be provided by the Vendor and accepted by TWC, subject to all original terms and conditions

of the contract, for a period not to exceed ninety (90) days following the original contract expiration date. During the hold over extension period, service costs shall be provided at the pro-rated rates, as applicable, in effect immediately prior to expiration of the original contract period and all other terms and conditions shall remain in effect. TWC may terminate such hold over extension period by providing written notice of cancellation not less than ten (10) business days prior to the cancellation date.

- 2.15. Records Retention:** Vendor and any subcontractor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents relevant to showing that any payments under this Contract were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Vendor shall maintain all such documents and other records relating to this Contract and the State's property 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. If Vendor chooses not to preserve contracting information for the retention period required by this section, Vendor agrees to provide at no cost to TWC all contracting information related to the Contract that is in the custody or possession of Vendor or any of its subcontractors.
- 2.16. Agency's Right to Audit:** Vendor and any subcontractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to this Contract, including but not limited to work papers, reports, books, records, and supporting documents. Vendor and any subcontractors shall provide TWC with any information that TWC deems relevant to any investigation or audit. Vendor must retain all work and other supporting documents pertaining to this contract, for the purposes of inspecting, monitoring, auditing, or evaluating by TWC. For the purpose of this section, TWC's right to audit extends to any agency of the Federal government or State of Texas authorized by law or TWC, including an investigation or audit by the State Auditor.
- 2.17. State Auditor:** Pursuant to Texas Government Code §2262.154, 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.

Vendor and any subcontractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all requested information and materials. Vendor's failure to comply with this section shall constitute a material breach of contract and shall authorize TWC and the State of Texas to immediately assess appropriate damages for such failure.

Vendor shall ensure that this provision concerning the State's authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards.

- 2.18. Limitation on TWC's Liability:** TWC will not be liable for any incidental, indirect, special, or consequential damages under contract, Tort, (including negligence), or other legal theory.

TWC's liability to Vendor under the contract will not exceed the total charges to be paid by TWC to Vendor under the contract.

- 2.19. State Ownership:** The Parties agree that TWC will own all right, title and interest in and to the work products including deliverables, source and object code and documentation developed by the Vendor in connection with the contract.

**2.19.1.** All work products including deliverables, source and object code and

documentation, in whole or in part, will be deemed works made for hire of TWC for purposes of copyright law and copyright will belong solely to TWC.

- 2.19.2.** To the extent that any such work product or deliverable does not qualify as a work made for hire under applicable law, and to the extent that the deliverable or work product includes materials subject to copyright, patent, trade secret, or other proprietary right protection, Vendor agrees to assign, and hereby assigns, all right, title, and interest in and to the work products and deliverables, including without limitation all copyrights, inventions, patents, trade secrets, and other proprietary rights therein (including renewals thereof) to TWC.
- 2.19.3.** Vendor will assist TWC or its nominees (including but not limited to the State of Texas) to obtain copyrights, trademarks, or patents for all such work products or deliverables in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer to TWC all the right, title, and interest in and to such work products or deliverables. Vendor agrees to not assert any moral rights under applicable copyright law with regard to such work products and deliverables.
- 2.19.4.** Vendor agrees to reproduce and include TWC's copyright and other proprietary notices and product identifications provided by Vendor on such copies, in whole or in part, or on any form of the work products or deliverables.
- 2.20. License:** In accordance with 2 C.F.R. §200.315, all appropriate State and Federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate or otherwise use, and to authorize others to use for State or Federal purposes all materials, deliverables and work products, including software and modifications thereof, and associated documentation designed, developed, or installed with Federal Financial Participation under the contract, including but not limited to those materials covered by copyright, all source and object code, instructions, files, and documentation composing the system.
- 2.21. Most Favored Customer:** If during the term of the contract, the Vendor enters into another contract with any customer for substantially similar services at prices more favorable than those provided to TWC, the contract may be amended at TWC's discretion to provide the more favorable prices to TWC.
- 2.22. Governing Law and Venue:** The contract shall be executed in and governed, construed and interpreted under the laws of the state of Texas, without regard to the conflicts of law provisions. Vendor agrees that proper venue for a claim arising under the contract shall be brought in a court of competent jurisdiction in Travis County, Texas.
- 2.23. Survival:** Expiration or termination of the contract for any reason does not release Vendor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.
- 2.24. Severability:** If any provision of the contract is construed to be illegal or invalid, such provision shall be deemed stricken and deleted to the same extent and effect as if never incorporated into the contract, but all other provisions shall remain in full force and effect.
- 2.25. Block Terrorism:** TWC and the Vendor must adhere to the directions in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism. This Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at

<http://www.Sam.gov>

- 2.26. No Waiver:** Nothing in this contract shall be construed as a waiver of the TWC's or the State's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the TWC or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TWC or the State of Texas under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TWC does not waive any privileges, rights, defenses, or immunities available to TWC by entering into this contract or by its conduct prior to or subsequent to entering into this contract.
- 2.27. Redacted Electronic Copy:** Texas Government Code § 322.020 and as per the following requirements, no later than two (2) business days after Vendor's receipt of notice from TWC, the Vendor must deliver to TWC an electronic copy of its complete proposal. Vendor shall deliver these electronic copies to TWC via email in compliance with all of the following requirements:
- 2.27.1.** An email containing a copy of Vendor's response to solicitation, in searchable Portable Document Format (PDF) format, which has excised, blacked out, or otherwise redacted information from its solicitation response that Vendor reasonably considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de minimis portion, if any, of Vendor's solicitation response, such as social security numbers). The email shall also contain an Appendix for Vendor's solicitation response which provides a cross reference for the location of all information redacted by Vendor and a general description of the redacted information. The PDF should be entitled "For Public Release: Redacted Version of [Name of Vendor]'s Proposal and Exhibits. Texas Workforce Commission's RFP/RFO/IFB solicitation No. \_."
- 2.27.2.** Per Texas Government Code § 322.020, the Texas Legislative Budget Board (LBB) has now implemented a major contracts database.
- 2.27.3.** TWC shall upload to the LBB's contracts database the text of the complete contract (with limited redaction and appendix) no later than thirty (30) days after date of contract award. By submitting a response to this solicitation, Vendors acknowledge that they understand and accept this requirement. See the LBB website at <http://www.lbb.state.tx.us/>.
- 2.28. American Recovery and Reinvestment Act (ARRA or the Recovery Act):** Buy American Requirements for Construction Material prohibits the use of funds appropriated for the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- 2.29. Build America, Buy America Act (BABAA):**
- 2.29.1.** Buy America Requirements for Infrastructure projects prohibits the use of federal funds for any project for the construction, alteration, maintenance, or repair of Infrastructure unless all of the iron, steel, manufactured products, and construction materials used in the project are produced and/or manufactured in the United States.
- For the purpose of this section, "Infrastructure" means the structures, facilities and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property in the United States.
- 2.29.2. Waiver:** The Head of the funding Federal Agency or designee may issue a

waiver to the Buy America requirements in limited circumstances including (i) compliant iron, steel, manufactured products, and or construction materials are not available; (ii) utilizing compliant iron, steel, manufactured products, and or construction materials will increase the cost of the overall project by more than 25 percent; (iii) for a reason determined to be in the public interest based on criteria established by the funding Federal agency; or (iv) to address exigent circumstances.

Vendors seeking a waiver from the BABAA Buy America preference must submit a waiver request along with written justification to TWC. Waivers requested will be considered on a case-by-case basis. TWC will inform the Vendor if there is already a waiver in effect covering Vendor's waiver request along with the existing waiver's parameters. If TWC agrees with the waiver request, TWC will submit the request to the responsible federal agency. Upon receiving the federal agency response, TWC will inform the Vendor whether the request was rejected or granted in whole or part.

- 2.29.3. Certification:** Vendor certifies that it will comply with the provisions of BABAA (Public Law 117-58, §§ 70901- 70952) for Infrastructure Projects.
- 2.29.4. Pass-Through Requirement:** Vendor must pass BABAA compliance obligations to any subcontractors for Infrastructure projects paid for with federal funds. Vendor shall require the subcontractor to certify compliance as a condition of any applicable subcontract.
- 2.30. Whistleblower Protection:** Pursuant to 41 U.S.C. § 4712, Vendors may not discharge, demote, or discriminate against employees for reporting information that employee reasonably believes is evidence of gross mismanagement of a federal grant or contract, gross waste of federal funds, abuse of authority relating to a federal grant or contract, a substantial and specific danger to public health or safety, or a violation of a law, rule, or regulation relating to a federal contract or grant. Employees subject to adverse action in violation of this section may file a complaint with the Office of the Inspector General no later than three years from the date of the adverse action. Vendors must provide written notification of these whistleblower protections to employees performing on covered contracts.
- 2.31. Background Check:** Vendors must submit criminal background checks on all key personnel assigned to the services related to this solicitation, as authorized by Texas law, and at Vendor expense. Key personnel are defined as personnel whose oversight and guidance is essential to the subject services. TWC may provide any finalist for a contract position a Contractor Criminal History Report Investigation Request form P33c which Vendor must complete and submit back to TWC as required on the form. To obtain a facility access badge, Vendor must provide TWC with either a completed form P-33c or a recent criminal background check within fifteen (15) days of contract award. TWC will not issue a Purchase Order until the criminal background check has been completed and passed.
- 2.32.** To the extent that Vendor's staff are provided access to and workspace within TWC buildings, Vendor's staff will abide by TWC policies and procedures expressed in Chapter 1 of the Texas Workforce Commission Personnel Manual in existence and as amended from time to time.
- 2.33. Privacy:** Vendor who has access to sensitive personally identifiable information ("Sensitive PII"), including anyone who views, contracts, collects, uses, maintains, stores, or destroys Sensitive PII of TWC employees, job seekers, employers, customers, or partners (including any employees of the State of Texas), must safeguard that information.
- 2.33.1.** Sensitive PII is anything that alone or in combination with available information can identify an individual, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual.
- 2.33.2.** Awarded Vendor must have a Non-Disclosure Agreement (NDA) on file with

TWC prior to handling Sensitive PII

- 2.33.3.** In order to safeguard Sensitive PII, Awarded Vendor must:
- 2.33.3.1.** Collect Sensitive PII only as authorized.
  - 2.33.3.2.** Limit the use of Sensitive PII.
  - 2.33.3.3.** Minimize the proliferation of Sensitive PII.
  - 2.33.3.4.** Secure Sensitive PII both physically and in electronic form.
  - 2.33.3.5.** Report suspected privacy incidents within twenty-four (24) hours to the TWC Contract Manager or, email the TWC Information Security Office at [CISO@twc.texas.gov](mailto:CISO@twc.texas.gov).
  - 2.33.3.6.** Not transmit or store Sensitive PII in a server or storage device that is located in a foreign country.
  - 2.33.3.7.** Awarded Vendor will not transmit Sensitive PII via email or store on CDs, DVDs, thumb drives and the like without prior review and encryption protocol approved by TWC.
  - 2.33.3.8.** Failure to follow these requirements will constitute a breach of contract.
- 2.34. Change in Law:** Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or state law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- 2.35. Davis-Bacon Act:** Vendors on all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act (40 U.S.C. §§3141-3144) as supplemented by the Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.")
- 2.36. Anti-Kickback:** Vendor will comply with the Copeland "Anti- Kickback" Act (18 U.S.C. § 874) and "Regulations Governing Contractors and Subcontractors" (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").
- 2.37. Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701-3708):** For all contracts in excess of \$100,000 that involve the employment of mechanics and laborers, Vendor shall comply with 40 U.S.C. §§3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
- 2.38. Environmental Protection:** Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.).
- 2.39. Contracting Information Responsibilities:** If this contract has a stated value equal to or in excess of \$1 million or results in the expenditure of an amount equal to or in excess of \$1 million in public funds, 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 requirement applicable to TWC for the duration of the Contract, (2) promptly provide to TWC any contracting information related to the contract that is in the custody or possession of the Vendor on request of TWC, and (3) on termination or expiration of the contract, either provide at no cost to TWC 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 TWC. Except as provided by Texas Government Code §552.374(c), the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the contract and Vendor agrees that the contract may be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 2.40. Disaster Recovery Plan:** In accordance with 13 TAC § 6.94(a)(9), Vendor shall provide to TWC the description of its business continuity and disaster recovery plans.

- 2.41. Media Releases:** Vendor shall not use TWC's name, logo, or other likeness in any press release, marketing material, or other announcement without TWC's or the relevant state agency's prior written approval. TWC does not endorse any vendor, commodity, or service. Vendor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the solicitation response, or the services to which they relate without the prior written consent of the relevant state agency, and then only in accordance with explicit written instruction from the relevant state agency. Vendors must obtain written approval from the TWC Contract Manager not more than fifteen (15) business days and not less than five (5) business days prior to any media release related to this Contract.
- 2.42. Specific Conditions for Disclosing Federal Funding in Public Announcements:** The parties agree that all statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, the parties shall clearly state:
- 2.42.1.** the percentage of the total costs of the program or project which will be financed with Federal money;
  - 2.42.2.** the dollar amount of Federal funds for the project or program; and,
  - 2.42.3.** the percentage and dollar amount of the total costs of the project or program that will be financed by non- governmental sources.
- 2.43. Prohibition of Text Messaging and E-mailing While Driving During Official Federal Grant Business:** The parties and their employees and representatives are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately-owned vehicle during official contract business, or from using government supplied electronic equipment to text message or email when driving. The parties must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009.
- 2.44. All work performed and Services provided under this Contract shall be performed in the United States.**

### **3. REQUIRED CERTIFICATIONS**

By responding to this solicitation and accepting the award of a contract or purchase order, Vendor certifies to the following:

- 3.1.** Vendor represents and warrants that all statements and information prepared and submitted in this Proposal are current, complete, true, and accurate. Submitting a Proposal with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Proposal and any resulting contract.
- 3.2. All Terms and Conditions Met:** that all terms and conditions listed in the solicitation will be met.
- 3.3.** By submitting the Proposal, Vendor represents and warrants that the individual submitting this document and the documents made part of this Proposal 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 this Proposal.
- 3.4. U.S. Department of Homeland Security's E-Verify System:** By entering into this Contract, the Vendor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine eligibility of:
  - 3.4.1.** All persons employed to perform duties within Texas, during the term of the Contract; and
  - 3.4.2.** All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.



- 3.4.3.** The Vendor shall provide, upon request of TWC, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E- Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Vendor, and Vendor's subcontractors, as proof that this provision is being followed.
- 3.4.4. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of TWC and at no fault to TWC, with no prior notification. The Vendor shall also be responsible for the costs of any re-solicitation that TWC must undertake to replace the terminated Contract.**
- 3.5. Inducements/Dealings with Public Servants:** Pursuant to Texas Government Code § 2155.003, the Vendor affirms it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted solicitation response.
- 3.6. Lobbying:** that the Vendor will not and has not used any federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Vendor certifies that it shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL. Further, Vendor certifies that no funds provided under the contract will be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with State or local legislators.
- 3.7. Not Ineligible:** that neither the Vendor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participating in this contract by any state or federal agency.
- 3.8. Non-Discrimination:** The Vendor agrees that no person will, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits or be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Vendor certifies compliance with Sections 504 and 508 of the Rehabilitation Act(29 U.S.C. §§ 794, 794d); the Housing and Urban Development Act § 3 (12 USC §1701u); Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e); Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal contract Compliance Programs, Equal Employment Opportunity Department of Labor."; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101); and all amendments to each.
- 3.9. Drug-Free Workplace:** The Vendor agrees to provide a drug- free workplace in compliance with the Drug- Free Workplace Act of 1988 (41 U.S.C., Chapter 81, Subtitle IV).
- 3.10. Franchise Tax:** The Vendor is not currently delinquent in the payment of any franchise tax owed to the State of Texas, pursuant to Chapter 171, Texas Tax Code.
- 3.11. Child Support:** The Vendor is not ineligible to receive the specified grant, loan, or payment under Texas Family Code § 231.006 (relating to child support) and acknowledges that the contract may be terminated, and payment may be withheld if certification is inaccurate. Pursuant to Texas Family Code § 231.006(c), Vendor must provide the name and Social Security

Number (SSN) of each person with at least 25% ownership of the business. This information must be provided prior to contract award.

- 3.12. Certain Bids and Contracts Prohibited:** Under Texas Government Code §2155.004, Vendor certifies that the individual or business entity named in the solicitation response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and/or payment withheld if this certification is inaccurate.
- 3.13. Fair Business Practices:** The Vendor has not been found to have engaged in unfair business practices in a judicial or state agency administrative proceeding during the preceding year. The Vendor further affirms that no officer of the Vendor has served as an officer of any company found to have engaged in unfair business practices in a judicial or state agency administrative proceeding during the preceding year.
- 3.14. Antitrust Affirmation:** Affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor have violated any federal antitrust law; and (3) neither I nor any representative of the Vendor have directly or indirectly communicated any of the contents of this Response to a competitor of the Vendor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Vendor.
- 3.15. No Compensation:** The Vendor has not received compensation for participation in the preparation of the solicitation. This section does not prohibit a Vendor or contract participant from providing free technical assistance.
- 3.16. Conflict of Interest:** Vendor has disclosed any existing or potential conflict of interest relative to the performance of the contract. Failure to do so will be grounds for contract termination.
- 3.17. Prohibition on Certain Bids and Contracts related to Disasters and Hurricanes Katrina and Rita:** Under Texas Government Code § 2155.006 and § 2261.053, the Vendor certifies that the individual or business entity named in response to this solicitation is not ineligible to receive the specified contract and acknowledges that any contract resulting from this solicitation may be terminated and payment withheld if this certification is inaccurate.
- 3.18. Independent Contractor:** Vendor or Vendor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any contract resulting from this solicitation. Vendor and Vendor's employees, representatives, agents and any subcontractors shall not be employees of TWC or the State of Texas. Should Vendor subcontract any of the services required in this solicitation, Vendor expressly understands and acknowledges that in entering into such subcontract(s), TWC or the State of Texas are in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this solicitation and any resulting contract.
- 3.19. Insurance Requirements: (The default insurance requirements in this section may be superseded by specific insurance requirements in the solicitation or in other parts of the contract).** Vendor certifies it maintains insurance coverage in accordance with statutory limits and these requirements:
- Workers Compensation:** Statutory Limits Employers Liability: Each Accident \$1,000,000 Disease – Each Employee \$1,000,000  
Disease – Policy Limit \$1,000,000

### **Commercial General Liability:**

Occurrence based:

Bodily Injury and Property Damage Each occurrence limit: \$1,000,000 Aggregate limit: \$2,000,000

Medical Expense each person: \$5,000

Personal Injury and Advertising Liability: \$1,000,000 Products/Completed Operations Aggregate Limit: \$2,000,000 Damage to Premises Rented to You: \$50,000.

NOTE: The required coverage is to be with companies licensed in the state of Texas with an "A" rating from A.M. Best and authorized to provide the corresponding coverage.

- 3.20. Felony Criminal Convictions:** Vendor represents and warrants that Vendor has not and Vendor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Vendor has fully advised TWC as to the facts and circumstances surrounding the conviction.
- 3.21. Restricted Employment for Former State Officers or Employees Under Texas Government Code §572.069:** Vendor certifies that it has not employed and will not employ a former TWC or state officer or employee who participated in a procurement or contract negotiations for TWC or the State of Texas involving Vendor within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
- 3.22.** Vendor certifies that both of the following statements are true and correct, and that the Vendor understands that making a false statement is a material breach of the contract and is grounds for termination of contract award:
- 3.22.1.** Vendor is current in Unemployment Insurance taxes, Payday and Child Labor law monetary obligations, and Proprietary School fees and assessments payable to the State of Texas, to the extent applicable.
- 3.22.2.** Vendor has no outstanding Unemployment Insurance overpayment balance payable to the State of Texas.
- 3.23. Entities that Boycott Israel:** In contracts worth \$100,000 or more in value, if Vendor is a Company as defined by Texas Government Code § 808.001 with 10 or more full-time employees, and Vendor is not a sole proprietorship, Vendor represents and warrants that, pursuant to Texas Government Code § 2271.002, Vendor does not boycott Israel and will not boycott Israel during the term of any contract executed with TWC.
- 3.24. Prohibition on Contracts with Companies Boycotting Certain Energy Companies, Texas Government Code Chapter 2274:** In contracts worth \$100,000 or more in value, if Vendor is a Company with 10 or more full-time employees, Vendor verifies that it does not boycott energy companies as defined in Texas Government Code § 2274.001(1) and will not boycott energy companies during the term of this contract.
- 3.25. Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries, Texas Government Code, Chapter 2274:** In contracts worth \$100,000 or more in value, if Vendor is a company with 10 or more full-time employees, Vendor verifies, that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and Vendor will not discriminate against a firearm entity or firearm trade association during the term of this contract.
- 3.26. Prohibition on Contracts or Other Agreements with Certain Foreign-Owned Companies in Connection with Critical Infrastructure in this State, Texas Government Code, Chapter 2274:** If this contract involves Vendor accessing critical

infrastructure as defined in Texas Government Code § 2274.0101, Vendor certifies that Vendor is not:

- (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia or a designated country as defined in §2274.0101(4); or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia or other designated country as defined in § 2274.0101(4); or
- (2) headquartered in China, Iran, North Korea, Russia, or other designated country as defined in § 2274.0101(4).
- (3) This provision applies regardless of whether the Vendor's or its parent company's securities are publicly traded, or the Vendor or its parent company is listed on a public stock exchange as a Chinese, Iranian, North Korean, or Russian company or a company of a designated country.

**3.27. 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.

**3.28. COVID-19 Vaccine Passport Prohibition:** Under Section 161.0085 of the Texas Health and Safety Code, Vendor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Vendor's business. Vendor acknowledges that such a vaccine or recovery requirement would make Vendor ineligible for a state-funded contract.

**3.29. Executive:** Vendor certifies it is in compliance with Texas Government Code §669.003, relating to contracting with the executive head of a State agency. If applicable, Vendor will complete the following for TWC evaluation:

Former Executive Name: \_\_\_\_\_

State Agency Name: \_\_\_\_\_

Date Separated from Agency: \_\_\_\_\_

Position with Vendor: \_\_\_\_\_

Date employed with Vendor: \_\_\_\_\_

**3.30. Buy Texas:** Vendor agrees to comply with Texas Government Code §2155.4441, pertaining to purchasing products and materials produced in the State of Texas.

**3.31. Texas Bidder Affirmation:** Vendor certifies that if a Texas address is shown as the address of the Vendor on this solicitation response, Vendor qualifies as a Texas Bidder as defined in Texas Government Code § 2155.444(c).

**3.32. Human Trafficking:** Under Texas Government Code §2155.0061, Vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate. Further, Vendor acknowledges that TWC may not award a contract to person convicted of on any offense related to the direct support of promotion of human trafficking during the five-year period preceding the date of award and that if TWC determines that Vendor is ineligible to have accepted the contract, TWC may immediately terminate the contract without further obligation to Vendor.

**3.33. Trafficking in Persons:** The parties acknowledge the requirements of 2 C.F.R., Part 175, including the U.S. Department of Education's modifications to these requirements, and agree to comply with the requirements regarding trafficking in persons.

**3.34. Disclosure of Prior State Employment:** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Vendor certifies that it does not employ an individual who has been employed by TWC or another agency at any time during the two (2) years preceding submission of the solicitation response or, in the alternative, Vendor has disclosed in its solicitation response the following: (a) the nature of the previous employment with TWC or the other agency; (b) the date employment was terminated; and (c) the annual rate of compensation for the employment at the time of termination.

**3.35. Former Agency Employees:** In accordance with Texas Government Code § 2252.901, Vendor represents and warrants that none of its employees, including but not limited to those authorized to provide services under the contract were former employees of TWC during the twelve (12) month period immediately prior to the date of execution of the contract.

If the contract is for professional services as described by Chapter 2254 of the Texas Government Code, Vendor represents and warrants that if a former employee of TWC was employed by Vendor within one year of the employee's leaving the Agency, then such employee will not perform services on projects with Vendor that the employee worked on while employed by the TWC in accordance with Section 2252.901 of the Texas Government Code.

**3.36.** Vendor represents and warrants that if selected for award of a contract as a result of this solicitation, Respondent will submit to Agency a Certificate of Interested Parties, prior to contract execution as required by Texas Government Code §2252.908.

**3.37. Cybersecurity Training:** Vendor represents and warrants that it will comply with the requirement of Texas Government Code §2054.5192 relating to cybersecurity training and required verification of completion of the training program. Specifically, if Vendor or any Vendor employee of subcontractor employee has access to a state computer system or database, Vendor shall ensure that Vendor, or any Vendor employee or subcontractor employee completes a cybersecurity training program certified under Texas Government Code §2054.519 as selected by TWC. The cybersecurity training program must be completed by Vendor during the term of the contract and during any renewal period. Vendor shall verify completion of the cybersecurity training to the TWC point of contact.

**3.38. Computer Equipment Recycling Program:** Vendor hereby certifies its compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act located in Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 TAC, Chapter 328. Failure of a Vendor to provide this certification shall render the Vendor ineligible to participate in the bidding process. TWC shall reject the related bid and not evaluate it.

**3.39. Television Equipment Recycling Program:** Vendor certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.

**3.40. Changes to Financial Condition:** Vendor warrants it will notify TWC in writing of a change in financial condition during the contract term and any renewal thereof at the time the change occurs or is identified. For the purposes of this section, examples of a substantial change in financial condition are events such as insolvency, bankruptcy, or receivership.

#### **4. SPECIFICATIONS**

**4.1.** Any catalog, brand name or manufacturer's reference used in the solicitation is descriptive only (not restrictive) and is used to indicate type and quality desired. Submitted responses containing other brands that are functionally equivalent will be considered unless TWC has advertised the solicitation as

proprietary under Texas Government Code §2155.067. If Vendor takes an exception to

the solicitation's specifications and Vendor's response contains equivalent product, Vendor is required to include additional information such as manufacturer, brand or trade name, illustrations, and specifications for the equivalent product as part of their response to the solicitation. If Vendor takes no exception to the specifications, the Vendor must furnish the item(s) as specified in the solicitation.

- 4.2.** Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation. Written warranty is to be provided with product and is to include the point-of-contact name, phone number, and all information needed to initiate a warranty service call.
- 4.3. No Substitutions:** Vendor will not make any substitution to the specifications of any solicitation or PO, unless the substitution is (1) proposed to TWC in writing by the Vendor, and (2) supported by the expressed written prior approval of TWC.
- 4.4. Replacement Parts Available:** The Vendor, in connection with an agreement with the manufacturer of the equipment, warrants that new or reconditioned replacement parts will be available until five (5) calendar years after the date of the award of the contract. All replacement parts must meet or exceed original manufacturer's specifications and be compatible with existing equipment.
- 4.5.** All electrical items must meet all applicable standards and regulations and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
- 4.6.** Vendor guarantees product offered will meet or exceed specifications; that the product is new, in current production, including the manufacturer's standard equipment and accessories; and is qualified for full maintenance coverage, service and support at, or below, the manufacturer's standard maintenance rates.
- 4.7. Projects Using Iron or Steel Products:** Pursuant to Texas Government Code §2252.202, iron or steel products produced through a manufacturing process and used in the project must be produced in the United States.

## **5. DELIVERY**

- 5.1.** Vendor is to show the number of days required to place material in the receiving location under normal conditions. Failure to state delivery time obligates Vendor to complete delivery within fourteen (14) days. Unrealistically short or long delivery promises may cause Vendor's response to be disregarded. Consistent failure to meet delivery promises will be grounds for termination of the contract.
- 5.2.** If delay is foreseen, Vendor shall give written notice to TWC who reserves the right to extend delivery date if reasons appear valid. Vendor must keep TWC advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes TWC to purchase the ordered products elsewhere and charge full increase, if any, in cost and handling to defaulting Vendor. Any damages incurred by TWC as a result of the default may also be assessed to the defaulting Vendor.
- 5.3.** Delivery shall be made on State business days between 8:00 am and 5:00 pm, unless prior approval has been obtained from TWC.

## **6. VALIDATION, INSPECTION & TESTS**

- 6.1.** Vendor agrees to provide TWC with information necessary to validate any statements made in the Vendor's solicitation response, if requested by TWC. This may include, but is not limited to, allowing access for on-site observation, granting permission for TWC to verify information with third parties, allowing inspection of Vendor's records, and allowing inspection of plans for compliance.
- 6.2.** All goods will be subject to inspection and test by TWC to the extent practicable at all times and places. Tests may be performed on samples called for, or on samples taken from regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specification, the cost of the sample used, and the

cost of the testing shall be borne by the supplier. Goods that have been delivered and rejected in whole, or in part may, at TWC's option, be returned to the Vendor or held for disposition at Vendor's risk and expense. Latent defects may result in revocation of acceptance.

## **7. INVOICING INSTRUCTIONS**

- 7.1.** Invoices must be submitted to TWC according to the instructions on the PO and emailed to [APPO@twc.texas.gov](mailto:APPO@twc.texas.gov).
- 7.2.** Invoices must include:
  - 7.2.1.** Vendor's name; mailing address and e-mail (if applicable); telephone number and correct remittance address, including city, state, and zip code;
  - 7.2.2.** the name and telephone number of a person designated by the Vendor to answer questions regarding the invoice;
  - 7.2.3.** TWC's name, agency number, and delivery address;
  - 7.2.4.** TWC PO number;
  - 7.2.5.** contract number or other reference number, if applicable;
  - 7.2.6.** a valid Texas identification number (TIN) issued by the comptroller;
  - 7.2.7.** an itemized description of the goods or services, in sufficient detail to identify the order or authorization, which relates to the invoice;
  - 7.2.8.** unit numbers corresponding to the amount of the invoice, unit cost, and total amount being billed;
  - 7.2.9.** discounts, if applicable, must be stated, extended, and deducted to arrive at a Net Total for the invoice;
  - 7.2.10.** if submitting an invoice after receiving an assignment of a contract, the TIN of the original contractor and the TIN of the successor vendor;
  - 7.2.11.** other relevant information supporting and explaining the payment requested, if necessary; and
  - 7.2.12.** any other information required by applicable state and federal laws, rules, and regulations.

## **8. PAYMENT**

- 8.1.** Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 governs remittance of payment and remedies for late payment and non-payment.
- 8.2.** TWC will incur no penalty for late payment if payment is made within thirty (30) days of acceptance of goods or services, or within thirty (30) days of receipt of an uncontested invoice submitted according to the instructions on the PO, whichever comes last.
- 8.3.** In no event shall use of the product by TWC, for any purpose during any phase of the acceptance testing, constitute acceptance of any product by TWC.
- 8.4.** Prior to any payment being made, the goods or services being invoiced must have been received and accepted by TWC.
- 8.5.** The vendor must be notified of an error or disputed amount in an invoice submitted for payment not later than the 21st day after receipt of the invoice. Notification to the vendor must include the following: (1) Detailed statement of the amount of the invoice, which is disputed, (2) TWC may withhold payments no more than 110 percent of the disputed amount.

## **9. PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS**

- 9.1. VENDOR SHALL INDEMNIFY, SAVE AND HOLD HARMLESS THE STATE OF**

**TEXAS FROM AND AGAINST CLAIMS OF PATENT, TRADEMARK, COPYRIGHT TRADE SECRET OR OTHER PROPRIETARY RIGHTS, VIOLATIONS OR INFRINGEMENTS ARISING FROM THE STATE'S OR VENDOR'S USE OF ACQUISITION OF ANY SERVICES OR OTHER ITEMS PROVIDED TO THE STATE OF TEXAS BY VENDOR OR OTHERWISE TO WHICH THE STATE OF TEXAS**

HAS ACCESS AS A RESULT OF VENDOR'S PERFORMANCE UNDER THIS CONTRACT, PROVIDED THAT THE STATE SHALL NOTIFY VENDOR OF ANY SUCH CLAIM WITHIN A REASONABLE TIME OF THE STATE'S RECEIVING NOTICE OF ANY SUCH CLAIM. IF VENDOR IS NOTIFIED OF ANY CLAIM SUBJECT TO THIS SECTION, VENDOR SHALL NOTIFY TWC OF SUCH CLAIM WITHIN FIVE (5) BUSINESS DAYS OF SUCH NOTICE. NO SETTLEMENT OF ANY SUCH CLAIM SHALL BE MADE BY VENDOR WITHOUT TWC PRIOR WRITTEN APPROVAL. VENDOR SHALL REIMBURSE THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, JUDGMENTS OR ANY OTHER AMOUNTS, INCLUDING BUT NOT LIMITED TO, ATTORNEY'S FEES AND COURT COSTS, ARISING FROM SUCH CLAIM. VENDOR SHALL PAY ALL REASONABLE COSTS OF THE STATE'S COUNSEL AND SHALL ALSO PAY COSTS OF MULTIPLE COUNSEL, IF REQUIRED TO AVOID CONFLICTS OF INTEREST.

- 9.2. Should the goods, or use of the goods, become the subject of a claim of infringement of a United States patent, trademark, copyright, trade secret or other proprietary rights, TWC may require the Vendor to procure for TWC the right to continue using the goods, to replace or modify the same to remove the infringement, or to accept return of the goods.
- 9.3. Vendor represents that it has determined what licenses, patents and permits are required under this contract and has acquired all such licenses, patents and permits.
- 9.4. Vendor agrees that for the exclusive use by TWC or the State of Texas for State business, TWC and the State of Texas are free to reproduce without royalty, all manuals, publications, maintenance programs, diagnostics and documentation pertaining to any product developed as a result of the contract.

**10. TERMINATION PROVISIONS**

- 10.1. The contract shall not be construed as creating a debt on behalf of TWC in violation of Article III, § 49a of the Texas Constitution. Vendor understands that all obligations of TWC under the contract are subject to the availability of state funds.
- 10.2. **Termination for Cause:** TWC reserves the right to immediately terminate any PO or contract resulting from or connected to this solicitation, in whole or in part, without recourse or penalty, for breach of contract by the Vendor.
- 10.3. **Termination for Convenience:** TWC reserves the right to terminate any PO or contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) days' advance written notice, if TWC determines that such termination is in the best interest of the state.
- 10.4. In the event of such termination under 10.2 or 10.3, Vendor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TWC and the State of Texas shall be liable for payments limited only to the portion of work TWC expressly authorized in writing and which Vendor has completed, delivered to TWC, and which has been accepted by TWC in writing. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TWC and the State of Texas shall have no other liability, including no liability for any costs associated with the termination.
- 10.5. TWC expressly reserves any and all legal remedies to which it may be entitled to collect related to any and all damages directly or indirectly resulting from breach of contract, by the Vendor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of the Vendor.
- 10.6. TWC shall retain ownership of all work products including deliverables, source and object code, and documentation in whatever form that they exist. In addition to any other provision, the Vendor shall transfer title and deliver to the TWC any partially



completed work products, deliverables, source and object code, or documentation that the Vendor has produced or acquired in the performance of the contract.

## **11. INFORMATION TECHNOLOGY (IT) PURCHASES**

- 11.1.** During the term of the contract, the Vendor must notify TWC whenever an engineering change is made that may affect TWC's use of the product. It will be the sole option of TWC to accept the change.
- 11.2.** Vendor represents that the product and all its elements, including, but not limited to, documentation and source code, meet the standards issued by the American National Standards Institute.
- 11.3.** Vendor agrees that TWC owns the source code to any jointly- developed application(s) resulting from the contract.
- 11.4.** As required by 1 TAC, Chapters 206 and 213:
  - 11.4.1.** Effective September 1, 2006, state agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC, Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
  - 11.4.2.** Vendor shall provide TWC with the URL to its completed Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act of 1973, as amended (29 USC § 794d)). Vendors not supplying a URL to its completed VPAT must provide TWC with a report that addresses the same accessibility criteria in substantively the same format. Additional information on obtaining a copy of the VPAT is located at <https://www.itic.org/policy/accessibility/vpat>.
  - 11.4.3.** TWC will use the completed VPAT to assess the degree of accessibility of a proposed product when making the procurement decision.
- 11.5.** Vendor shall follow Web Content Accessibility Guidelines (WCAG). Vendor shall follow the most recent official W3C Recommendation for WCAG in effect at the time of publication of the RFP. The current version of the WCAG guidelines is available on the W3C Accessibility Standards website (<https://www.w3.org/WAI/standards-guidelines>).
- 11.6.** Vendor agrees that all products and/or services equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to sanitize data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/or services, in accordance with 1 TAC, Chapter 202 or NIST 800-88.
- 11.7.** In accordance with Texas Government Code § 2054.138, and to the extent that the Vendor is authorized to access, transmit, use, or store data for the agency, Vendor agrees to meet the security controls put in place by the Agency to protect Agency data. The Vendor agrees to provide the Agency evidence that the Vendor meets the security controls required by the contract annually or more often as requested by the Agency.
- 11.8. Cloud Computing State Risk and Authorization Management Program (TX-RAMP):** Pursuant to Texas Government Code § 2054.0593(d)-(f), relating to cloud computing state risk and authorization management program, Vendor represents and warrants that it complies with the requirements of the state risk and authorization management program and Vendor agrees that throughout the term of the contract it shall maintain its certifications and comply with the program requirements in the performance of the contract.

## **12. ADDITIONAL TERMS**

- 12.1. Abortion Provider and Affiliate Transactions Prohibited:** Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Texas Government Code § 2273.003 and that payments made by Agency to Respondent and Respondent's receipt of appropriated funds under the contract are not prohibited by Article IX, § 6.24 of the General Appropriations Act.
- 12.2. Binding Effect:** The 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.
- 12.3. Federal Occupational Safety and Health Law:** Respondent represents and warrants that all articles and services 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).
- 12.4. Immigration:** Respondent represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
- 12.5. Legal and Regulatory Actions:**
- Respondent represents and warrants that it is not aware of and has received no notice of any threatened or pending material civil or criminal litigation involving the Respondent or the individuals or entities included in the Response, nor has Respondent or the individuals or entities included in the Response received any final judgment, entered into any settlement agreement, or been placed under consent decree stemming from material civil or criminal litigation within the five (5) calendar years immediately preceding the submission of the Response. "Material Litigation" means any action, suit, proceeding, inquiry, or investigation—including civil investigative demand—against Respondent or the individuals or entities included in the Response by or before any arbitrator, court, tribunal, or governmental authority that a reasonable person knowledgeable of the applicable industry would believe would or could (i) impair Respondent's performance under the contract, relate to the solicited or similar goods or services, result in a substantial change in Respondent's financial condition, or (iv) otherwise be relevant to Agency's consideration of the Response.
- 12.5.1.** If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such threatened, pending, or resolved Material Litigation.
- 12.5.2.** Respondent represents and warrants that it shall notify Agency of any threatened or commenced Material Litigation in writing within five (5) days of its occurrence and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.
- 12.6. License:** Respondent hereby grants to Agency a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to Respondent; and (b) to sublicense any or all such rights to third parties.
- 12.7. Limitation on Authority:** Respondent shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expense or liability of any kind on behalf of Agency or the State of Texas.
- 12.8. No Third-Party Beneficiaries:** The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and

assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

- 12.9. Use of State Property:** Respondent is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, Agency's office space, identification badges, Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Agency-issued software, and the Agency Virtual Private Network (VPN client)), and any other resources of Agency. Respondent shall not remove State Property from the continental United States. In addition, Respondent may not use any computing device to access Agency's network or e-mail while outside of the continental United States. Respondent 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 Respondent, Respondent 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 Respondent's use of State Property that exceeds the contract scope. Respondent shall fully reimburse such charges to Agency within ten (10) days of Respondent's receipt of Agency'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 Agency under contract, at law, or in equity.
- 12.10. Refund:** Vendor will promptly refund or credit within thirty (30) days any funds erroneously paid by TWC which are not expressly authorized under the contract.
- 12.11. Subcontractors:** Vendor may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the TWC. Subcontracts, if any, entered into by the Vendor shall be in writing and be subject to the requirements of the contract. Should Vendor subcontract any of the services required in the contract, Vendor expressly understands and acknowledges that in entering into such subcontract(s), TWC is in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.