

Texas Military Department
Standard Terms and Conditions

Revision 7

Affirmations and Certifications

Respondents are asked to read the Standard Terms and Conditions in its entirety. If any assurance is shown to be false, the Contract may be terminated, payment withheld, and the Respondent shall be liable to Texas Military Department (TMD) for attorney's fees and the costs necessary to complete the contract, including the cost of advertising and awarding a subsequent contract:

1. Abortion Provider and Affiliate Transactions Prohibited

Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Section 2272.003 of the Texas Government Code and that payments made by Agency to Respondent and Respondent's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.

2. Agency's Right to Audit

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

3. Americans With Disabilities Act

Respondent represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA) and its implementing regulations, as each may be amended.

4. Assignment (for Goods)

Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from Agency. Any attempted assignment in violation of this provision is void and without effect.

Or

Neither Party may assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without the prior written consent of the other Party, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void. Notwithstanding the foregoing, upon prior written notification to the other Party, either Party may assign the contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without such prior written consent to: (1) a successor in interest (for Agency, another state agency as designated by the Texas Legislature) or (2) a subsidiary, parent company, or other entity in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

5. Antitrust Affirmation

The undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response neither I nor any representative of the Respondent have violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Response, neither I nor any representative of the Respondent have violated any federal antitrust law; and (3) neither I nor any representative of the Respondent have directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership, or individual engaged in the same line of business as the Respondent.

6. 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.

Or

The contract shall be binding upon and shall ensure to the benefit of Agency and Respondent and to their representatives, successors and assigns

7. Buy Texas Affirmation

In accordance with Section 2155.4441 of the Texas Government Code, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

8. Change in Law and Compliance with Laws

Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without a written amendment hereto and shall become effective on the date designated by such law or by regulation.

Or

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

9. Contract Term

The initial term of the contract shall be for one (1) year from [Insert Date] to [Insert Date]. Agency may, in its sole discretion, exercise the option to extend the contract for up to three (3) additional one (1) year periods. To exercise the option to extend the term, the Agency will notify Respondent; such notice may be by Purchase Order issuance.

10. Child Support Obligation Affirmation

Under Section 231.006 of the Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate in addition to other remedies set out in 231.006(f).

Name:		SSN:	
Name:		SSN:	
Name:		SSN:	

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

11. Cloud Computing State Risk and Authorization Management Program (TX-TAMP)

Pursuant to Section 2054.0593 (d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, Respondent represents and warrants that it complies with the requirements of the state risk and authorization management program and Respondent 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. Computer Equipment Recycling Program

Respondent certifies its compliance with Subchapter Y, Chapter 361, of the Texas Health and Safety Code and the Texas Commission Environmental Quality rules in 30 TAC Chapter 328.

13. Contracting Information Responsibilities

In accordance with Section 552.372 of the Texas Government Code, Respondent agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Agency for the duration of the contract, (2) promptly provide to the Agency any contracting information related to the contract that is in the custody or possession of the Respondent on request of the Agency, and (3) on termination or expiration of the contract, either provide at no cost to the Agency all contracting information related to the contract that is in the custody or possession of the Respondent or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Agency. Except as provided by Section 552.374(c) of the

Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

14. COVID-19 Vaccine Passport Prohibition

Respondent 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 Respondent's business. Respondent acknowledges that such a vaccine or recovery requirement would make Respondent ineligible for state-funded contract.

15. Critical Infrastructure Affirmations

Pursuant to Government Code Section 2275.0102, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2275.0103, or (2) headquartered in any of those countries.

16. Cybersecurity Training

Respondent represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.

17. Damage to Government Property

Respondent shall be liable for all damage to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the contract. Respondent shall notify the Agency in writing of any such damage within one (1) calendar day. Respondent is responsible for the removal of all debris resulting from work performed under the contract.

Or

In the event of loss, destruction or damage to any Agency or State of Texas property by Respondent or Respondent's employees, agents, subcontractors, and suppliers, Respondent shall be liable to Agency and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property. Respondent will reimburse Agency and the State of Texas for such property damage within ten (10) calendar days after Respondent's receipt of Agency's notice of amount due.

18. Disclosure of Interested Parties

Respondent represents and warrants that if selected for award of a contract as a result of the Solicitation, Respondent will submit to Agency a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.

19. Discounts

If Respondent at any time during the term of the contract provides a discount on the final contract costs, Respondent will notify Agency in writing ten (10) calendar days prior to effective date of discount. Agency will generate a Purchase Order Change Notice and send a revised Purchase Order to Respondent.

Or

Notwithstanding any other provision to the contrary, all the benefits, pricing and any hourly rates granted by Respondent to Agency herein are at least as favorable as the benefits, pricing and hourly rates granted by Respondent to any previous client of Respondent for services and/or products similar to those provided hereunder. If Respondent enters into any subsequent agreement with any other client during the term of this contract which provides for benefits, pricing and/or hourly rates that are more favorable than those contained in this contract, Respondent shall notify Agency promptly of the existence of such more favorable benefits, pricing and/or hourly rates and Agency shall have the right to receive the more favorable contractual terms immediately. If requested in writing by Agency, Respondent hereby agrees to amend this contract to contain the more favorable benefits, pricing and/or hourly rates.

20. Electrical Items

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

21. Equal Employment Opportunity

Respondent represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

22. 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).

23. Force Majeure

Neither Respondent nor Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party

could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

24. 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.

25. Independent Contractor

Respondent acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Respondent and its personnel are not employees of the Agency or the State of Texas.

Or

Respondent and Respondent's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Respondent nor Agency is an agent of the other and neither may make any commitments on the other party's behalf. Should Respondent subcontract any of the services required in the contract, Respondent expressly understands and acknowledges that in entering into such subcontract(s), Agency is in no manner liable to any subcontractor(s) of Respondent. In no event shall this provision relieve Respondent of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Respondent shall have no claim against Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between Respondent and Agency.

26. Legal and Regulatory Actions

Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. In addition, Respondent represents and warrants that it shall notify Agency in writing within five (5) business days of any changes to

the representations or warranties in this clause and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.

27. License Grant (Simple)

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

28. Data Management and Security Controls

In accordance with Section 2054.138 of the Texas Government Code, Respondent certifies that it will comply with the security controls required under this contract and will maintain records and make them available to Agency as evidence of Respondent's compliance with the required controls.

29. Dealings with Public Servants Affirmation

Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response.

30. Debts and Delinquencies Affirmation

Respondent agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

31. Disclosure of Prior State Employment

In accordance with Section 2254.003 of the Texas Government Code, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by Agency or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Respondent has disclosed in its Response the following: (i) the nature of the previous employment with Agency or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

32. Energy Company Boycotts

If Respondent is required to make a verification pursuant to Section 2276.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.

33. Entities that Boycott Israel

If Respondent is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, Respondent certifies that Respondent does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Respondent does not make that certification, Respondent must indicate that in its Response and state why the certification is not required.

34. E-Verify Program

Respondent certifies that for Contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:

- a) all persons employed by Respondent to perform duties within Texas; and
- b) all persons, including subcontractors, assigned by Respondent to perform work pursuant the contract within the United States of America

35. Excluded Parties

Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.

36. Executive Head of a State Agency Affirmation

Under Section 669.003 of the Texas Government Code, Respondent certifies that it does not employ or has disclosed its employment of any former executive head of the Agency. Respondent must provide the following information in the Response.

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

37. False Statements

Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response 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 Response and any resulting contract.

38. Financial Participation Prohibited Affirmation

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

39. Firearm Entities and Trade Associations Discriminations

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

40. Foreign Terrorist Organizations

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

41. Former Agency Employees

Respondent 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 Agency during the twelve (12) month period immediately prior to the date of execution of the contract.

42. Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

43. Lobbying Prohibition

Respondent represents and warrants that Agency's payments to Respondent and Respondent's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.

44. Media Releases

Respondent shall not use Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without Agency's prior written approval. Agency does not endorse any vendor, commodity, or service. Respondent is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the

Response or the services to which they relate without Agency's prior written consent, and then only in accordance with explicit written instructions from Agency.

45. No Conflicts of Interest

Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

46. No Felony Criminal Convictions

Respondent represents that neither Respondent nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Respondent has fully advised Agency in writing of the facts and circumstances surrounding the convictions.

47. Prior Disaster Relief Contract Violation

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

48. Public Information Act

Information, documentation, and other material in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State

49. Signature Authority

By submitting the Response, Respondent represents and warrants that the individual submitting this document, and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response.

50. Standard of Care for Architectural and Engineering Contractors

Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Respondent shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

51. State Auditor's Right to Audit

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.

52. Suspension and Debarment

Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

53. Technology Access Clause

Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairment. Accordingly, Respondent represents and warrants to Agency that the technology provided to Agency for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in formats intended for nonvisual use; and
- being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For the purposes of this Section, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Title 1, Chapter 213, Subchapter B of the Texas Government Administrative Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

54. Television Equipment Recycling Program

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

55. Terms and Conditions Attached to Response

Attached to Response Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.

56. Texas Bidder Affirmation

Respondent certifies that if a Texas address is shown as the address of the Respondent on the Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

57. Disaster Recovery Plan

In accordance with 13 TAC 6.94(a)(9), upon request of TMD, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.

58. Dispute Resolution

The dispute resolution process provided for in chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract.

59. Dispute Resolution

(Engineering, Architectural, or Construction Services)

Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and set forth below in subsections (a)-(d) shall be used by the parties to attempt to resolve all disputes arising under this contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)- (d).

- a) Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if the Respondent's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, Respondent may make a claim against Agency for breach of contract and the Agency may assert a counterclaim against the Respondent as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Respondent must provide written notice to Agency of a claim for breach of the contract not later than the 180th day after the date of the event giving rise to the claim. The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount the Respondent seeks as damages; and (3) the legal theory of recovery.

- b) The chief administrative officer, or if designated in the contract, another officer of the Agency, shall examine the claim and any counterclaim and negotiate with the Respondent in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
- c) If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a party's rights under this contract as to the parts of the claim that are not resolved.
- d) If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with Agency, unless the parties agree in writing to an extension of time, the parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is the Respondent's sole and exclusive process for seeking a remedy for an alleged breach of contract by the Agency if the parties are unable to resolve their disputes as described in this section.
- e) Nothing in the contract shall be construed as a waiver of the state's or the Agency'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 State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to 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. Agency does not waive any privileges, rights, defenses, or immunities available to Agency by entering into this contract or by its conduct, or by the conduct of any representative of Agency, prior to or subsequent to entering into this contract.
- f) Compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the

Respondent:

- i. filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code;
or
- ii. initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.

60. Excess Obligations Prohibited

The contract is subject to termination or cancellation, without penalty to Agency, either in whole or in part, subject to the availability of state funds.

61. Governing Law and Venue

The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent Jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the contracting Agency.

62. Indemnification (General)

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

63. Indemnification (Engineering or Architectural Services)

RESPONDENT SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, 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 DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO RESPONDENT'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE RESPONDENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO RESPONDENT, OR ANY OTHER ENTITY OVER WHICH THE

CONTRACTOR EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM

64. Indemnification (IP)

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

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

65. National Anthem Verification

If Respondent is a professional sports team as defined by Section 2004.002 of the Texas Occupations Code, Respondent will play the United States national anthem at the beginning of each team sporting event held at the Respondent's home venue or other venue controlled by Respondent for the event. Failure to comply with this obligation constitutes a default of this contract, and immediately subjects Respondent to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Respondent may be debarred from contracting with the State. The Agency or the Attorney General may strictly enforce this provision.

66. Abandonment or Default

If Respondent defaults on this Contract, Texas Military Department reserves the right to cancel this Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible Respondent. The defaulting Respondent will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the agency based on the seriousness of the default

67. Delivery

If delay is foreseen, Respondent shall give written notice to Agency immediately upon discovering a delay will occur. Respondent must keep Agency advised at all times of status of progress for the services being provided. Default in meeting deliverable timelines (without accepted reasons) or failure to meet deliverable specifications authorizes Agency to purchase the services of this solicitation elsewhere and charge any increased costs for the services, including the cost of rebidding, to the Respondent. No substitutions are permitted without written approval of Agency.

68. Disclosure of Potential Conflicts of Interest; Certain Contracts Prohibited

Pursuant to Section 2261.252 of the Texas Government Code, the Department may not enter into a Contract for the purchase of goods or services with a private vendor if certain positions within the agency including the Adjutant General, Executive Director, General Counsel or the Procurement Director or their covered family members have a financial interest in the vendor. Any contract found to violate Government Code 2261.252 is void.

69. Drug-Free Workplace

Respondent represents and warrants that it shall comply with the applicable provisions of the Drug- Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.) and maintain a drug-free work environment.

70. Entire Agreement

Any Contract resulting from this solicitation represents the entire agreement between the parties. No prior agreement or understanding, oral or otherwise, of the parties or their agents will be valid or enforceable unless embodied in the Contract documents.

71. Fraud, Waste, and Abuse

By submitting a response, Respondent represents and warrants that it has read and understood and will comply with Agency's Anti-Fraud Policy, found at <https://www.comptroller.texas.gov/about/policies/ethics.php>, as such Policy currently reads and as it is amended throughout the term of the Contract.

72. 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.

73. No Implied Waiver

The failure of a Party to insist at any time upon the strict performances of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.

Or

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

Or

No provision of the contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Agency as an agency of the State of Texas or otherwise available to Agency. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to Agency by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

74. No Quantity Guarantees

Agency makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract.

Or

The contract is not exclusive to the Respondent. Agency may obtain products and related services from other sources during the term of the contract. Agency makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the contract.

75. 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.

Or

Nothing contained in the contract, either expressed or implied, is intended to confer on any person other than the Parties, or their respective permitted successors, assigns, transferees or delegates, any interests, rights, remedies, obligations or liabilities pursuant to, or by reason of, this contract.

76. Patents, Trademarks, and Copyrights

Respondent agrees to defend and indemnify the Agency and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the Agency's or the State's use of any good or service provided by the Respondent as a result of this solicitation.

77. Permits, Certifications, and Licenses

Respondent represents and warrants that it has determined what licenses, certifications and permits are required to perform services under the contract and has acquired all applicable licenses, certifications, and permits.

78. Prompt Payment

Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

Or

All payments to Respondent by Agency, any payments by Respondent to any subcontractor, and any payments by a subcontractor to any other person or entity that provides goods or services under this contract shall be made in compliance with Chapter 2251 of the Texas Government Code and 34 Texas Administrative Code § 20.487.

79. Property Rights

For purposes of the contract, the term “Work” is defined as all work papers, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property developed, produced, generated in connection with the services provided under the contract. Agency and Respondent intend this agreement to be a contract for the services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Respondent to be a work made for hire. Respondent and Respondent’s employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of Agency. Respondent acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of Agency. If for any reason the Work would not be considered a work-for-hire under applicable law, Respondent does hereby sell, assign, and transfer to Agency, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Respondent agrees to execute all papers and to perform such other property rights, as Agency may deem necessary to secure for Agency or its designee the rights herein assigned. In the event that Respondent has any rights in and to the Work that cannot be assigned to Agency, Respondent hereby grants to Agency an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon Agency’s request, Respondent shall deliver to Agency all completed, or partially completed, Work and any and all documentation or other products and results of the services. Failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of the contract. Respondent will not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of Agency.

Or

For purposes of the contract, the term “Work Product” is defined as all work papers, materials, approaches, designs, specifications, systems, software, programs, source code,

documentation, methodologies, concepts, intellectual property or other property and/or results of the services that are developed, produced, generated or provided to Agency in connection with, or as a result of, the services provided under the contract. Agency and Respondent intend this agreement to be a contract for the services and each considers and expressly intends and agrees that the Work Product to be rendered by Respondent shall be a work-made-for-hire. Respondent and Respondent's employees will have no rights in or ownership of the Work Product or any other property of Agency. Respondent acknowledges and agrees that the Work Product (and all rights therein, including without limitation all intellectual property rights) belongs to and shall be the sole and exclusive property of Agency. If for any reason the Work Product would not be considered a work-made-for-hire under applicable law, Respondent does hereby irrevocably sell, assign, and transfer to Agency, its successors and assigns, the entire right, title and interest in and to the Work Product and any and all intellectual property rights embedded therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Respondent agrees to execute all papers and to perform such other property rights, as Agency may deem necessary to secure for Agency or its designee the rights herein assigned. In the event that Respondent has any rights in and to the Work Product that cannot be assigned to Agency, Respondent hereby grants to Agency an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon Agency's request, Respondent shall deliver to Agency all completed, or partially completed, Work Product and any and all versions thereof. Failure to timely deliver such Work Product will be considered a material breach of the contract. Respondent will not make or retain any copies of the Work Product or any and all documentation or other products and results of the services without the prior written consent of Agency

80. Protest Procedures

Any actual or prospective Respondent who is aggrieved in connection with this solicitation, evaluation, or award of any Contract resulting from this solicitation may formally protest as provided in Texas Military Department rules at 37 TAC Rule 134.1.

81. Records Retention

Respondent shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims for contract

funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Respondent 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.

82. Refund

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

83. Restricted Employment for Certain State Personnel

Pursuant to Section 572.069 of the Texas Government Code, Respondent certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for Agency involving Respondent within two (2) years after the date that the contract is signed, or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state services or employment ceased on or after September 1, 2015.

84. Secure Erasure of Hard Disk Capability

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

85. Severability

If any provision of the contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

Or

If any provision of the contract is construed to be illegal, invalid or unenforceable, such construction will not affect the legality, validity or enforceability of any of its other provisions. It is the intent and agreement of the parties to this contract that this contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this contract will continue in full force and effect.

86. Smoke-Free Agency

Agency has a policy of being a smoke-free agency which includes but is not limited to electronic cigarettes. The policy reflects Agency's commitment to providing a healthy environment for all employees and visitors. This policy prohibits smoking within any state building or on the grounds. Respondent, by acceptance of the Contract, agrees to abide by this policy when on Agency property.

87. Sovereign Immunity

The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by Agency or the State of Texas of any immunities from suit or from liability that the Agency or the State of Texas may have by operation of law.

Or

Nothing in the contract shall be construed as a waiver of the Agency'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 Agency 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 Agency or the State of Texas under the 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. Agency does not waive any privileges, rights, defenses, or immunities available to Agency by entering into the contract or by its conduct prior to or subsequent to entering into the contract.

88. Subcontractors

Respondent may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of Agency. Subcontracts, if any, entered into by the Respondent shall be in writing and be subject to the requirements of the contract. Should Respondent subcontract any of the services required in the contract, Respondent expressly understands and acknowledges that in entering into such subcontract(s), Agency is in no manner liable to any subcontractor(s) of Respondent. In no event shall this provision relieve Respondent of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract.

89. Survival

Expiration or termination of the contract for any reason does not release Respondent 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.

90. Taxes

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Agency will furnish Tax Exemption Certificates upon request. Respondent represents and warrants that it shall pay all taxes or similar amounts resulting from the contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Respondent or its employees. Agency shall not be liable for any taxes resulting from the contract.

91. Termination for Convenience

Agency reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if Agency determines that such termination is in the best interest of the state. In the event of such a termination, Respondent must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Agency shall be liable for payments limited only to the portion of work Agency authorized in writing and which Respondent has completed, delivered to Agency, and which has been accepted by Agency. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. Agency shall have no other liability, including no liability for any costs associated with the termination.

Or

Agency may terminate the contract for convenience on thirty (30) calendar days' written notice. There is no buy out or other amounts due if Agency terminates early. Upon termination under this provision, Respondent shall refund to Agency any amounts attributable to the terminated months within thirty (30) days of the termination.

92. Termination for Failure

If the termination of the Contract is for failure of the Respondent to fulfill the Contract obligations, Agency may complete the work by Contract or otherwise and the Respondent will be liable for any additional cost incurred by Agency.

If, after termination for failure to fulfill Contract obligations, it is determined that the Respondent had not failed, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

93. Trademark License

Agency hereby grants to Respondent, for the term of the contract, a limited, non-exclusive, royalty- free, non-assignable, non-transferable license to reproduce Agency's trademarks (as depicted in Exhibit -) on published materials in the United States related to the performance of the contract, provided that such license is expressly conditional upon, and subject to, the following:

- a) Respondent is in compliance with all provisions of the contract;

- b) Respondent's use of the trademarks is strictly in accordance with the quality standards and in conformance with the reproduction requirements set forth in Exhibit _ or as otherwise communicated by Agency;
- c) Respondent takes no action to damage the goodwill associated with the trademarks, and refrains from any attempt to contest, attack, dispute, challenge, cancel and/or oppose Agency's right, title and interest in the trademarks or their validity;
- d) Respondent makes no attempt to sublicense any rights under this trademark license; and
- e) Respondent complies with any marking requests Agency may make in relation to the trademarks, including without limitation to use the phrase "Registered Trademark", the symbol "TM", the registered trademark symbol "®" and/or any equivalent thereof.

94. Trademark Ownership

Respondent hereby acknowledges and agrees that the trademarks remain the exclusive property of Agency, that all right, title and interest in and to the trademarks is exclusively held by Agency, and all goodwill associated with such trademarks inures solely to Agency.

95. Unfair Business Practices

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

96. Unresolved Audit Exceptions

The Respondent has no unresolved audit exceptions with Agency. An unresolved audit exception is an exception for which the Respondent has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.

97. 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 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 devices 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) calendar 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.

98. Waiver of Consequential Damages

NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, ANTICIPATED OR OTHERWISE, OR LOSS OF REVENUES IN CONNECTION WITH OR ARISING OUT OF, OR IN CONNECTION WITH, THE SUBJECT MATTER OF THIS CONTRACT.

99. Respondent Acknowledgment and Certification

Respondent hereby certifies by signing the Pricing Request (PR), Invitation for Bid (IFB), Request for Proposal (RFP), Request for Offer (RFO) and Request for Qualification (RFQ) document, it has received, reviewed the specification, statement of work, forms, terms, requirements, and conditions. The Respondent hereby acknowledges that it can meet all of the requirements as stated in the procurement methods outlined above excluding any requirements it took exception to as explicitly set forth in its Response.

The Respondent also certifies that the information included in its Response and on this form is, to the best of its knowledge, complete and accurate and that it shall update all such information at any time that such information changes. The Respondent certifies that the person signing the PR, IFB, RFP, RFO, and RFQ document is authorized.

100. Bids or Proposal

- a) All state agencies controlled by gubernatorially appointed heads, and public institutions of higher education, shall require any company that submits a bid or proposal with respect to a contract for goods or services to the agency or institution of higher education to certify that the company, and, if applicable, any of its holding companies or subsidiaries, is not:
 - i. Listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or
 - ii. Listed in Section 1260H of the 2021 NDAA; or
 - iii. Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or
 - iv. Controlled by any governing or regulatory body located in a country of the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. 791.4.

A covered agency or public institution of higher education cannot enter into a new contract, contract extension, or contract renewal for a good or service with any company that meets any of the above listed criteria. However, if the agency or public institution of higher education can sufficiently demonstrate that (a) the good or service is necessary for the covered agency or institution of higher education to fulfill a core function that directly benefits Texas and (b) the good or services can be provided by an entity that meets one of the above-listed criteria, then the covered agency or public institution of higher education may enter into a new contract, contract renewal, or contract extension with such an entity for no more than one year from the date of the issuance of this order, and never thereafter.

- b) No personnel of a state agency controlled by gubernatorially appointed heads, or of public institutions of higher education, shall accept any gift, regardless of value, from an entity associated with or travel to, for professional purposes, a country of the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4. All agencies and public institutions of public higher education affected by this order shall include this prohibition in their ethics policies and create a mechanism by which their employees can report being approached by groups representing these countries, that offer gifts or travel, or alleged violations of this ethics policy.
- c) The Texas Workforce Commission shall amend the state application to include an attestation by applicants that they are not employed by and do not have any connection or continuous connections to any governmental entity or political apparatus of a country listed in 15 C.F.R. § 791.4.

- d) The Office of the Governor, Texas Department of Public Safety, Texas Military Department, Public Utility Commission of Texas, Department of Information Resources, Texas Commission on Environmental Quality, Texas Division of Emergency Management, Office of Public Utility Counsel, Texas Department of Transportation, Texas Health and Human Services Commission, Texas Department of State Health Services, and public institutions of higher education must create processes by which their employees will notify the agency of any personal travel to a foreign-adversary nation prior to their travel and submit a post-travel brief outlining details of the trip, including the dates and purpose of travel, to their employer.
- e) Agencies controlled by gubernatorially appointed heads, and public institutions of higher education, must include in the minimum qualifications of the job descriptions of all positions that research, work on, or have access to critical infrastructure as defined in Section 113.001(2). Business and Commerce Code, that a requirement to be hired for and to continue to be employed in that position is the ability to maintain the security or integrity of the infrastructure.

Further, all the above-described personnel, and similarly situated state contractors, must be routinely reviewed to determine whether or not things such as criminal history or continuous connections to the government or political apparatus of a foreign adversary that might prevent the applicant, employee, or contractor from being able to maintain the security or integrity of the infrastructure.

To facilitate these reviews, DPS shall contract with a cyber intelligence company or other similar third-party that can conduct these reviews for agencies and public institutions of higher education. Alternatively, if an agency or public institution of higher education would like to directly contract for these review services, the agency or institution shall consult with DPS before procuring services.

- f) All public institutions of higher education that are required to submit reporting on foreign-gift and contract disclosures to the U.S. Department of Education under Section 117 of the Higher Education Act of 1965, must submit the same reporting to the Texas Higher Education Coordination Board (THECB). THECB shall submit a report outlining the data it receives from public institutions of higher education to the Governor, Lieutenant Governor, and Speaker by December 1st each year.
- g) All public institutions of higher education shall include in their employment manuals a prohibition on their faculty and employees from taking part in any foreign recruitment program by a foreign-adversary nation, such as the PRC's Thousand Talents Program.

All affected agencies and public institutions of higher education shall certify with, and submit documentation supporting their certification to, the Office of the Governor that they have effectuated the requirements of this order by the 60th day after that adjournment of the 89th Regular Session of the Texas Legislature.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by the Governor.

101. Executive order No. GA-48 hardening of state government

Respondent represents and warrants that it, and if applicable, any of its holding companies or subsidiaries, is not (1) listed in § 889 of the 2019 National Defense Authorization Act (NDAA), or (2) listed in § 1260H of the 2021 NDAA, or (3) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4, or (4) controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.