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

**Month Day, 201X**

**at**

**XX:00 AM/PM CST/CDT**

**MAIL, COURIER or HAND DELIVER PROPOSAL TO:**

**Texas State University-San Marcos**

**ATTN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Office of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**601 University Drive, \_\_\_\_\_ Bldg. Room ???**

**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 aboveand time stamped on or before the time and date specified in this solicitation **i**n order to be considered.

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 (Offeror) is cautioned to allow sufficient time for delivery prior to the published deadline to the location specified above.
* Failure to deliver, for whatever reason, may not be grounds for disputing the procurement solicitation process or any resulting contract award.

All questions relating to the RFP shall be in writing via fax or e-mail as provided below. All requests for information shall result in written responses sent to all potential Offerors known to the University.

**REFER INQUIRIES IN WRITING TO:**

ATTN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Office

Fax: 512-245-\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_

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.

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### SECTION 1: INTRODUCTION

**1.1 STATEMENT OF INTENT AND PURPOSE**

Texas State University-San Marcos (“Texas State” or “University”) is seeking responses to this solicitation (proposals/offers/bids) from qualified individuals or firms (Respondents) to perform the services described below (Work) to/for .

Such a proposal shall describe the methodology to be used, which is to be based on parameters further described herein, including .

The University expects to enter into one or more contract(s) with the selected individual(s) or firm(s) to provide the following described services (Work):

* .
* .
* .

The selected individual(s) or firm(s) as provider of the Work to the University shall:

* ;
* Be expected to maintain a high degree of confidentiality throughout the process;
* Refer all media or other requests for information to ; and,
* Be subject to the State’s “open records” laws.

The proposed term of any resulting contract shall be from \_\_\_\_\_\_\_\_\_\_\_\_\_ or execution of the contract, whichever occurs later, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ . In addition \_\_\_\_ ( ) “options to renew” to be exercised at the end of the term then in effect shall be available to be exercised at the sole discretion of the University, if it is determined to be in the University’s best interests to do so.

1.2 HUB OUTREACH PROGRAM

The purpose of the State of Texas Historically Underutilized Business (HUB) Program is to promote equal business opportunities for economically disadvantaged persons (as defined by Texas Government Code ∲2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study.

If you are a certified HUB, please indicate this in your response. If you are anticipating subcontracting with certified HUBs, please indicate your intent in your response.

The Statewide HUB goals per TAC 20.14 are: 11.2 % for heavy construction other than building contracts; 21.1% for all building construction, including general contractors and operative builder’s contracts; 32.7 % for all special trade construction contracts; 23.6 % for professional services; 24.6 % for all other services contracts; and 21 % for commodities contracts.

For additional information regarding any aspect of the University’s HUB Outreach Program, please contact Yolanda Strey, HUB Specialist at (512) 245-2523 or HUB@txstate.edu.

[*Note: Add the following highlighted paragraphs if the total contract award may exceed $100k and subcontracting opportunities have been determined as “probable”*]

It has been determined that subcontracting opportunities are probable. In accordance with the State’s HUB “Good Faith Efforts” mandates, a HUB Subcontracting Plan (HSP) is required to be prepared and included as part of any response submitted. Failure to furnish a completed HSP shall cause a submitted response to be rejected.

Please note that there are mandated subcontracting opportunity notifications that must be sent and documented, as specified on the HSP form, referenced below, prior to the scheduled response submittal deadline. All potential Respondents are urged to familiarize themselves with the HUB “good faith effort (GFE)” requirements for developing, documenting and submitting an HSP with a response to this solicitation.

For further information regarding how to properly prepare an HSP and the forms to use, please access the following website:

 <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

For additional information regarding the proper preparation of an HSP for this solicitation, please contact Yolanda Strey, HUB Specialist at (512) 245-2523 or HUB@txstate.edu.

**1.3 FORM OF PROPOSAL**

Proposals shall contain the following information:

* Description of methodology used in fulfilling the requirements of the process.
* A detail of the qualifications of the individual or firm proposing to provide the services outlined above.
* A detail of all costs associated with the proposed services. (*Please note:* ).
* Specific examples of previous services performed that demonstrate experience and expertise for the services being proposed.
* Complete, sign and submit Execution of Offer form found in Section 5 of this RFP.
* Complete, sign and submit HUB Subcontracting Plan (HSP).
* .
* \_\_ .

**1.4 PROPOSAL EVALUATION**

Proposals shall be evaluated based on the weights assigned below to each evaluation criteria. If additional information or proposal clarification is required, the RFP evaluation team shall make written requests to the appropriate firm(s) and require all responses to be made in writing.

 Proposed methodology of delivering services %

 Firm’s qualifications and references %

 Cost of proposed services %

 %

 %

 Total 100%

1.5 AWARD PROCESS

It is the University’s intention to . The University may elect to award contracts to more than one service provider for . University shall be the sole judge in making this determination and it shall be done if it is determined to be in the University’s best interests. The University reserves the right to make a “best value” award based solely upon the initial evaluation of the responses submitted; completion of any clarifications, demonstrations or presentations; or on the basis of the submittal of a “best and final offer” (BAFO).

In accordance with The Texas State University System “Rules and Regulations”, Chapter III, Section 17 and the Texas Education Code, Chp. 51, Sections 51.9335 (a) – (e), the University intends to carefully evaluate responses to this RFP to determine which “in total” shall constitute the “best value” to the University.

**1.5.1 Initial Evaluation**

### Administrative Review

The University will review timely received responses to determine if mandatory requirements are met and to verify that the proposals meet administrative and formatting requirements. Compliant responses will be approved for subsequent evaluation steps.

### Initial Ranking

The University will review and rank compliant responses, without consideration of cost, from best to least qualified. The evaluation team will use detailed evaluation and weighting guidelines to carefully review and assign a score to each section of each response. Upon completion of the evaluation and scoring, the next step of this evaluation will be performed.

### Cost Proposal Evaluation

Cost proposals will be opened and reviewed by evaluation team members. Scores for cost will be based on pre-determined guidelines and weightings. These scores will be added to those assigned in the Initial Ranking process.

### Reference Checks, Clarification, and Product Demonstration/Presentation

The University will perform reference checks and seek further information as needed from all firms whose responses Texas State, at its discretion, considers viable, based on the initial evaluation and scoring. Firms may be asked to discuss their responses or provide written clarification. The University reserves the right to conduct independent investigations and reference checks in its effort to select the firms which is best qualified, responsible and responsive to this solicitation’s requirements.

All firms selected for further consideration will be asked to present their responses. The conduct, content and extent of such discussions and demonstrations are a matter of the University’s judgment, based on the particulars of the selected responses.

In the course of seeking additional information, the University will:

* Control all discussions;
* Attempt to resolve any uncertainties concerning a firm’s response;
* Attempt to resolve any suspected mistakes by calling them to a Respondent’s attention as specifically as possible without disclosing information concerning other Respondent’s responses or confidential aspects of the evaluation process;
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ; and,
* Provide the Respondent a reasonable opportunity to submit any technical, cost or other revisions to its response that may result from discussions.

Each presentation will be scheduled for approximately full days. All key staff is expected to attend and participate. The University will provide an agenda, instructions, and when invitations are issued. These materials will be identical for all firms. Each firm will receive these items approximately thirty working days prior to the first day of its scheduled presentation.

**1.5.2 Best and Final Offers (BAFO)**

The University may choose to issue a written “Request for Best and Final Offer” to one or more firms determined, in the sole opinion of the University, as a potential “best value”. The request will include a specified date and time for receipt of BAFO responses, as indicated in Section “Schedule of Proposal Process”. The request will also include general instructions to, and questions for, all BAFO participants, as well as a list of issues, concerns and/or requests for additional clarification including, but not limited to functional capabilities, cost, contractual gaps, and other Respondent-specific issues unique to each BAFO participant.

The objectives of the Request for BAFO include obtaining:

* The best price for requested and services;
* Changes to proposals to better align them with University requirements or needed services;
* Clarifications where initial proposals were deemed ambiguous or confusing by the evaluation team;
* Changes to the proposed approach or timing to the extent deemed necessary by the University; and
* Changes to or more information about proposed project personnel.

**1.5.3 Final Evaluation**

The University intends to make the contract award to the Respondent whose response best meets the evaluation criteria and reflects the “best value” to the University.

In determining “best value”, the Evaluation Committee will be instructed to consider all information contained in the initial responses; the initial evaluation; BAFO responses (if necessary); and information obtained from references, site visits, Respondent presentations or demonstrations, and any other information obtained during this procurement solicitation process.

* 1. TERM OF AGREEMENT

The term of any resulting agreements for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ shall be ( ) years with the ability to exercise option(s) to renew for ( ), additional one-year terms, provided all terms and conditions remain in effect.

* 1. TEXAS STATE UNIVERSITY-SAN MARCOS BACKGROUND INFORMATION

Texas State University-San Marcos is a doctoral granting university located in the burgeoning Austin-San Antonio corridor, the largest campus in the Texas State University System, and one of the 75 largest universities in the country.

For additional information see the [University Factbook](http://www.irp.txstate.edu/fb/irfactbook.htm) or refer to [“About Texas State”](http://www.txstate.edu/about/index.html) found on the University’s website at:

 <http://www.txstate.edu/about/index.html>

* 1. COMPLAINCE WITH UNIVERSITY POLICIES

**RESPONDENT IS NOTIFIED THAT IN THE EVENT OF AN AWARD THE FOLLOWING UNIVERSITY POLICIES, AT A MINIMUM, SHALL APPLY TO A CONTRACTOR’S EMPLOYEES AND SUBCONTRACTORS WHILE ON THE TEXAS STATE CAMPUS:**

* 1. On-campus driving and parking;
	2. Prohibition on smoking or tobacco use;
	3. Fire safety;
	4. Hazardous Materials;
	5. Drug-free workplace; and,
	6. Prohibition of sexual harassment, or harassment or discrimination based on race, color, national origin, age, sex, religion, disability or sexual orientation.
	7. INSURANCE REQUIREMENTS

[*insert appropriate minimum insurance and workers compensation requirements - based on type of Work to be provided and whether or not the Work shall be performed on campus]*

1.XX GROUP PURCHSING AUTHORITY [*optional*]

Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (re. Section 51.9335, Education Code) Additional Texas public institutions of higher education may elect to enter into a contract with the successful Respondent under this procurement solicitation.

1.XX BACKGROUND CHECK MINIMUM REQUIREMENTS [*optional]*

Due to the scope, nature or the location of the Work involved, the Contractor shall perform, or require to be performed, background checks, investigations or inquiries for all Contractor or subcontractor employees who shall perform the described Work on a Texas State campus. Contractor will pay for these background checks. Please refer to Attachment “ “ - “Texas State University-San Marcos (Texas State) Contract Vendor Employee Background Check Policies” for the details.

 [This is a TSUS system wide rule! Requirement is based on *type of Work, if the contract vendor employee is permanently located on campus, and whether or not the Work shall be performed in close contact with students]*

1.XX SERVICE CATEGORIES (optional)

1.XX UTILIZATION OF SERVICE PROVIDER POOL (optional)

As the need arises for services, the shall select the most qualified firm. The shall make this determination by utilizing “best value” criteria. “Best value” shall be as defined in Texas Education Code, Chp. 51, Section 51.9335 “Acquisition of Goods and Services”.

A separate purchase order shall be issued once the selects a “best value” firm from the pool to provide the services.

**1.XX Work Products, Including Intellectual Property (optional)**

The following shall apply in the event of an award:

The parties shall deem all work products produced as a result of this agreement as “works for hire.” Upon delivery, all work products, including writings, drawings, plans, reports, specifications, calculations, documents, presentations, and other materials developed under this agreement shall be the UNIVERSITY’S exclusive property, to use as the UNIVERSITY deems appropriate.

CONTRACTOR relinquishes all claims to copyright and other intellectual property rights in favor of the UNIVERSITY.

Neither CONTRACTOR nor its subcontractors, if any, shall make any such materials available to any individual or organization, without the prior written approval of the UNIVERSITY’S AUTHORIZED REPRESENTATIVE, or designee. CONTRACTOR makes no representation of the suitability of the work product for use in, or application to, circumstances not contemplated by the scope of work.

**1.XX *[Additional Requirements to be Determined]* (*optional*)**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**1.XX *[Additional Requirements to be Determined]* (*optional*)**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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SECTION 2

**SCHEDULE OF PROPOSAL PROCESS**

The University wishes to adhere to the following schedule:

***DATE: ACTION:***

***? ? , 201\_:*** RFP posted to State Electronic State Business Daily (ESBD) and forwarded to service providers that have expressed an interest.

***? ? , 201\_:*** Deadline for submission of questions and/or clarifications regarding RFP. All questions must be received in total by XX:00 am/p.m. Central Standard/Daylight Time in order to be considered.

***? ? , 201\_:*** Mandatory/Non-mandatory pre-submittal conference/site visit

***? ? , 201\_:***  Written responses received by the University on or before XX:00 am/p.m. Central Standard/Daylight Time. Responses should be presented in the format described in the Section below titled “Form of Proposal”.

***? ? , 201\_:*** Clarification of responses, negotiations, and/or demonstrations/presentations (if necessary)

***? ? , 201\_:*** Request for “Best and Final Offer” (BAFO)

***? ? , 201\_:*** Notification of pool of services providers contingent upon execution of contract.

***? ? , 201\_:***  Recommend of Award and approval to enter into Contract(s).

***? ? , 200\_:***  Contract(s) executed.

***? ? , 201\_:*** Pool of services providers is activated.

***? ? , 201\_:*** Work to begin/move in.

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 3**

GENERAL INFORMATION

**3.1 Submittal Deadline and Location**

(a) All proposals must be received by Texas State at the designated location no later than the time and date specified.

(b) Proposals are to be submitted to the location specified.

(c) 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.

Please note that many courier or delivery services do not deliver directly to offices on campus, but rather to the University’s Central Distribution Warehouse. All University mail is received by the University’s Mail Services at a central location for later distribution to the various departments on campus. If hand carrying, please note that visitor’s parking on campus is limited and may not be convenient to the designated submittal location.

Late offers properly identified will be returned to Respondent unopened. Late offers will not be considered under any circumstances.

**3.2 Submittal Instructions**

(a) Proposals including Execution of Offer (Section 5) must be signed by Respondent’s company official or representative authorized to commit such proposals and bind the Respondent in the event of a contract award. Failure to sign the Execution of Offer may be basis for proposal disqualification.

(b) An original and two (2) copies of your complete proposal submitted in response to this solicitation are required.

(c) Proposal package (envelope/box/carton) must indicate on the lower left-hand corner:

* the Respondent’s company name;
* the proposal opening date; and,
* RFP number.

(d) Telephone and/or facsimile (Fax) responses to this RFP are not acceptable.

(e) All costs and expenses related to the preparation and submittal of a response to this solicitation shall be borne by the Respondent.

(f) Upon receipt, all submittals shall become property of the University.

**3.3 Texas State Authorized Contacts and Approvers**

Any questions or concerns regarding this Request for Proposal shall be directed in writing to:

Texas State University-San Marcos

ATTN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Office

601 University Drive, \_\_\_ Bldg. Room # ???

San Marcos, Texas 77666-4616

e-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: (512) 245-\_\_\_\_\_

Texas State specifically requests that Respondents restrict all contact and questions regarding this RFP to the above named individual.

Respondents are cautioned that only authorized individuals may sign any resulting contracts, orders or agreements on behalf of Texas State in accordance with University Policy and Procedures (Ref: UPPS [03.04.02 “Contracting Authority to Commit the University”](http://www.txstate.edu/effective/upps/upps-03-04-02.html)). A CONTRACT SIGNED BY AN UNAUTHORIZED PERSON IS NOT BINDING ON TEXAS STATE.

If unsure, it is strongly recommended that the successful Respondent confirm the authority of any Texas State employee who approves any resulting contract or agreement by contacting the Texas State Director of Contract Compliance (512-245-2550 or rm01@txstate.edu), or contact The TSUS Office of General Counsel at 512-245-2530.

**3.4 Inquiries and Interpretations**

Any questions or inquiries regarding the specifications or any other aspect of this solicitation must be received no later than close of business or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_ (See Section 2 “Schedule of Proposal Process”).

Responses to inquiries which directly affect an interpretation or change to this RFP will be issued in writing by addendum (amendment) posted to the ESBD and mailed and or faxed to all parties recorded by Texas State as having received a copy of the RFP. All such addenda issued by Texas State prior to the time that proposals are received shall be considered part of the RFP, and the Respondent shall consider and acknowledge specific receipt of each in his/her proposal response.

Only those Texas State replies to inquiries, which are made by formal written addenda, shall be binding. Oral and other interpretations or clarification will be without legal effect.

**3.5 Terms and Conditions**

The following Section 4 represents the contract format used by Texas State for engaging services. Prior to providing any services or incurring any costs, the successful Respondent (service provider) will be required to execute a contract using the language as shown without additions or deletions, save specific provider identification, related scope of work and agreed upon fee schedule. No changes to the agreement will be considered and it is recommended proposed bidder find the contract terms acceptable prior to submission of response to this RFP.

The Respondent should note that there are constitutional and statutory limitations on the authority of University (a State agency) to enter into certain terms and conditions of a Contract or Agreement (collectively, the “**Limitations**”), including, but not limited to:

* 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.

**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.** Nothing hereunder shall be construed as a waiver of the constitutional, statutory or common law rights, privileges, immunities or defenses of Texas State.

**SECTION 4 IS A SAMPLE ONLY. DO NOT ATTEMPT TO COMPLETE THIS SECTION.** This section is intended to give all potential Respondents the contract language that will be used with the successful Respondent(s).

**By signing the Execution of Offer in Section 5, Respondent is accepting the terms and conditions which will become a part of any resulting contract.**

**NOTE: In accordance with Texas Education Code, Chp. 51, Section 51.9335, Subsection (h):**

**“(h) in any contract for the acquisition of goods and services to which an institution of higher education is a party, a provision required by applicable law to be included in the contract is considered to be part of the executed contract without regard to:**

1. **whether the provision appears on the face of the contract; or**
2. **whether the contract includes any provisions to the contrary.”**
	1. **Confidential or Proprietary Information**

University considers all information, documentation and other materials requested to be submitted in response to this solicitation to be of a non-confidential and/or non-proprietary nature and therefore shall be subject to public disclosure after a contract is awarded under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.). Any or all information, documentation, and other material provided in connection with this solicitation, or any resulting contract, may be subject to public disclosure as noted above.

Any part of this solicitation response that, in the opinion of the Respondent, is of a proprietary or confidential nature must be clearly, specifically and prominently marked as such by the Respondent; however merely indicating or marking in no way guarantees that the State shall view the furnished information as such regardless of how it is identified.

Respondents are hereby notified that the University strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of RFP information.

* 1. **Right To Not Make An Award, Waive Formalities or Technicalities**

University makes no guarantee that an award will be made as a result of this solicitation, and reserves the right to accept or reject any or all responses to this solicitation, waive any formalities or minor technical inconsistencies, or delete any item/requirements from this solicitation or resulting contract when deemed by the University to be in University's best interest.

Representations made within the response will be binding on responding firms. University will not be bound to act by any previous communication or responses submitted by the firms other than in response to this solicitation.

* 1. **Referenced Documents**

**The following list of documents, attachments or exhibits are attached and incorporated into this solicitation by reference:**

| ***Title*** | ***Revision Date*** | ***Number of Pages*** |
| --- | --- | --- |
| **Procurement Solicitation Questionnaire** | **XX/XX/200X** | **2** |
| **Exhibit “ ” – Statement/Scope of Work**  | **XX/XX/200X** | **X** |
| **Exhibit “ ” -**  | **XX/XX/200X** | **X** |
| **Exhibit “ ” – Cost Proposal/Unit Price Schedule** | **XX/XX/20XX** | **X** |
| **Attachment “ ” -**  | **XX/XX/200X** | **X** |
| **Attachment “ “ – Texas State University-San Marcos Contract Vendor Employee Background Check Policies [optional]** | **01/11/2010** | **1** |
| **HUB Subcontracting Plan (HSP)** |  |  |

* 1. **Special Instructions**

**In addition to any instructions included by reference in Section 3.8 “Referenced Documents”, the following shall apply to this solicitation:**

* **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**
* **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**
* **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**
* **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**SECTION 4**

**(*SAMPLE CONTRACT*)**

### GENERAL TERMS AND CONDITIONS

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ AGREEMENT

# BETWEEN

# TEXAS STATE UNIVERSITY-SAN MARCOS

# AND

# PROVIDER

This agreement (“Agreement”) is made and entered into by and between Texas State University-San Marcos (“University” or “Texas State”) and (“Provider”) to provide \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Work”) as described in Exhibit A.

University and Provider agree as follows:

**1. SCOPE OF WORK**.

1. 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.
2. 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 contract.

**2. TIME FOR COMMENCEMENT AND COMPLETION**.

1. Time is of the essence in this Agreement and Provider shall complete all authorized Work in accordance with the time for performance described for the Work, and in a minimum of time consistent with the highest customs, standards and practices of Provider’s business or profession.
2. Provider will commence and substantially complete the Work as set forth in Exhibit A.

**3. PAYMENT TERMS**

1. University will pay for Work performed under this agreement in accordance with Texas Government Code, section 2251 “Prompt Payment”.
2. For the satisfactory performance of the Work, the University shall pay Provider an amount not to exceed that described in Exhibit B, attached to and made a part of this agreement for all purposes.
3. The amount due to Provider 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 must sign the invoice and submit it to University at the address specified in Section 7.G below.
4. The University will pay for authorized travel related expenses in accordance with State of Texas Travel Guidelines.

**4. DEFAULT AND TERMINATION**.

1. If a party substantially fails to perform in accordance with the terms of this agreement, the other party may terminate this Agreement upon fifteen 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-day period.
2. University may, without cause, terminate this Agreement at any time upon giving thirty days advance notice to Provider. Upon termination pursuant to this paragraph, Provider shall receive 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.

**5. PUBLIC INFORMATION**

1. 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.
2. 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.
3. 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, Tex. Govt. Code.
4. The University strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to the public disclosure of contract information under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.).

**6. ALTERNATIVE DISPUTE RESOLUTION**

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

1. 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 7.G.
			2. This notice shall specifically state that the provisions of Chapter 2260, subchapter B, 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 Government Code.
2. The contested case process provided in Chapter 2260, subchapter C, of the 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.
3. Compliance with the contested case process provided in subchapter C 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.
4. 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.
5. 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.
6. 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 7.G.

**7. MISCELLANEOUS**

1. Provider agrees to indemnify and hold harmless the University from any claim, damage, liability, expense or loss arising out of Provider’s performance under this Agreement.
2. Provider shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of the University.
3. Provider shall be an independent contractor, and neither Provider nor any employee of Provider shall be deemed to be an agent or employee of the University. As an independent contractor, Provider will be solely responsible for determining the means and methods for performing the services described. 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:**
	1. On-campus driving and parking;
	2. Prohibition on smoking or tobacco use;
	3. Fire safety;
	4. Hazardous Materials;
	5. Drug-free workplace; and,
	6. Prohibition of sexual harassment or harassment or discrimination based on race, color, national origin, age, sex, religion, disability, or sexual orientation.
4. This Agreement (including Exhibits A and B) 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.
5. 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.
6. Provider certifies that, upon the effective date of this Agreement, Provider is not delinquent in payment of State of Texas corporate franchise taxes. Provider agrees that any false statement with respect to franchise tax status shall be a material breach hereof and University shall be entitled to terminate this Agreement upon written notice to the Provider.
7. Any written notice required by this agreement shall be mailed to the attention of the Authorized Representative at the address listed below: (Address for University as appropriate for Section 3.B above and any other address for reporting as University may request).

University Provider

Attn: Attn: Texas State University-San Marcos

601 University Drive, JCK #

San Marcos, Texas, 78666-4616

With copies to:

Attn:

Texas State University-San Marcos

601 University Drive, JCK #

San Marcos, Texas, 78666-4616

1. If Provider signed its Proposal with a false statement, or signs this Contract with a false statement, or it is subsequently determined that Provider has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Provider shall be in default under the Contract and the University may terminate or void the Contract for cause and pursue other remedies available under the Contract and applicable law.
2. Except as otherwise provided, neither Provider nor University, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this Contract caused by Force Majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform.
3. “Force Majeure” is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three business days of the existence of such Force Majeure or otherwise waive this right as a defense.
4. Provider represents and warrants that the Provider has no actual or potential conflicts of interest in providing services to the University under this Contract and that Provider’s provision of services under this Contract would not reasonably create an appearance of impropriety.
5. The parties shall deem all work products produced as a result of this agreement as “works for hire.” Upon delivery, all work products, including writings, drawings, plans, reports, specifications, calculations, documents, presentations, and other materials developed under this agreement shall be the UNIVERSITY’S exclusive property, to use as the UNIVERSITY deems appropriate. CONTRACTOR relinquishes all claims to copyright and other intellectual property rights in favor of the UNIVERSITY.

Neither CONTRACTOR nor its subcontractors, if any, shall make any such materials available to any individual or organization, without the prior written approval of the UNIVERSITY’S AUTHORIZED REPRESENTATIVE, or designee. CONTRACTOR makes no representation of the suitability of the work product for use in, or application to, circumstances not contemplated by the scope of work.

1. In accordance with Texas Education Code, Chp. 51, Section 51.9335, Subsection (h), any contract for the acquisition of goods and services to which an institution of higher education is a party, a provision required by applicable law to be included in the contract is considered to be a part of the executed contract without regard to:
	1. Whether the provision appears on the face of the contract; or
	2. Whether the contract includes any provision to the contrary.
2. The following exhibits and attachments are hereby incorporated into this contract by reference. In the event of a conflict between the referenced documents and this contract, unless specifically noted otherwise, the contract terms and conditions shall prevail.

| ***Title*** | ***Revision Date*** | ***Number of Pages*** |
| --- | --- | --- |
| **Exhibit “ ” –**  | **XX/XX/200X** | **X** |
| **Exhibit “ ” -**  | **XX/XX/200X** | **X** |
| **Attachment “ ” -**  | **XX/XX/200X** | **X** |
|  | **XX/XX/200X** | **X** |

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

Texas State University-San Marcos Provider

(Signature) (Signature)

(Title) (Title)

(Date) (Date)

**EXHIBIT A**

## SCOPE OF WORK

**EXHIBIT B**

## **FEES AND EXPENSES**

1. The total costs of the Work rendered by Provider, including expenses, shall not exceed $ .

2. Billing Rates:

3. Expenses: Provider shall bill University for all reasonable and documented out-of-pocket expenses actually incurred in performing the Work described in Exhibit A.

SECTION 5

**EXECUTION OF OFFER**

In compliance with this solicitation, and subject to all the conditions herein attached or referenced, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted, bid, offered or proposed.

**Proposer Affirmations and Certifications**

By signing this “Execution of Offer” the Respondent affirms or certifies that the Respondent:

1. has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal;
2. is not currently delinquent in the payment of any franchise tax owed the State of Texas;
3. pursuant to Section 2155.004 Government Code, relating to collection of state and local sales and use taxes, certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate;
4. has not received compensation for participation in the preparation of the specifications for this solicitation;
5. shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings costs, damages, and liabilities, from any acts or omissions of proposer or any agent, employee, subcontractor of Respondent in the execution or performance of this purchase order;
6. agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
7. agrees to comply with Government Code 2155.4441, pertaining to service contract use of products produced in the State of Texas; and,
8. certifies that they are in compliance with section 618.003 of the Government Code, relating to contracting with executive head of a State agency. If section 618.003 applies, Respondent will complete the following information in order for the proposal to be evaluated:

Name of Former Executive:

Name of State Agency:

Date of Separation from State Agency:

Position with Respondent:

Date of Employment with Respondent:

Further, the Respondent certifies that neither the Respondent nor the firm, corporation, partnership or institution represented by the Respondent, or anyone acting for such firm, corporation or institution 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, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

*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.*

**Texas Family Code Section 231.006 – “Ineligibility to Receive State Grants or Loans, or Receive Proposals or Payments on State Contracts”.**

1. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to:
	1. receive payments from state funds under a contract to provide property, materials, or services: or
	2. receive a state-funded grant or loan.
2. A child support obligor or business entity ineligible to receive payments under Subsection (a) remains ineligible until:
	1. all arrearages have been paid; or
	2. the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.
3. Pursuant to Section 231.006 (c), Family Code, proposal should include name and Social Security number of each person with at least 25% ownership of the business entity submitting the proposal. Proposers that have pre-registered this information on the GSC Centralized Master Proposers List have satisfied this requirement. If not pre-registered, attach name & social security number for each person. Otherwise this information must be provided prior to contract award.
4. “Pursuant to Section 231.006, Family Code, re: child support, the proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”
5. If a state agency determines that an individual or business entity holding a state contract is ineligible to receive payment under Section (a) the contract may be terminated.
6. If the certificate required under Subsection (d) is shown to be false, the vendor is liable to the state for attorney’s fees, the costs necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or contract.

*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.*

**EXECUTION OF OFFER (continued)**

**This offer consists of pages number (1) through \_\_\_\_\_.**

**The Respondent acknowledges the following issued solicitation addenda have been incorporated into the response:**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Addendum No. |  |  |  |  |  |  |  |  |  |
| Dated |  |  |  |  |  |  |  |  |  |

***(Note – Failure to acknowledge an issued addendum may disqualify a response from further consideration)***

**Signature, Individual/Firm Information and Texas Identification Number (TIN)**

Respondent represents and warrants that the individual signing is authorized to sign this document on behalf of Respondent and to bind Respondent under any contract resulting from this Proposal. The person signing should show title or authority to bind his/her firm in contract.

Failure to manually, or, IF SPECIFICALLY ALLOWED, electronically sign will disqualify the response. If Respondent signs with a false statement, or signs any resulting contract with a false statement, or it is subsequently determined that Respondent has violated any of the representations, warranties, guarantees, certifications or affirmations included in the solicitation or resulting contract, Respondent shall be in default under the Contract and the University may terminate or void the Contract for cause and pursue other remedies available under the Contract and applicable law.

Respondent should provide the full firm name and address, Texas Identification Number (Formerly Vendor ID (VID), or Payee Identification Number (PIN). The Texas Identification Number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. Enter this number in the spaces provided on the Execution of Offer. Sole Owner should also enter Social Security No. (SSN).

 **Signature/Date (INK):**

 Name (Typed/Printed):

 Title:

 Respondent/Company:

 Texas Identification Number (TIN):

 Sole Owner should also enter Social Security No. (SSN):

 Street:

 City/State/Zip:

 Telephone No.: ( ) \_\_\_\_\_\_- \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Fax No.: ( ) \_\_\_\_\_\_- \_\_\_\_\_\_\_\_\_\_\_\_\_\_

 E-mail:

THIS SHEET MUST BE COMPLETED AND RETURNED WITH RESPONDENT’S PROPOSAL BID OR OTHER EXPRESSION OF INTEREST. FAILURE TO SIGN AND RETURN THIS SHEET WILL RESULT IN THE REJECTION OF THE

SUBMITTAL.

*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. In addition, the Respondent may be removed from all solicitation lists due to this transgression.*

PREFERENCES

Other preferences as defined in Rule 1 TAC 113.8 (check any that are applicable):

(\_\_) Supplies, materials, equipment, or services produced in TX/ offered by TX bidders

(\_\_) Agricultural products produced or grown in TX

(\_\_) Agricultural products and services offered by TX bidders

(\_\_) USA produced supplies, materials, or equipment

(\_\_) Products of persons with mental or physical disabilities

(\_\_) Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel

(\_\_) Energy efficient products

(\_\_) Rubberized asphalt paving material

(\_\_) Recycled motor oil and lubricants

(\_\_) Products produced at facilities located on formerly contaminated property

(\_\_) Products and services from economically depressed or blighted areas

**IF CLAIMING ANY PREFERENCES LISTED ABOVE, FOR THE PREFERENCE TO APPLY, THIS SHEET MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE.**

**Substitute W-9**

Texas State University-San Marcos requires all companies and individuals (not employees or students) to have a Substitute W-9 form on file. This form is needed for IRS compliance.

Step 1: Obtain the Substitute W-9 form from the Texas State Accounts Payable Office website at:

<http://www.txstate.edu/gao/fimd/forms.html>

Step 2: Fill out the form completely, sign and mail the original to:

Texas State University-San Marcos

Attn: Vendor Maintenance

FI Master Data Center

601 University Drive, JCK # 560

San Marcos, TX. 78666-4616

All vendors are encouraged to sign up for direct deposit. The direct deposit form is located at:

[**http://www.txstate.edu/gao/fimd/forms/contentParagraph/03/document/achvendor.pdf**](http://www.txstate.edu/gao/fimd/forms/contentParagraph/03/document/achvendor.pdf)

*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. In addition, the Respondent may be removed from all solicitation lists due to this transgression.*