



REQUEST FOR PROPOSAL

RFP # 754-EnvGraphicsIDIQ-2021

For selection of a vendor to provide environmental graphics: design, production, and installation services to Texas State University ("Texas State" or "University")

PROPOSAL MUST BE RECEIVED AT THE DESIGNATED LOCATION SPECIFIED IN THIS SOLICITATION ON OR BEFORE:

**SUBMITTAL DEADLINE: Thursday, November 19, 2020 at 2:00 p.m.,
Central Standard Time (C.S.T.)**

MAIL, COURIER or HAND DELIVER PROPOSAL TO:

Texas State University
ATTN: Karlie Beach
Facilities Planning, Design, and Construction
601 University Drive, Physical Plant, Suite 104
San Marcos, TX 78666-4616

Show RFP Number, Opening Date and Time on Return Envelope

NOTES TO POTENTIAL RESPONDENTS:

Responses to this solicitation (Proposals) must be received at the location designated above and time stamped on or before the time and date specified in this solicitation in order to be considered.

Due to the nature of the solicitation and evaluation process being utilized, after receipt of proposals only the names of Respondents will be made public. Prices, terms and other proposal details will only be divulged upon written request after the contract award, if one is made. All proposals submitted shall become the property of the State of Texas upon receipt.

Issued on: October 22, 2020

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Section 1 – General Information & Objective

- 1.1 **Objective:** Texas State University (“Texas State” or “University”) is soliciting competitive Solicitations (“Request for Proposals” or “RFPs”) for the selection of a qualified and capable vendor(s) (one or more) to provide Environmental Graphics: Design, Production, and Installation Services to the University. This Solicitation sets forth the terms, conditions, and requirements for Respondents to be considered for this project. The University expects to enter into one or more contract(s) with the selected individual(s) or firm(s) to provide the services as further defined in **Section 5** of this RFP.
- 1.2 **History of University:** Beginning in 1886, San Marcos hosted a Summer Normal Institute where educators gathered to study and earn advanced certification. Those who came to San Marcos for study saw its promise as a site for a permanent Normal School to serve teachers in South Texas and in December 1892, they petitioned the Legislature for such a designation. Work on the Main Building began in 1902 and the Normal School was ready for 303 students and 17 faculty members when Southwest Texas State Normal School opened in 1903. Over the years, the Texas Legislature broadened the institution’s scope and changed its name successively to Southwest Texas State Normal College, Southwest Texas State Teacher’s College, and Southwest Texas State College and, in 1969, Southwest Texas State University. In 2003 the name was changed to Texas State University-San Marcos. Finally, in 2013, the name was changed to Texas State University. In a little over 100 years, the University changed from being little more than a High School into a prominent institution with 115 undergraduate, 84 masters and 6 PHD Degree programs. For current information on Texas State University, please visit our website at <http://www.txstate.edu/about/index.html>
- 1.3 **Mission Statement:** Texas State University is a doctoral granting, student-centered institution dedicated to excellence and innovation in teaching, research, including creative expression and service. The University strives to create new knowledge, to embrace a diversity of people and ideas, to foster cultural and economic development, and to prepare its graduates to participate fully and freely as citizen of Texas, the nation, and the world.
- 1.4 **Public Information:** All information, documentation, and other materials submitted in response to this Solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, et seq.) after the Solicitation is completed.
 - 1.4.1 University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act*, Chapter 552, and *Texas Government Code*.
 - 1.4.2 Provider is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise exempted 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.
 - 1.4.3 Information provided to Provider by the University, including information from representatives of The Texas State University System (TSUS) or any of its components, and information provided to Provider by members of the public or any other third party shall belong to the University.

- 1.4.4 Information created or otherwise produced by Provider shall remain the exclusive property of Provider. Provider acknowledges any final report or papers will be provided in accordance with this Agreement, and that any information contained in any report or papers, which Provider believes is confidential under Texas law will be clearly designated as such by Provider.
- 1.4.5 If the University receives a request for public information for any portion of any final report or papers that have been designated by Provider to be confidential, the University will provide notice to Provider and Provider may submit a brief to the Office of the Attorney General, as provided by Chapter 552, *Texas Government Code*.
- 1.5 Term: The term of any contract(s) resulting from this RFP shall be for one year and the University shall have the option to renew this Contract for three (3), additional one-year terms providing both parties agree in writing. If the University and successful Respondent are unable to negotiate and sign a Contract, the University reserves the right to seek an alternative Respondent.
- 1.6 Group Purchasing Authority: Texas law authorizes institutions of higher education (defined by Section 61.003, *Education Code*) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, *Education Code*). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Respondent under this RFP.
- 1.7 Clarifications and Interpretations: Any clarifications or interpretations of this Solicitation that materially affect or change its requirements will be issued formally by the University as a written addendum. It is the responsibility of all Respondents to check the status of formal addenda five (5) days before the submission deadline and to obtain this information in a timely manner. All such addenda issued by the University before the proposals are due shall be acknowledged by Respondents and incorporated into its response to the Solicitation.
- 1.7.1 Respondents shall be required to consider only those clarifications and interpretations that the University issues by addenda five (5) or more days prior to the submittal deadline. Interpretations or clarifications obtained in any other form, including oral statements, will not be binding on the University and should not be relied on in preparing proposals.
- 1.7.2 Addenda, if required, will be issued by the University for this Solicitation via the Electronic State Business Daily (ESBD) Website located at: <http://www.txsmartbuy.com/sp>
- It is the responsibility of each Respondent to check this website for any addenda posted referencing the RFP number provided in this Solicitation.
- 1.7.3 If Respondent takes exception to any terms or conditions set forth in the Sample Contract, attached to this solicitation for reference, the Respondent must submit a written list of the exceptions prior to the submittal deadline.
- 1.8 Type of Contract: Any Contract resulting from this Solicitation will be in the form of the University's standard Contract, a sample copy of which is attached to this Solicitation (**Attachment A**).

Texas State Board of Regents mandates that any contract resulting from this RFP be limited to \$1,000,000.00 per the life of the contract agreement (TSUS Policy & Procedures Manual for Planning & Construction, Section 2.10) Total expenditures shall not exceed this amount.

This is an Indefinite Delivery, Indefinite Quantity (IDIQ) contract and the University does not guarantee any minimum or maximum amounts or projects on awarded contracts.

Section 2 – Notice to Respondents

- 2.1 **Submittal Deadline:** The University will accept proposals submitted in response to this RFP until 2:00 p.m., C.S.T. on Thursday, November 19, 2020.

Proposals shall be submitted via mail, courier, or hand delivered, by deadline mentioned above, to the location specified on the front page of this solicitation.

- 2.1.1 Proposals received after the stated official deadline will be returned, if properly identified, to the Respondent. The University's authorized Point-of-Contact identified in **Section 2.2** will identify the official time clock at the Proposal submittal location identified above.
- 2.1.2 The University will not acknowledge or receive any Proposals that are delivered by telephone, facsimile (fax), or electronic mail (email).
- 2.1.3 If Proposal is sent by courier or mail, the Respondent is cautioned to allow sufficient time for delivery prior to the published deadline to the location specified in this RFP. The University has a decentralized mail system and the mail/courier delivery services may not deliver directly on campus. **It is the Respondent's sole responsibility for preparing, submitting and delivering a response with all required materials to the designated location on or before the published submittal deadline.** Courier or delivery services may not deliver directly to the specified location. It is strongly recommended that the response be hand carried to insure receipt at the proper location. If mailing or sending by courier, the Respondent is cautioned to allow sufficient time for delivery prior to the published deadline to the location specified.
- 2.1.4 Failure to deliver, for whatever reason, may not be grounds for disputing the procurement solicitation process or any resulting contract award.
- 2.1.5 Respondent materials must be enclosed in a sealed envelope, box or container, addressed to the Point-of-Contact identified on the front of this solicitation. The package must clearly identify the submittal deadline, the RFP number, and the name, return address, and email address of the Respondent.

Proposals shall be submitted as three (3) separate documents and must be packaged in separate sealed envelopes. Clearly mark to indicate the contents, within the sealed envelope, box, or container:

- 1.) Qualifications, Response to the Scope of Work (SOW), and Execution of Offer,**
- 2.) Pricing and Delivery Proposals, and**
- 3.) HUB Subcontracting Plan (HSP) if applicable**

- 2.1.6 The names of the submitting Respondents will be read aloud immediately following the date and time stated in **Section 2.1.**
- 2.1.7 Submit six (6) identical paper/hard copies of the response to the RFP (Proposal) and one electronic version (CD, etc.). An original signature must be included on one copy of the Execution of Offer.

- 2.1.8 Proposals must be typed on letter-size (8 ½" x 11") paper and must be submitted in bound copies. Preprinted material should be referenced in the Proposal and included as labeled attachments. Proposals shall include a Table of Contents and sections within the Proposal should be divided by tabs for ease of reference.
- 2.1.9 The Qualifications and Proposal section shall be a maximum of thirty-five (35) printed pages, double sided, with font 11 point. The cover, table of contents, divider sheets and Execution of Offer do not count as printed pages.
- 2.1.10 All pages of the Proposal should be numbered sequentially in Arabic numbers (1, 2, 3, etc.). Attachments should be numbered or referenced separately.
- 2.2 Point-of-Contact: The following individual is the University's authorized Point-of-Contact for this Solicitation. Respondents shall restrict all contact with other University staff and direct all questions regarding this Solicitation, including questions regarding terms and conditions, in writing to:
- Karlie Beach, Buyer III
Facilities Planning, Design, and Construction
Physical Plant Building
151-2 E. Sessom, Suite 104
San Marcos, Texas 78666
Phone: (512) 245-4725 Fax: (512) 245-9172
kbeach@txstate.edu
- 2.2.1 Point-of-Contact must receive all questions and concerns not later than the date and times specified in **Section 7**, Timeline of RFP Events.
- 2.2.2 University must have a reasonable amount of time to respond to questions or concerns.
- 2.2.3 It is the University's intent to respond to all appropriate questions and concerns however, University reserves the right to decline to respond to any question or concern.
- 2.3 Pre-Proposal Conference: Due to COVID-19, we will not be having a Pre-Proposal Conference.
- 2.4 Historically Underutilized Businesses (HUB) Submittal Requirements: All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a "**HUB**") in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state entities. Pursuant to the HUB program, if under the terms of any contract resulting from this RFP, Respondent subcontracts any of the services, then Respondent must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this Section 2.4 will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any contract resulting from this RFP. Respondent acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the services will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Services by the Respondent is subject to review by University to ensure compliance with the HUB program.

The HUB goals per TAC 20.13 are: 11.2% for heavy construction other than building contracts; 21.1% for all building construction, including general contractors and operative builder's contracts; 32.9% for all special trade construction contracts; 23.7% for professional services; 26.0% for all other services contracts; and 21.1% for commodities contracts.

For additional information regarding any aspect of the University's HUB Outreach Program, contact Destiny Llamas, HUB Specialist at (512) 245-2521 or HUB@txstate.edu. If the University determines that subcontracting opportunities are probable, then a HUB Subcontracting Plan is a required element of the response. Failure to submit a required HUB Subcontracting Plan will result in rejection of the Proposal.

- 2.4.1 Statement Of Probability: The University has determined that subcontracting opportunities are probable in connection with this procurement Solicitation. Therefore, a HUB Subcontracting Plan (HSP) is required as a part of the Respondent's Proposal. The Respondent shall develop and administer a HSP as a part of the Respondent's Proposal.
- 2.4.2 For further information regarding how to properly prepare a HSP and the forms, please access the following website:
<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>
- 2.4.3 Submit one (1) original, one (1) hard copy, and one electronic version (CD, etc.) of the HUB Subcontracting Plan (HSP) as a separate package to the Proposal package. The HSP should be clearly identified as specified in **Section 2.1** and annotated with the words "HUB Subcontracting Plan Enclosed".
- 2.4.4 Properly prepared and submitted HUB Subcontracting Plans and Proposals will not be returned to Respondents.
- 2.4.5 Respondents' HSPs will be reviewed for completeness prior to evaluations of the Proposals. For disqualified HSPs, the Proposal will be returned to the submitting Respondent, upon written request, after the selection of, negotiation with, and award of the requirements to the successful Respondent.
- 2.5 University's Reservation of Rights: The University reserves the right to accept or reject any or all Proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the Contract when deemed to be in the best interest of the University. University reserves the right to seek clarification from any Respondent concerning any item contained in its Proposal prior to final selection. Such clarification may be provided by telephone, conference or personal meeting with or writing to University, at University's sole discretion. University makes no representations, written or oral, that it will enter into any form of agreement or contract for any project with any Respondent to this Solicitation, and no such representation is intended or should be construed by the issuance of this Solicitation. Representations made by Respondent in its Proposal will be binding on Respondent.
- 2.6 Acceptance of Evaluation Methodology: By submitting its Proposal in response to this Solicitation, Respondent accepts the evaluation process and acknowledges and accepts that determination of the "most qualified" firm will require subjective judgments by the University. The results of this

most qualified determination will be combined with the Proposal evaluation results to determine the “best value” proposition for the University.

- 2.7 No Reimbursement for Costs: Respondent acknowledges and accepts that any costs incurred from the Respondent’s participation in this Solicitation process shall be at the sole risk and responsibility of the Respondent. Respondents submit Proposals at their own risk and expense.
- 2.8 Eligible Respondents: Only individual firms or lawfully formed business organizations may respond. The University will enter into a Contract only with an individual firm or formal organization that submits a Proposal.
- 2.9 Certain Proposals and Contracts Prohibited: Under Section 2155.004, *Texas Government Code*, a state agency may not accept a Proposal or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or Request for Proposals on which the Proposal or Contract is based. All Respondents must certify their eligibility by acknowledging the following statement, "Under Section 2155.004, *Texas Government Code*, the Respondent 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." If a state agency determines that an individual or business entity holding a state contract was ineligible to have the contract accepted or awarded as described above, the state agency may immediately terminate any Contract resulting from this Solicitation without further obligation to the successful Respondent. This section does not create a cause of action to contest a Proposal or award of a state contract, nor does it prohibit a Respondent from providing free technical assistance to a state agency.
- 2.10 Proposal Validity Period: Each Proposal must state that it will remain valid for University’s acceptance for a minimum of ninety (90) days after the submittal deadline, to allow time for evaluation, selection, any required additional approvals, and any unforeseen delays.
- 2.11 Submittal Modifications/Withdrawals: Except as otherwise provided in this RFP, no Proposal may be changed, amended, or modified after it has been submitted to University. However, a Proposal may be withdrawn and resubmitted at any time prior to the submittal deadline. No Proposal may be withdrawn after the submittal deadline without the University’s consent, which will be based on Respondent’s submittal of a written explanation and documentation evidencing a reason acceptable to University, in University’s sole discretion.
- 2.12 Required Notices of Insurance Coverage: During the term of any contract resulting from this Solicitation, the successful Respondent Agrees to procure and maintain, at its expense:

2.12.1 Workers Compensation Insurance with statutory limits, and Employer’s Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation and other rights in favor of University.

2.12.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 100,000
Medical Expenses (any one person)	\$ 10,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

Policy will include independent Successful Respondent's liability, covering, but not limited to, the liability assumed under the indemnification provision of this contract, fully insuring Successful Respondent's (or Subcontractor's) liability for bodily injury (including death) and property damage.

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage;

2.12.3 Comprehensive Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage. Such insurance is to include coverage for loading and unloading hazards.

Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or otherwise acceptable to the University.

Policies must include the following clauses, as applicable:

This insurance shall not be canceled, materially changed, or non-renewed until after thirty (30) days prior written notice has been given to the University. No policy will be canceled until after thirty (30) days' unconditional written notice to University.

It is agreed that the successful Respondent's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the University for liability arising out of operations under the any Contract resulting from this Solicitation with the University.

Texas State University and Texas State University Board of Regents is added as additional insured as respects the University's interests under any Contract resulting from this Solicitation. The additional insured status must cover completed operations as well. This is not applicable to the workers' compensation policy. All policies will be endorsed to provide a waiver of subrogation in favor of University. All policies with the exception of

Workers' Compensation and Employer's Liability will be endorsed to provide primary and non-contributory coverage.

Without limiting any of the other obligations or liabilities of the successful Respondent, the successful Respondent shall require each Subcontractor performing work under any Contract resulting from this Solicitation, at the Subcontractor's own expense, to maintain during the term of any Contract resulting from this Solicitation, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, the successful Respondent may include its Subcontractors as additional insured's on its own coverage as prescribed under these requirements. The successful Respondent's certificate of insurance shall note in such event that the Subcontractors are included as additional insured's and that the successful Respondent agrees to provide Workers' Compensation for the Subcontractors and their employees. The successful Respondent shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. The successful Respondent must retain the certificates of insurance for the duration of any Contract resulting from this Solicitation plus 5 years and shall have the responsibility of enforcing these insurance requirements among its subcontractors. The University shall be entitled, upon request and without expense, to receive copies of these certificates.

- 2.13 Payment Terms: University shall pay for work performed under any contract resulting from this Solicitation in accordance with *Texas Government Code*, Section 2251.021, "Prompt Payment Act". The University's standard terms of payment are Net 30 days; however, it will consider alternate payment terms if determined to be in the best interest of the University.
- 2.14 Parking Permit Requirements: There is no free parking on any Texas State University campus. The successful Respondent(s) will be required to purchase a parking pass for each vehicle that is parked on campus.
 - 2.14.1 Non-construction related parking: May purchase red restricted permits that will allow a broader range of parking places. Perimeter parking permits may also be purchased. However, perimeter-parking places are generally off-campus. There are two fee for parking garages on campus. One at 405 N. Edward Gary Street and one at 704 Gaillardia Street.
 - 2.14.2 Construction related parking: Construction related vehicles may be able to park inside the fenced staging areas, even though that space is not intended for parking use, but area will be limited to one to four spaces and be set aside for the Job Superintendent and other essential personnel. The Job Superintendent will provide the authorization for utilizing this space. This permit must be displayed at all times when parking inside the staging fence. Vehicles parked outside the pre-arranged staging area may be subject to ticketing, immobilization (booting), and towing at the vehicle owner's expense.
 - 2.14.3 All other personnel must purchase perimeter permits, will park in lot P/AZ 10W (Bobcat Stadium West) and be transported to the work-site.
 - 2.14.4 Vehicles illegally parked on campus or do not have a valid permit may be subject to ticketing, immobilization (booting), and towing at the vehicle owner's expense.

2.14.5 For parking permit types and associated costs, please visit the following link:

<https://www.facilities.txstate.edu/pdc/Vendor-Information-Page.html>

The parking map may be viewed at <https://www.parking.txstate.edu/map.html>

- 2.15 Nondiscrimination: In their execution of this agreement, all contractors, subcontractors, their respective employees, and others acting by or through them shall comply with all federal and state policies and laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this agreement.
- 2.16 Criminal Background Checks: Successful Respondent shall be required to provide criminal background checks on employees that will be assigned to work on campus. Provider will provide representation that it has conducted the following background checks on its officers, employees, or other persons it causes to be on the campus:
- 2.16.1 Sex offender and criminal history databases where the above individuals will be placed on campus, working with or around students;
- 2.16.2 Criminal history and credit history background checks where the above individuals will be handling money, informational technology, or other security-sensitive areas as determined by University;
- 2.16.3 Provider will determine on a case-by-case basis whether each individual assigned to perform the Work is qualified to provide the services. Provider will not knowingly assign any individual to provide services on University's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses.
- 2.16.4 Provider will provide University a letter signed by an authorized representative of Provider certifying compliance with this Section. Provider will provide University an updated certification letter each time there is a change in the individuals assigned to perform Work on the university campus.
- 2.17 Payment and Performance Bonds: The successful Respondent may be required to secure payment and performance bonds at any time during the contract term. The need for bonds will be determined by the university's designee. The successful Respondent agrees to execute the Payment and Performance Bonds within ten (10) calendar days after notification. The bond(s) shall be in the amount specified by the university's designated representative.
- 2.18 Contract Administration: The University will monitor the successful Respondent's progress and performance and ensure services conform to the established specifications and requirements. At the conclusion of each project or contract term, the University will complete a Contractor/Vendor Evaluation (see **Attachment C**). The evaluation is based on assessment of the output and outcome measures and compliance with the terms and conditions of the Contract. Contract monitoring and performance evaluations will be performed by the Contract Administrator or Contract Manager.

Section 3 – Requirements of Proposal

Respondents shall carefully read the information contained in the following criteria and submit a complete response to all requirements in **Section 3** and formatted as directed in **Section 2.1**. Incomplete responses will be considered non-responsive and will be subject to rejection.

- 3.1 Selection Criteria and Evaluation of Proposals: Evaluation of the Proposals shall be based on the requirements described in this Solicitation. All properly prepared and submitted Proposals shall be reviewed, evaluated, and ranked by the University. University, at its sole discretion, may make the selection on the basis of Proposals initially submitted, without discussion, clarification, or modification. In the alternative, University may choose to make a selection based on negotiations with any Respondents. Proposals shall be evaluated based on the weights assigned below to the criterion:

Proposed methodology of delivering goods or services, the extent to which the methodology meets the University's needs, quality of goods and services proposed, and Respondents ability to provide the goods or services;

And

Respondents qualifications and references (includes but is not limited to reputation of Respondent & Respondent's past relationship with University). 60%

Cost of proposed goods or service 40%

Total 100%

- 3.2 Negotiations and Clarifications: At University's sole option and discretion, University may discuss and negotiate all elements of the Proposals submitted by selected Respondents within a specified competitive range. University may establish, after initial review of the Proposals, a competitive range of acceptable or potentially acceptable composed of the highest rated Proposal(s). In that event, University will defer further action on Proposals not included within the competitive range pending the selection of a Provider; provided, however, University reserves the right to include additional Proposals in the competitive range if deemed to be in the best interests of the University. If additional information or clarifications are needed, the University shall provide a written request to the appropriate Respondent and shall require all responses to be made in writing.
- 3.3 Best and Final Offers: Before final selection is made, University may permit Respondent(s) to revise its/their Proposal in order to obtain the Respondent's "best and final offer" or BAFO. In that event, representations made by Respondent in its revised Proposal, including price and fee quotes, will be binding on Respondent. University will provide each Respondent within the competitive range with an equal opportunity for discussion and revision of its Proposal. University is not obligated to select the Respondent offering the most attractive economic terms if that Respondent is not the most advantageous to University overall, as determined by University.
- 3.4 Award Based on "Best Value": The Respondent selected for award of any Contract resulting from this Solicitation will be the Respondent whose Proposal is judged most advantageous and the **Best Value** to the University. The University is not bound to accept the lowest priced Proposal, if that Proposal is not in the best interest of the University or not judged as "best value", as determined solely by the University.

3.5 Criteria One - Respondent's Ability To Provide Environmental Graphics including: Design, Production, and Installation Services:

3.5.1 Provide the following information on your firm for the past **five** (5) fiscal years:

Volume

- Annual number, value and percent change of contracts in Texas per year;
- Annual number, value and percent change of contracts nationally per year;

Revenues

- Annual revenue totals and percent change per year;

Staffing

- Number of employees for the last five (5) calendar years.

3.5.2 State whether your firm is currently for sale or involved in any transaction to expand or to become acquired by another business entity. If so, please explain the impact both in organization and company direction.

3.5.3 Provide details of any past or pending litigation, or claims filed, against your firm that may affect your performance under a Contract with the Owner.

3.5.4 Does any relationship exist by relative, business associate, capital funding agreement, or any other such kinship between your firm and any Owner employee, officer or Regent? If so, please explain.

3.6 Criteria Two – Qualifications and References of Design and Installation Team(s):

3.6.1 Describe your firm's unique qualifications as they pertain to this type of project.

3.6.2 Provide a statement on the availability and commitment of the Respondent, its principal(s) and assigned professionals to undertake the Project(s) if later awarded.

3.6.3 Identify, describe, and provide photographic documentation of the proposed team's past experience for providing services that are MOST RELATED TO environmental graphic design, production, and installation projects, most typical of those completed for institutions of higher education, state government, and local municipalities, within the last five (5) years. List the projects in order of priority, with the most relevant project listed first. Provide the following information for each project listed (Maximum of 5 Projects):

3.6.3.1 Project name, location, description, and photographic documentation

3.6.4 References (for each project listed above, identify the following):

3.6.4.1 The firm's name and representative who served as the day-to-day liaison during the project, including telephone number and/or email address;

3.6.4.2 Length of business relationship with the firm

The University may contact references during any part of this process. The University reserves the right to contact any other references at any time during the Solicitation process.

- 3.6.5 Provide résumés for all proposed personnel that will be assigned to project(s) if later awarded to include the following:
 - 3.6.5.1 Experience in the industry;
 - 3.6.5.2 Background and education;
 - 3.6.5.3 Certifications;
 - 3.6.5.4 Advance notice must be given to the University if the selected Respondent changes its management personnel assigned to this contract;
 - 3.6.5.5 If the selected Respondent changes or modifies its service providers the University must give the successful Respondent its approval or concurrence. If the change is rejected by the University, the successful Respondent must submit alternate onsite services providers. If the successful Respondent fails to provide an acceptable service provider, the University may cancel the contract;
 - 3.6.5.6 The University shall have the right to require the successful Respondent to change the onsite service provider without justification.
- 3.7 Criteria Three – Cost: Includes the cost of the Respondent’s goods or services and may include the total long-term cost to the University for acquiring the Respondent’s goods or services. **Pricing and Delivery Proposals shall be submitted separate from the Qualifications, Response to the Scope of Work (SOW), and Execution of Offer, as outlined in Section 2.1.5.**

Section 4 – Execution of Offer

NOTE TO RESPONDENTS: SUBMIT ENTIRE SECTION WITH RESPONSE. THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED, AND RETURNED WITH THE RESPONDENT'S QUALIFICATIONS/PROPOSAL. **FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE PROPOSAL SHALL RESULT IN REJECTION OF THE PROPOSAL.** SIGNING A FALSE STATEMENT MAY VOID THE SUBMITTED PROPOSAL OR ANY AGREEMENTS OR OTHER CONTRACTUAL ARRANGEMENTS, WHICH MAY RESULT FROM THE SUBMISSION OF RESPONDENT'S PROPOSAL AND THE RESPONDENT MAY BE REMOVED FROM ALL PROPOSER LISTS. A FALSE CERTIFICATION SHALL BE DEEMED A MATERIAL BREACH OF CONTRACT AND, AT THE UNIVERSITY'S OPTION, MAY RESULT IN TERMINATION OF ANY RESULTING CONTRACT OR PURCHASE ORDER. **BY SIGNATURE HEREON, RESPONDENT:**

- 4.1 Acknowledges and agrees that (1) this Solicitation is a Solicitation for Proposals and is not a contract or an offer to contract; (2) the submission of Proposals by Respondent in response to this Solicitation will not create a contract between the University and Respondent; (3) the University has made no representation or warranty, written or oral, that one or more contracts with the University will be awarded under this Solicitation; and (4) Respondent shall bear, as its sole risk and responsibility, any cost which arises from Respondent's preparation of a response to this Solicitation.
- 4.2 Offers and agrees to furnish to the University products and/or services more particularly described in the Statement of Work and to comply with all terms and conditions and requirements set forth in the Solicitation documents and contained herein.
- 4.3 Affirms that he has neither given, nor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted Proposal.
- 4.4 Certifies that it is not currently delinquent in the payment of any Taxes due under Chapter 171, *Texas Tax Code*, or that the corporate Respondent is exempt from the payment of such taxes, or that the corporate Respondent is an out-of-state corporation that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting contract or agreement.
- 4.5 Certifies that neither the Respondent nor anyone acting on behalf of Respondent has violated the antitrust laws of this state, codified in Section 15.01, ET. seq., *Texas Business and Commerce Code*, or the *Federal Antitrust Laws*. Respondent further certifies that it has not communicated directly or indirectly the Proposals submitted to any competitor or any other person engaged in a similar line of business.
- 4.6 Represents and warrants that:
 - 4.6.1 Respondent is a reputable company regularly engaged in providing products and/or services necessary to meet the terms, conditions and requirements of this Solicitation;
 - 4.6.2 Respondent has the necessary experience, knowledge, abilities, skills, and resources to perform satisfactorily the terms, conditions and requirements of this Solicitation;

- 4.6.3 Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances;
- 4.6.4 Respondent understands the requirements and specifications set forth in this Solicitation and the terms and conditions set forth in this Solicitation under which Respondent will be required to operate;
- 4.6.5 Respondent, if selected by the University, will maintain insurance as required by any Contract resulting from this Solicitation;
 - 4.6.5.1 All statements, information and representations prepared and submitted in response to this Solicitation are current, complete, true, and accurate. Respondent acknowledges that the University will rely on such statements, information and representations in selecting the successful Respondent. If selected by the University as the successful Respondent, Respondent will notify the University immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.
- 4.6.6 If selected by University, Respondent will not delegate any of its duties or responsibilities under this RFP or the contract to any sub-contractor, except as expressly provided in the Contract.
- 4.7 Certifies that the individual signing this document and the documents made part of this Solicitation is authorized to sign such documents on behalf of the company and to bind the company under any Contract resulting from this Solicitation.
- 4.8 Certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Resident Respondent as defined in *Texas Government Code* Section 2252.001(4)(43 TAC 9.B 9.17).
- 4.9 Certifies as follows:
 - 4.9.1 “Under Section 231.006, *Texas Family Code*, the Respondent certifies that the individual or business entity named in this Proposal or any Contract resulting from this Solicitation is not ineligible to receive the specified grant, loan, or payment and acknowledges that any Contract resulting from this Solicitation may be terminated and payment may be withheld if this certification is inaccurate.”
 - 4.9.2 “Under Section 2155.004, *Texas Government Code*, the Respondent certifies that the individual or business entity named in this Proposal or any Contract resulting from 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.”

- 4.10 Certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship exist between Respondent and an employee of any Texas State University System component, or Respondent has not been an employee of any Texas State University System component within the immediate twelve (12) months prior to your Solicitation response. All such disclosures will be subject to administrative review and approval prior to the University entering into any Contract resulting from this Solicitation.
- 4.11 Affirms that no compensation has been received for participation in the preparation of the specifications for this Solicitation. (Ref. Section 2155.004 *Texas Government Code*).
- 4.12 Represents and warrants that all articles and services quoted in response to this Solicitation meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* (Public Law 91-596) and the *Texas Hazard Communication Act*, Chapter 502, *Health and Safety Code*, and all related regulations in effect or proposed as of the date of this Solicitation.
- 4.13 Signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 4.14 Agrees to defend, indemnify, and hold harmless the State of Texas, Texas State University System and all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Respondent or any agent, employee, subcontractor, or supplier of Respondent in the execution or performance of any Contract resulting from this Solicitation.
- 4.15 Agrees that any payments that may become due under any Contract resulting from this Solicitation will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.
- 4.16 Certifies that no member of the Board of Regents of the Texas State University System, or the Executive Officers of The Texas State University System (TSUS) or its component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of any Contract resulting from this Solicitation.

4.16.1 Execution of Offer: RFP No. RFP # 754-EnvGraphicsIDIQ-2021

The Respondent must complete, sign and return this Execution of Offer as part of their submittal response. The Respondent's company official(s) who are authorized to commit to such a submittal must sign submittals. Signing this Execution of Offer with a false statement is a material breach of contract and shall void the submitted response or any resulting contracts. The Respondent may be removed from all solicitation lists due to this transgression. **Failure to sign and return this form will disqualify the submittal.**

Respondent's Company Name: _____

Respondent's State of Texas Tax Account No.: _____
(This 11 digit number is mandatory)

If a Corporation:

Respondent's State of Incorporation: _____

Respondent's Charter No.: _____

Identify each person who owns at least 25% of the Respondent's business entity by name:

(Name)

(Name)

(Name)

(Name)

Submitted and Certified By:

(Type Respondent's Name)

(Type Title)

(Street Address)

(Telephone Number)

(City, State, Zip Code)

(Fax Number)

(Signature of Authorized Representative)

(Date)

(Email Address)

4.17 **Acknowledgement of Addenda:** Receipt is hereby acknowledged of the following addenda issued as part of this Solicitation (initial if any addenda were issued by University).

No. 1 _____ No. 2 _____ No. 3 _____ No.4 _____ No.5 _____ No.6 _____

Section 5 – Scope of Work

- 5.1 General: The minimum requirements and the specifications for the services, as well as certain requests for information to be provided by Respondent as part of its Proposal, are set forth below.

The Respondent shall provide environmental graphic design, production, and installation services. Respondent shall be available for all phases of each project designated by Texas State University. The University reserves the right to negotiate a mutually agreeable “lump sum,” “not-to-exceed,” or “time and materials” work order for any additional work activity or service that is in keeping with the general intent of the resulting contract.

The Contractor shall provide all labor, materials, equipment, supervision, and all other items necessary to design, produce, and install graphics within the brand standards set forth by the University’s Office of University Marketing (<https://brand.txstate.edu/>) and (<http://txst.com/brandguide>), on an as-needed basis. All items are to be delivered to specifications and as ordered, within the timeframe identified or mutually agreed upon, and meeting the high-quality standards set out in this document. Pricing requested on the Pricing Proposal Form is per square foot for each production value. Pricing must include any delivery costs to the University and a minimum of one round of color proofs per project.

Projects to be produced include but are not limited to:

1. **Environmental large format graphics applied directly to wall**
 - High resolution printing
 - 3M IJ180Cv3-10 vinyl
 - UV resistant 3M 8520 matte over laminate
 - Pricing for this item must include installation at the University
2. **Acrylic graphics panels**
 - High resolution printing
 - Face mount to non-glare, computer controlled cut acrylic
 - Polished edges (no sharp edges)
 - Price for 1/8" thick non-glare acrylic
3. **Direct printing to rigid substrate**
 - High resolution printing
 - PVC based white substrate for direct printing
 - Price for 1/4" thick substrate
4. **Direct printing to acrylic**
 - High resolution direct to acrylic printing
 - Non-glare, computer controlled cut acrylic
 - Polished edges (no sharp edges)
 - Price for 1/8" thick acrylic
5. **Contour cut vinyl lettering**
 - 3M IJ180Cv3-10 vinyl
 - High resolution printing

- UV resistant 3M 8520 matte over laminate
- Pricing for this item must include installation at the University

6. **Dimensional lettering**

- Painted Acrylic
- Laser cut
- 3/8" thickness
- Adhesive mounting
- Pricing for this item must include installation at the University

Branding Guidelines:

The Respondent will follow branding guidelines set forth by the University. Branding guidelines can be found here: <https://brand.txstate.edu/> and <http://txst.com/brandguide>. All designs are subject to the University's Marketing Department review and approval prior to production or installation.

Proofs:

Color proofs will be required before printing final deliverables each time a project is generated. Price per square foot must include the cost of one round of proofs.

Turnaround Time:

Five (5) business days, delivered to the University. Exceptional situations will occur occasionally that dictate a quicker turnaround time. Both parties will mutually agree upon longer turnaround times prior to the beginning of the project.

Quality Assurance:

All deliverables must meet the specifications for the intended production type, including dimensions (exact dimensions required), color, overall finish, and edge treatment of all graphics. Finished products must meet client expectations of highest standard of quality control before the graphics are delivered to the University.

Installation:

For the purpose of this RFP, projects will require the use of a 6'-8' vendor-provided ladder. Any project that requires a lift or any other equipment for installation will be an additional cost and will be reviewed on a case-by-case basis. The Respondent may be responsible for removing any previously installed graphics before installation. If removal of previously installed graphics results in damage to the wall or substrate, coordination for repair will occur between Respondent and University representative prior to installation of new graphics. Respondent will not be responsible for repair to the wall or substrate.

Project Schedule:

Graphics will be ordered on an as-needed basis per the prices submitted in response to this RFP.

Section 6 – Pricing and Delivery

BY SIGNATURE IN SECTION 4 “EXECUTION OF OFFER”, THE RESPONDENT CONFIRMS OR AFFIRMS THE FOLLOWING:

- 6.1 Pricing for Services Offered: Having carefully examined all specifications and requirements of this RFP and any attachment thereto, the undersigned proposes to furnish the graphics design, production, and installation services required pursuant to this RFP.

Individual billing rates for services provided:

Description:	Price per Square Foot (1-50 SQFT):	Price per Square Foot (51-250 SQFT):	Price per Square Foot (>250 SQFT):
Environmental Graphics applied directly to wall (including installation cost)	\$ _____	\$ _____	\$ _____
Acrylic graphic panels	\$ _____	\$ _____	\$ _____
Direct printing to rigid substrate	\$ _____	\$ _____	\$ _____
Direct printing to acrylic	\$ _____	\$ _____	\$ _____
Contour cut vinyl lettering (including installation cost)	\$ _____	\$ _____	\$ _____
Dimensional lettering (including installation cost)	\$ _____	\$ _____	\$ _____
Proofs (Additional proofs beyond first round)	\$ _____	\$ _____	\$ _____

- 6.2 Delivery Schedule of Events and Time Periods: Contract to commence on November 5, 2020.

- 6.3 University’s Payment Terms: University’s standard payment terms for services are “Net 30 days” in accordance with *Texas Government Code*, Chapter 2251, Subchapter B “Payment for Goods and Services.” Indicate below the prompt payment discount that Respondent will provide to University:

Prompt Payment Discount: _____% _____days/net 30 days

NOTE: Payment discount will not be considered in determining lowest price submittal, however any payment discount earned will be taken.

- 6.4 Award and Commencement of Services: The Respondent agrees to commence services after notification that the Respondent has been identified by the University as the successful Respondent with the “best value” Proposal, on or before the commencement date stated by the University in a Notice to Proceed. The University reserves the right to accept or reject any or all

Proposals and to waive Proposal irregularities. Proposals shall be valid and not withdrawn for a minimum period of ninety (90) days from the date of the published submittal deadline.

- 6.5 Project Budgets: The University will coordinate each respective project budget with successful Respondent(s). Fees and expenses, other than those defined in Exhibit “B” of the resulting contract, will be determined, and mutually agreed upon in writing, on a per-project basis prior to initiation of each specific and individual project.

Section 7 – Timeline of RFP Events

Issuance of RFP	October 22, 2020
Non-Mandatory Pre-Proposal Conference	N/A
Pre-Proposal Conference Site	N/A
Deadline for Questions	November 5, 2020
RFP Submittal Deadline	November 19, 2020 at 2:00 p.m. C.S.T.
Approximate Award/Contract Execution Date	January 1, 2021

NOTE: This schedule may be modified or changed at the sole discretion of the University, if it is determined to be in the University’s best interests to do so.

Section 8 – Submittal Check List

Respondent is instructed to complete, sign, and return the following documents as a part of its Proposal. If Respondent fails to return each of the following items with its Proposal, the University may reject the Proposal.

- ✓ Signed and completed originals of HUB Subcontracting Plan (Ref. Section 2.4 & Attachment B)
- ✓ Responses to Criteria One through Three (ref. Section 3)
- ✓ Signed and completed Execution of Offer (ref. Section 4)
- ✓ Response to Criteria Four (Pricing) - Completed Pricing and Delivery Schedule (ref. Section 6)
- ✓ Acknowledgement of Addenda (ref. Section 4.17)



The rising STAR of Texas

**General Terms and Conditions
Services Agreement
Between
Texas State University
And
Provider**

This agreement ("Agreement") is made and entered into by and between Texas State University ("University") and _____ ("Provider") to provide Graphics Design, Production, and Installation Services IDIQ ("Work") as described in **Exhibit A**.

University and Provider agree as follows:

1. Scope of Work

- A. The scope of the Work and the time for performance thereof, is set forth in **Exhibit A**, attached to, and made a part of this agreement for all purposes.
- B. Upon execution of this agreement, all services previously performed by Provider on behalf of the University and included in the description of the Work, shall become part of the Work subject to the terms and conditions of this agreement.
- C. Provider will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local laws, regulations or ordinances, for the performance of the Work.

2. Time for commencement and Completion

- A. The term of this agreement will begin on _____ (Effective Date) and expire on _____. University will have the option to renew this agreement for three (3) additional, one-year periods.
- B. Completion of Work in Progress: The Owner has the option to extend the term of this Agreement, as necessary for Services Provider to complete work on any project approved by the Owner prior to the expiration of the Agreement.
- C. No Minimum Amount of Work: University makes no representations regarding the amount or type of services, if any, that Provider will be asked to provide to the University during the term of this Agreement. It is expressly understood that the University is under no obligation to request services from Provider and no minimum amount of work is required, guaranteed, or contemplated under this

Agreement. All Project Assignments will be made by the University on an as-needed basis, subject to future agreement on the scope of the work and the fee.

3. Provider Obligations

- A. Provider will perform the Work in compliance with all applicable federal, state and local, laws, regulations, and ordinances. Provider represents and warrants that neither Provider nor any firm, corporation or institution represented by Provider, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Provider's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this agreement.
- B. Provider represents, warrants and agrees that (a) it will use commercially reasonable efforts to perform the Work in a good and workmanlike manner and in accordance with commercially reasonable standards of Provider's profession or business, and (b) all of the Work to be performed will be of the quality that prevails among similar businesses engaged in providing similar services in major United States urban areas under the same or similar circumstances.
- C. Provider will call to University's attention in writing all information in any materials supplied to Provider (by University or any other party) that Provider regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- D. Provider warrants and agrees that the Work will be accurate and free from any material defects. Provider's duties and obligations under this agreement will at no time be in any way diminished by reason of any approval by University nor will Provider be released from any liability by reason of any approval by University, it being agreed that University at all times is relying upon Provider's skill and knowledge in performing the Work.
- E. Provider will, at its own cost, correct all material defects in the Work as soon as practical after Provider becomes aware of the defects. If Provider fails to correct material defects in the Work within a reasonable time, then University may correct the defective Work at Provider's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that University may have at law or in equity.
- F. Provider will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Provider will cause all persons connected with Provider directly in charge of the Work to be duly registered and/or licensed under all applicable federal, state, and local, laws, regulations, and ordinances. Provider will assign to the Project a designated representative who will be responsible for the administration and coordination of the Work. Provider will furnish efficient business administration and coordination and perform the Work in an expeditious and economical manner consistent with the interests of University.
- G. Provider represents that if (i) it is a corporation, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Provider has been duly authorized to act for and bind Provider; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder,

and the individual executing this Agreement on behalf of Provider has been duly authorized to act for and bind Provider.

- H. Provider represents and warrants that: (i) the Work will be performed solely by Provider, its full-time or part-time employees during the course of their employment, or independent providers who have assigned in writing all right, title and interest in their work to Provider for the benefit contractors University; (ii) University will receive free, good and clear title to all Work Material developed under this Agreement; (iii) the Work Material and the intellectual property rights protecting the Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges or other restrictions; (iv) the Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of the Work Material will not violate the rights of any third parties in the Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.
- I. All individuals including providers, subcontractors, service providers and vendors operating a vehicle on property owned and operated by Texas State University shall comply with the Traffic and Parking Regulations for the University. All vehicles parked on University property must obtain and display a valid parking permit paid for and purchased at their own expense. Providers shall make every effort to carpool when possible.
- J. Provider will provide representation that it has conducted the following background checks on its officers, employees, or other persons it causes to be on the campus:
 - 1. Sex offender and criminal history databases where the above individuals will be placed on the campus, working with or around students;
 - 2. Criminal history and credit history background checks where the above individuals will be handling money, information technology, or other security-sensitive areas as determined by the University;
 - 3. Provider will determine on a case-by-case basis whether each individual assigned to perform the Work is qualified to provide the services. Provider will not knowingly assign any individual to provide services on University's premises who has a history of criminal conduct unacceptable for a University campus or healthcare center, including violent or sexual offenses.
 - 4. Provider will provide University a letter signed by an authorized representative of Provider certifying compliance with this Section. Provider will provide University an updated certification letter each time there is a change in the individuals assigned to perform the Work.

4. Premises Rules

- A. If this Agreement requires Provider's presence on University's premises or in University's facilities, Provider agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable University rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

5. Contract Amount

- A. University will pay Provider for the performance of the Work as more particularly set forth in **Exhibit B**, attached and incorporated for all purposes.
- B. Contract Sum: Allowable fees for each specifically authorized project will be established in individual "Project Assignments", issued by the University. Invoices for authorized work performed by the Provider shall not exceed the fees established for any portion of authorized work. Established fee amounts shall not be increased except by written amendment to a previously issued Project Assignment executed by the University and Provider.
- C. Contract limits: This contract is an Indefinite Delivery, Indefinite Quantity (IDIQ) and may not reach or exceed \$3,000,000 for the entire contract term.
- D. University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Work in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* ("TAC") Section 3.322.

6. **Payment Terms**

- A. University will pay for Work performed under this agreement in accordance with *Texas Government Code*; section 2251 "Prompt Payment".
- B. For the satisfactory performance of the Work, the University shall pay Provider an amount not to exceed that described in **Exhibit B**, attached hereto, and made a part of this agreement for all purposes. If University disapproves any invoice amount, University will give Provider specific reasons for its disapproval in writing.
- C. The amount due to Provider shall be upon receipt of an invoice that details the date of service, describes the Work performed, and provides supporting documentation for reimbursable expenses relating to the Work. The Provider shall submit all signed invoices to University at the address specified in Section 24 below.
- D. Within ten (10) days after final completion of the Work and acceptance of the Work by University or as soon thereafter as possible, Provider will submit a final invoice ("Final Invoice") setting forth all amounts due and remaining unpaid to Provider. Upon approval of the Final Invoice by University, University will pay ("Final Payment") to Provider the amount due under the Final Invoice.
- E. Notwithstanding any provision of this Agreement to the contrary, University will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Provider if Provider is in default under this Agreement.
- F. The cumulative amount of all Progress Payments and the Final Payment (defined below) will not exceed the Contract Amount as more particularly set forth in **Exhibit B**.
- G. No payment made by University will (a) be construed to be final acceptance or approval of that part of the Work to which the payment relates, or (b) relieve Provider of any of its duties or obligations under this Agreement.
- H. The acceptance of Final Payment by Provider will constitute a waiver of all claims by Provider except those previously made in writing and identified by Provider as unsettled at the time of the Final Invoice for payment.

- I. University will have the right to verify the details set forth in Provider's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Provider at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action.

7. Default and Termination

- A. If a party substantially fails to perform in accordance with the terms of this agreement, the other party may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure. The termination shall not be effective if the failure is fully cured prior to the end of the fifteen (15) day period.
- B. University may, without cause, terminate this Agreement at any time upon giving thirty (30) days advance notice to Provider. Upon termination pursuant to this paragraph, Provider receives payment for the services satisfactorily performed from the time of the last payment date to the termination date, provided Provider shall have delivered to University a final report describing the work completed to the date of termination. University shall not reimburse Provider for any services performed or expenses incurred after the date of termination notice.
- C. Termination under Sections A or B above will not relieve Provider from liability for any default or breach under this Agreement or any other act or omission of Provider.
- D. If Provider fails to cure any default within fifteen (15) days after receiving written notice of the default, University will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Provider under this Agreement, any and all reasonable expenses incurred in connection with University's curative actions.

8. Indemnification

PROVIDER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERISTY, AND HOLD HARMLESS UNIVERISTY AND THE TEXAS STATE UNIVERISTY SYSTEM AND THEIR REGENTS, OFFICERS, DIRECTORS, ATTORNEY, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGEMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREFORING (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM THIS AGREEMENT OR THE GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT, TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF PROVIDER, OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, SUPPLIERS OR ANYONE DIRECTLY EMPLOYEED BY PROVIDER OR ANYONE FOR WHOSE ACTS PROVIDER MAY BE LIABLE. IN ADDITION, PROVIDER WILL INDEMNIFY, PROTECT, DEFENT WITH COUSEL APPROVED BY UNIVERISTY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS AGREEMENT OR THE GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT. THE PROVISIONS OF THIS WILL NOT BE CONSTRUED TO ELIMITATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT, WHICH ANY INDEMNITEE HAS, BY LAW OR EQUITY. IN THE EVENT OF LITIGATION, UNIVERISTY AGREES TO COOPERATE REASONABLE WITH PROVIDER. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

9. Relationship of the Parties

- A. For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary Provider is an independent contractor and is not a state employee, partner, joint venture, or agent of University. Provider will not bind nor attempt to bind University to any agreement or contract. As an independent contractor, Provider is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.
- B. Provider shall observe and abide by all applicable laws and regulations, policies, and procedures, including but not limited to, those of the University relative to conduct on its premises. Provider is notified that the following University policies shall apply to its employees and subcontractors while on Texas State property:
- On campus driving and parking;
 - Prohibition on smoking and tobacco use;
 - Fire Safety;
 - Hazardous Material;
 - Drug-free workplace; and
 - Prohibition on sexual harassment or discrimination based on race, color, national origin, age, sex, religion, disability, or sexual orientation.
- C. Nondiscrimination: In their execution of this agreement, all contractors, subcontractors, their respective employees, and others acting by or through them shall comply with all federal and state policies and laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree to not discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this agreement.

10. Insurance

- A. Provider, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance in the form, with companies having an A.M. Best Rating of A-:IV or better, and in amounts (unless otherwise specified), as University may require:

1. Workers Compensation Insurance coverage with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability – Each Accident	\$1,000,000
Employers Liability – Each Employee	\$1,000,000
Employers Liability – Policy Limit	\$1,000,000

2. Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$100,000
Medical Expenses (any one person)	\$10,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$2,000,000

Policy will include independent Successful Respondent's liability, covering, but not limited to, the liability assumed under the indemnification provision of this contract, fully insuring Successful Respondent's (or Subcontractor's) liability for bodily injury (including death) and property damage.

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage;

3. Comprehensive Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage. Such insurance is to invoice coverage for loading and unloading hazards.
4. Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or otherwise acceptable to the University.

Policies must include the following clauses, as applicable:

This insurance shall not be canceled, materially changed, or non-renewed until after thirty (30) days prior written notice has been given to the University. No policy will be canceled until after thirty (30) days' unconditional written notice to University.

It is agreed that the successful Respondent's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the University for liability arising out of operations under the any Contract resulting from this Solicitation with the University.

Texas State University and Texas State University Board of Regents is added as additional insured as respects the University's interests under any Contract resulting from this Solicitation. The additional insured status must cover completed operations as well. This is not applicable to the workers' compensation policy. All policies will be endorsed to provide a waiver of subrogation in favor of University. All policies with the exception of Workers' Compensation and Employer's Liability will be endorsed to provide primary and non-contributory coverage.

Without limiting any of the other obligations or liabilities of the successful Respondent, the successful Respondent shall require each Subcontractor performing work under any Contract resulting from this Solicitation, at the Subcontractor's own expense, to maintain during the term of any Contract resulting from this Solicitation, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, the successful Respondent may include its Subcontractors as additional insured on its own coverage as prescribed under these requirements. The successful Respondent's certificate of insurance shall note in such event that the Subcontractors are included as additional insured's and that the successful Respondent agrees to provide Workers' Compensation for the Subcontractors and their employees. The successful Respondent shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. The successful Respondent must retain the certificates of insurance for the duration of any Contract resulting from this Solicitation plus 5 years and shall have the responsibility of enforcing these insurance requirements among its subcontractors. The University shall be entitled, upon request and without expense, to receive copies of these certificates.

11. Assignment and Subcontracting

Provider's interest in this Agreement (including Provider's duties and obligations under this Agreement, and the fees due to Provider under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Provider will be subject to all remedial actions provided by Texas law, including Chapter 2161, *Texas Government Code*, and 34 *Texas Administrative Code* §§20.101 – 20.108. The benefits and burdens of this Agreement are assignable by University.

12. Child Support Certification

Pursuant to Section 231.006, *Texas Family Code*, Provider certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

13. Eligibility Certifications

Pursuant to Sections 2155.004 and 2155.006, *Texas Government Code*, Provider certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if these certifications are inaccurate.

14. Tax Certification

If Provider is a taxable entity as defined by Chapter 171, *Texas Tax Code* (“**Chapter 171**”), then Provider certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Provider is exempt from the payment of those taxes, or that Provider is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

15. Payment of Debt or Delinquency to the State

Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Provider agrees that any payments owing to Provider under this Agreement may be applied directly toward any debt or delinquency that Provider owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.

16. Products and Materials Produced in Texas

Provider covenants and agrees that as required by Section 2155.4441, *Texas Government Code*, in performing the Work and its other duties and obligations under this Agreement, Provider will purchase products and materials produced in Texas when the products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

17. Loss of Funding

University, in performance of its duties and obligations under this Agreement, may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (“the Legislature”) and/or allocation of funds by the Board of Regents of The Texas State University System (“the Board”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Provider and University may terminate this Agreement without further duty or obligation hereunder. Provider acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

18. Entire Agreement; Modifications

This Agreement (including **Exhibits A, B, C, D, and E**) constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.

19. Force Majeure

No party shall be liable or responsible to the other for any loss or damage or for any delays or failure to perform under this Agreement due to causes beyond its reasonable control.

Force Majeure shall be interpreted to mean any cause beyond the reasonable control of the party affected, provided such cause is brought to the attention of the other parties immediately by said party. Such cause shall include, but not be limited to, an act of God, employee strikes, disturbance, hostility, war, revolution/riots, strike, sabotage, lockout, terrorist acts, pandemic/epidemic, accident, fire, tropical storm, hurricane, flood, government restrictions, any requirement of law, or mechanical, electronic, or communications failure, or any other circumstances of like character.

20. Governing Law

This Agreement shall be construed under the laws of the State of Texas, and venue for any action brought hereunder shall be Hays County, Texas.

21. Waivers

No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

22. Public Information

- A. University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act*, Chapter 552, and *Texas Government Code*.
- B. Provider is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise exempted 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.
- C. Information provided to Provider by the University, including information from representatives of The Texas State University System (TSUS) or any of its components, and information provided to Provider by members of the public or any other third party shall belong to the University.
- D. Information created or otherwise produced by Provider shall remain the exclusive property of Provider. Provider acknowledges any final report or papers will be provided in accordance with this Agreement, and that any information contained in any report or papers, which Provider believes is confidential under Texas law will be clearly designated as such by Provider.
- E. If the University receives a request for public information for any portion of any final report or papers that have been designated by Provider to be confidential, the University will provide notice to Provider and Provider may submit a brief to the Office of the Attorney General, as provided by Chapter 552, *Texas Government Code*.

23. Safeguarding of University Records

- A. Provider represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard University records according to reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Provider protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University records are safeguarded and the confidentiality of University records is maintained in accordance with all applicable federal, state and local, laws, regulations, and ordinances, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with the University's rules, policies, and procedures regarding access to and use of University's computer systems. At the request of University, Provider agrees to provide University with a written summary of the procedures Provider uses to safeguard and maintain the confidentiality of University records.
- B. If an impermissible use or disclosure of any University records occurs, Provider will provide written notice to University within one (1) business day after Provider's discovery of that use or disclosure. Provider will promptly provide University with all information requested by University regarding the impermissible use or disclosure.
- C. If Provider discloses any University records to a subcontractor or agent, Provider will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Provider by this Section.
- D. Except when defined as part of the Work, Provider will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Provider as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.

24. Notices

All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission, or email as provided below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile or email, when received:

If to University: Texas State University
Attention: Associate Director of Procurement/Contracting
Facilities Planning Design and Construction
601 University Ave.
San Marcos, TX 78666
Fax: 512-245-9172
Email: ejm51@txstate.edu

with copy to: Texas State University
Director of Purchasing & Strategic Sourcing
J C Kellam, Suite 527
601 University Ave.
San Marcos, TX 78666
Fax: 512-245-2393

contracts@txstate.edu

If to Provider:

Attention: _____

Fax: _____

Email: _____

or other person or address as may be given in writing by either party to the other in accordance with this Section.

25. Severability

In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

26. Right to Audit

Provider understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Provider agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Provider will include this provision in all contracts with subcontractors.

27. Alternative Dispute Resolution

The parties shall use the dispute resolution process provided for in Chapter 2260 of the *Texas Government Code*, as further described herein, by University and Provider to attempt to resolve any claim for breach of contract made by the Provider:

- A. A Provider's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the *Texas Government Code*. To initiate the process:
 1. Provider shall submit written notice, as required by subchapter B, to the University's representative named in section 24.
 2. This notice shall specifically state that the provisions of Chapter 2260, subchapter B, of the *Texas Government Code* are being invoked.
 3. A copy of the notice shall also be given to all other representatives of University and Provider otherwise entitled to notice under the parties' contract.
 4. Compliance by Provider with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the *Texas Government Code*.
- B. The contested case process provided in Chapter 2260, subchapter C, of the *Texas Government Code* is Provider's sole and exclusive process for seeking a remedy for any and all alleged

breaches of contract by University if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.

- C. Compliance with the contested case process provided in subchapter C, of the *Texas Government Code*, is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the *Civil Practices and Remedies Code*. Neither the execution of this contract by University nor any other conduct of any representative of University relating to the contract shall be considered a waiver of sovereign immunity to suit.
- D. The submission, processing and resolution of Provider's claim is governed by the published rules adopted by the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted, or subsequently amended.
- E. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Provider, in whole or in part.
- F. The designated individual responsible on behalf of University for examining any claim or counterclaim and conducting any negotiations related thereto as required under §2260.052 of the *Texas Government Code* shall be University's representative named in section 24.

28. Limitations

THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

29. Ethics

Provider and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at <http://www.txstate.edu/effective/upps/upps-01-04-02.html>, The Texas State University System Rules and Regulations, Chapter VIII, and applicable state ethics laws and rules, including Senate Bill 20 (84th Texas Legislature, 2015). Neither Provider nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflict of Interest Policy. Provider represents and warrants that no member of The Texas State University System Board of Regents has a direct or indirect financial interest in the transaction that is the subject of the Agreement.

30. Disclosure of Interested Parties

Provider acknowledges that the *Texas Government Code*, Section 2261.251(a) and 2261.252 require an initial determination in this higher education contract that no Texas State University System Regent, the Chancellor, Vice Chancellor and General Counsel, the University President or Director of Procurement has a 1% interest (or other interest prohibited by law) in Provider or any affiliated company. The Parties also assert that this

Agreement complies with *Texas Government Code*, Section 2252.908 which requires a business entity to submit a [Disclosure of Interested Parties \(Disclosure\)](#), as prescribed by the Texas Ethics Commission, to the government entity (University) at the time the signed contract (or Amendment) is submitted. Within 30 days after the Disclosure is filed, the University will file a copy of the Disclosure with the Texas Ethics Commission.

31. **Historically Underutilized Business Subcontracting Plan**

- A. Provider agrees to use good faith efforts to subcontract the Work in accordance with the Historically Underutilized Business Subcontracting Plan (“**HSP**”) (ref. **Exhibit E**). Provider agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, “**TPASS**”). Submission of compliance reports will be required as a condition for payment under this Agreement. If University determines that Provider has failed to subcontract as set out in the HSP, University will notify Provider of any deficiencies and give Provider an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Provider. If University determines that Provider failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the TPASS in accordance with 34 TAC Sections 20.101 through 20.108. University may also revoke this Agreement for breach and make a claim against Provider.
- B. **Changes to the HSP.** If at any time during the term of this Agreement, Provider desires to change the HSP, before the proposed changes become effective (a) Provider must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 18** to replace the HSP with the revised subcontracting plan.
- C. **Expansion of the Work.** If University expands the scope of the Work through a change order or any other amendment, University will determine if the additional Work contains probable subcontracting opportunities *not* identified in the initial Solicitation for the Work. If University determines additional probable subcontracting opportunities exist, Provider will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (a) this Agreement may be amended to include the additional Work; or (b) Provider may perform the additional Work. If Provider subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with 34 TAC Section 20.14, Provider will be deemed to be in breach of this Agreement under **Section 7** and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Texas Government Code* and 34 TAC Section 20.14. University may report nonperformance under this Agreement to the TPASS in accordance with 34 TAC Sections 20.101 through 20.108.

32. **Debarment**

Provider confirms that neither Provider nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States (“**U.S.**”) federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<https://www.sam.gov/portal/public/SAM>) issued by the U.S. General Services Administration.

“**Principals**” means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Provider will provide immediate written notification to University if, at any time prior to award, Provider learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when University executes this Agreement. If it is later determined that Provider knowingly rendered an erroneous certification, in addition to the other remedies available to University, University may terminate this Agreement for default by Provider.

33. Group Purchase Authority

Texas law authorizes institutions of higher education (defined by Section 61.003, *Education Code*) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, *Education Code*). Additional Texas institutions of higher education may therefore elect to enter into a contract with the Provider under this agreement.

34. Non-Boycott Verification

Pursuant to Section 2270.002 of the *Texas Government Code*, Provider certifies that either (i) it meets an exemption criteria under Section 2270.002 or (ii) it does not boycott Israel and will not boycott Israel during the term of this contract. Provider shall state in this contract any facts that make it exempt from the boycott exemption.

35. Compliance with Law

Provider is aware of, fully informed about and in full compliance with its obligations with all applicable, federal, state and local, laws, regulations, codes, ordinances and orders and with those of any other body or authority having jurisdiction ("Applicable Laws"), including *Title VI of the Civil Rights Act of 1964*, as amended [42 USC 2000(D)], *Executive Order II 246*, as amended (41 CFR 60-1 and 60-2), *Vietnam Era Veterans Readjustment Act of 1974*, as amended (41 CFR 60250), *Rehabilitation Act of 1973*, as amended (41 CFR 60-741), *Age Discrimination Act of 1975* (42 USC 6101 et seq.), *Non-segregated Facilities* (41 CFR 60-1), *Fair Labor Standards Act of 1938*, Sections 6, 7, and 12, as amended, *Immigration Reform and Control Act of 1986*, *Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals* (PL 95-507), *Americans with Disabilities Act of 1990* (42 USC 12101 et seq.), *Civil Rights Act of 1991*, *Occupational Safety and Health Act of 1970*, as amended (PL 91-596), *Immigration and Nationality Act* (8 United States Code 1324a) and all other applicable laws. Provider represents and warrants that neither Provider nor any firm, corporation or institution represented by Provider, nor anyone acting for that firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Provider's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.

36. Prohibition of Contract

Prohibition of Contract with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization: Per *Texas Government Code*, Chapter 2252.152, a governmental entity may not enter into a contract with a company that the Comptroller of Public Accounts has identified that is doing business

with a foreign terrorist organization. This prohibition extends to Iran and Sudan under *Texas Government Code*, Section 806.051 and 807.051.

37. U.S. Produced Steel

U.S. Produced Steel: Construction Contracts entered into on or after September 1, 2017, shall contain the provisions mandated by Senate Bill 1289 (85th Texas Legislature, 2017), as follows:

Except as provided below, the bid documents provided to all potential bidders and the contract shall include a requirement that any iron or steel product produced through a manufacturing process and used in the Project shall be produced in the United States (U.S.), within the meaning provided in *Texas Government Code*, Section 2252.201.

- If any of the following apply, as determined by the TSUS Board of Regents on a project-by-project basis, the requirement for U.S. produced steel does not apply:
 1. Iron or steel products produced in the U.S. are not:
 - a. produced in sufficient quantities;
 - b. reasonably available; or
 - c. of a satisfactory quality;
 2. Use of iron or steel products produced in the U.S. will increase the total cost of the project by more than 20 percent; or
 3. Complying with this requirement is inconsistent with the public interest.
- Electrical components, equipment and systems, and appurtenances thereto as described in *Texas Government Code*, Section 2252.203 (b), are exempt from the requirement for U.S. produced steel.

38. Provider Conflict

Provider agrees that it will not at any time prior to or during the term of this Agreement, either directly or indirectly, use labor or materials that could or will create any difficulty with other providers or labor engaged by Provider or University or with any other party in the construction, maintenance or operation of University or any part thereof.

39. Presence on University Premises

- A. Provider agrees that it will ensure that all of its Employees, Subcontractors and Agents whose duties bring them upon University's premises will obey the rules and regulations that are established by University and TSUS and will comply with reasonable directions University's representatives may give to Provider.
- B. Provider is responsible for acts of its Employees, Subcontractors and Agents while on University's premises. Accordingly, Provider agrees to take all necessary measures to prevent injury and loss to persons and property located on University's premises. Provider is responsible for all damages to persons or property caused by Provider or any of its Employees, Subcontractors and Agents. Provider will promptly repair, in accordance with the specifications of University, any damage that it, or of its

Employees, Subcontractors and Agents, may cause to University's premises or equipment. On Provider's failure to do so, University may repair the damage and Provider will reimburse University promptly for any and all reasonable expenses incurred in connection with the repair. At its option, University may offset against all amounts due to Provider any and all reasonable expenses incurred in connection with the repair.

40. Undocumented Workers

The Immigration and Nationality Act (8 United States Code 1324a) ("Immigration Act") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("I-9 Form") as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Provider is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Provider employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, University may terminate this Agreement. Provider represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

41. Illegal Dumping

The Provider shall ensure that it and all of its Subcontractors and assignees prevent illegal dumping of abated asbestos in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

42. Contract Administration

The University will monitor the Provider's progress and performance and ensure services conform to the established specifications and requirements. At the conclusion of each project or contract term, the University will complete a Vendor Evaluation (see **Exhibit E**). The evaluation is based on assessment of the output and outcome measures and compliance with the terms and conditions of the Contract. Contract monitoring and performance evaluations will be performed by the Contract Administrator or Contract Manager.

43. Incorporation of Solicitation

The Texas State University Solicitation, whether it be a Request for Proposal, a Request for Competitive Sealed Proposals, or a Request for Qualifications solicitation, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, that resulted in the execution of this agreement are hereby incorporated by reference into this agreement as if copied verbatim.

44. Safety

In accordance with UGCs and the Division 1 Specifications, Provider is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the *Occupational Safety and Health Act of 1970* and all other applicable federal, state and local laws and regulations and with the requirements of Owner's project safety specification.

Provider shall provide recommendations and information to Owner regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Provider shall verify that appropriate safety precautions and provisions have been included in the Construction Documents.

The existence or creation of any Owner controlled insurance program in connection with the Work shall not lessen or reduce the Provider's safety responsibilities.

45. Appointment

Owner hereby expressly reserves the right from time to time to designate by notice to Provider a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Provider shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

46. Required Posting of Contracts

The parties acknowledge that, pursuant to the provisions of *Texas Government Code* Section 2261.253, this agreement may be posted on the Owner's website.

47. Cybersecurity Training Program

Pursuant to Section 2054.5192, *Texas Government Code*, Provider and its consultants, officers, and employees must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* as selected by the Owner. The cybersecurity training program must be completed by Provider and its consultants, officers, and employees during the term and any renewal period of this Agreement. Provider shall verify in writing completion of the program to the Owner within the first thirty (30) calendar days of the term and any renewal period of this Agreement.

48. COVID-19 Pandemic Procedures

The Provider will follow all rules and regulations set forth by the Center for Disease Control (CDC), OSHA, Texas Government, Texas State University System, and University with regards to the current COVID-19 pandemic and any subsequent pandemics in the future. This includes but is not limited to testing of employees and reporting of positive COVID-19 cases within the Provider's organization.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties have signed this agreement on the date indicated below their signatures.

Texas State University

Provider

(Signature)

(Signature)

Eric Algoe, Vice President Finance & Support Services
(Title)

(Title)

(Date)

(Date)

Attachments:

Exhibit A – Scope of Work

Exhibit B – Contract Amount/Payment/Pricing

Exhibit C – Criminal Background Checks

Exhibit D – Vendor Evaluation Form

Exhibit E – HUB Subcontracting Plan

Exhibit A

Scope of Work

General: The minimum requirements and the specifications for the services, as well as certain requests for information to be provided by Respondent as part of its Proposal, are set forth below.

The Respondent shall provide environmental graphic design, production, and installation services. Respondent shall be available for all phases of each project designated by Texas State University. The University reserves the right to negotiate a mutually agreeable “lump sum,” “not-to-exceed,” or “time and materials” work order for any additional work activity or service that is in keeping with the general intent of the resulting contract.

The Contractor shall provide all labor, materials, equipment, supervision, and all other items necessary to design, produce, and install graphics within the brand standards set forth by the University’s Office of University Marketing (<https://brand.txstate.edu/>) and (<http://txst.com/brandguide>), on an as-needed basis. All items are to be delivered to specifications and as ordered, within the timeframe identified or mutually agreed upon, and meeting the high-quality standards set out in this document. Pricing requested on the Pricing Proposal Form is per square foot for each production value. Pricing must include any delivery costs to the University and a minimum of one round of color proofs per project.

Projects to be produced include but are not limited to:

1. **Environmental large format graphics applied directly to wall**
 - High resolution printing
 - 3M IJ180Cv3-10 vinyl
 - UV resistant 3M 8520 matte over laminate
 - Pricing for this item must include installation at the University
2. **Acrylic graphics panels**
 - High resolution printing
 - Face mount to non-glare, computer controlled cut acrylic
 - Polished edges (no sharp edges)
 - Price for 1/8" thick non-glare acrylic
3. **Direct printing to rigid substrate**
 - High resolution printing
 - PVC based white substrate for direct printing
 - Price for 1/4" thick substrate
4. **Direct printing to acrylic**
 - High resolution direct to acrylic printing
 - Non-glare, computer controlled cut acrylic
 - Polished edges (no sharp edges)
 - Price for 1/8" thick acrylic
5. **Contour cut vinyl lettering**
 - 3M IJ180Cv3-10 vinyl
 - High resolution printing

- UV resistant 3M 8520 matte over laminate
- Pricing for this item must include installation at the University

6. **Dimensional lettering**

- Painted Acrylic
- Laser cut
- 3/8" thickness
- Adhesive mounting
- Pricing for this item must include installation at the University

Branding Guidelines:

The Respondent will follow branding guidelines set forth by the University. Branding guidelines can be found here: <https://brand.txstate.edu/> and <http://txst.com/brandguide>. All designs are subject to the University's Marketing Department review and approval prior to production or installation.

Proofs:

Color proofs will be required before printing final deliverables each time a project is generated. Price per square foot must include the cost of one round of proofs.

Turnaround Time:

Five (5) business days, delivered to the University. Exceptional situations will occur occasionally that dictate a quicker turnaround time. Both parties will mutually agree upon longer turnaround times prior to the beginning of the project.

Quality Assurance:

All deliverables must meet the specifications for the intended production type, including dimensions (exact dimensions required), color, overall finish, and edge treatment of all graphics. Finished products must meet client expectations of highest standard of quality control before the graphics are delivered to the University.

Installation:

For the purpose of this RFP, projects will require the use of a 6'-8' vendor-provided ladder. Any project that requires a lift or any other equipment for installation will be an additional cost and will be reviewed on a case-by-case basis. The Respondent may be responsible for removing any previously installed graphics before installation. If removal of previously installed graphics results in damage to the wall or substrate, coordination for repair will occur between Respondent and University representative prior to installation of new graphics. Respondent will not be responsible for repair to the wall or substrate.

Project Schedule:

Graphics will be ordered on an as-needed basis per the prices submitted in response to the associated RFP.

Exhibit B

Contract Amount/Payment/Pricing

The total costs of the scope of services rendered by Provider, as outlined in Exhibit A or separate attachment, including expenses **shall not exceed \$3,000,000.00** for the life of the contract. Services, fees, and expenses, other than those listed below, will be determined, and mutually agreed upon in writing, on a per-project basis prior to initiation of each specific and individual project.

Invoicing: Invoices must reflect, detail, and support the time and hourly bill rates, as defined in Exhibit “B” of the IDIQ contract, and the associated fee schedule, for personnel providing services in each phase of a project. The invoicing detail and support outlined is also applicable to lump sum project fee submittals.

University’s Payment Terms: University’s standard payment terms for services are “Net 30 days” in accordance with Texas Government Code, Chapter 2251, Subchapter B “Payment for Goods and Services”.

EXHIBIT C

TEXAS STATE UNIVERSITY (TEXAS STATE) CONTRACT VENDOR EMPLOYEE BACKGROUND CHECK POLICIES

(Ref: Texas State University System (TSUS) “Rules and Regulations, Chapter III, Section 10, Subsection 10.3 “Contract Vendor Employee Background Check Policies”)
(Rev. 01/11/2010)

Texas State shall engage in due diligence in awarding contracts to vendors of services, who will maintain permanent staffing on the campus:

1. Before awarding a contract to a vendor of services, who will permanently place employees on the campus where such employees will be working with or around students, Texas State shall:
 - 1.1. During the bidding or negotiation process, notify prospective vendors, in writing, of the requirements of this paragraph;
 - 1.2. Secure credit and criminal background checks on the vendor’s officers and managers dealing with or on the campus; and
 - 1.3. Research prior or pending claims against the vendor (e.g., negligent hiring claims).
2. All contracts in which the vendor permanently places employees on the campus, working with or around students, shall include the following provisions and requirements:
 - 2.1. A general liability policy, providing primary coverage and naming Texas State, Texas State University System (TSUS), TSUS Regents, and their employees as additional insureds;
 - 2.2. Indemnity and/or hold harmless clauses, protecting Texas State, Texas State University System (TSUS), TSUS Regents, and their employees from third party claims, caused, in whole or in part, by the actions or omissions of vendor, its employees, or other persons that the vendor causes to be on the campus;
 - 2.3. A representation by the vendor that it has conducted the following background checks on its officers, employees, or other persons it causes to be on the campus:
 - 2.3.1. Sex offender and criminal history databases where the above individuals will be placed permanently on the campus, working with or around students;
 - 2.3.2. Criminal history and credit history background checks where the above individuals will be handling money, informational technology, or other security-sensitive areas as determined by the president;
 - 2.4. That the president may require the vendor to remove any person from the campus that, in his or her judgment, poses a danger to health or safety;
 - 2.5 . An “independent contractor” clause.

Exhibit D – Contractor Evaluation Form

Exhibit E – Provider’s HSP



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - ☐ Section 2 c. - Yes
 - ☐ Section 4 - Affirmation
 - ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - ☐ Section 2 c. - No
 - ☐ Section 2 d. - Yes
 - ☐ Section 4 - Affirmation
 - ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - ☐ Section 2 c. - No
 - ☐ Section 2 d. - No
 - ☐ Section 4 - Affirmation
 - ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - ☐ Section 1 - Respondent and Requisition Information
 - ☐ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - ☐ Section 3 - Self Performing Justification
 - ☐ Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SOLICITATION NUMBER/PROJECT NAME: 754-GraphicsIDIQ-2021

Project Goal is: 26.0% (OTHER SERVICES CONTRACTS)

If indicating in Section 2 "SUBCONTRACTING INTENTIONS", Subsection "d" that you are utilizing "HSP GOOD FAITH EFFORT - METHOD B" (Ref: "Attachment B, Section B-3") in preparing your HUB Subcontracting Plan (HSP), the DEADLINE for solicitation to HUB subcontractors and at least two(2) Minority Trade Organizations is:

BY: October 9, 2020 by end of business day

**See additional attachments:

- HSP Quick Check List
- Monthly Progress Assessment Report (PAR)

Contact: Procurement and Strategic Sourcing at 512.245.2521 or hub@txstate.edu

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Requisition #: _____ Bid Open Date: _____
 (mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- ☐ - **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)
- ☐ - **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>).

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- ☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- ☐ - **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- ☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- ☐ - **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____

Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____

Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature_____
Printed Name_____
Title_____
Date
(mm/dd/yyyy)

Reminder:

- If you responded "**Yes**" to **SECTION 2, Items c or d**, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "**No**" **SECTION 2, Items c and d**, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.

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IMPORTANT: If you responded “**Yes**” to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method A (Attachment A)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-of-achm-a.pdf>

Item Number: _____ Description: _____

[illegible]

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HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "**No**" to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - Yes (If **Yes**, continue to SECTION B-4.)

☐ - No / Not Applicable (If **No** or **Not Applicable**, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscblsearch/index.jsp>. HUB status code "**A**" signifies that the company is a Texas certified HUB.

b. List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

d. List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____
Point-of-Contact: _____
E-mail Address: _____

State of Texas VID #: _____
Phone #: _____
Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____
Point-of-Contact: _____
Requisition #: _____

Phone #: _____
Bid Open Date: _____
(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____ .
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

☐ - Not Applicable

4. Bonding/Insurance Requirements:

☐ - Not Applicable

5. Location to review plans/specifications:

☐ - Not Applicable

