

**Peer Assistance Program 507-16-001
TEXAS BOARD OF NURSING**

**SECTION ONE:
GENERAL INFORMATION**

- 1.1 **Purpose of the Request for Proposals.** The purpose of this Request for Proposals (RFP) is to engage a Contractor to provide Peer Assistance Services to the TEXAS BOARD OF NURSING (herein referred to as the "BON ") The BON, by means of this RFP, invites all qualified Contractors to submit Proposals in accordance with the requirements outlined in this RFP. The BON anticipates that, based on its review and evaluation of the Proposals received pursuant to this RFP, making no promise to perform such, it may select a Contractor and execute a contract whereby the Contractor renders Services to the BON, in accordance with the terms and conditions set forth in the contract. This RFP is not a solicitation for professional or consulting services as defined in Chapter 2254, Texas Government Code.
- 1.2 **Historically Underutilized Business (HUB) Firms.** The BON endeavors to promote full and equal opportunity for businesses to supply the BON Services that are necessary to support the BON's mission. In this regard, the BON commits to select Contractors in accordance with (i) BON needs, (ii) BON resources, (iii) HUB goals and guidelines established by the Texas Legislature and the Texas Procurement and Support Services, and (iv) BON policies and procedures for contracting with Historically Underutilized Businesses. See attachment A.
- 1.3 **BON's Right to Reject.** This RFP does not commit the BON to select a Contractor or to award a Contract to any Contractor. The BON reserves the right to accept or reject, in whole or in part, any Proposal it receives pursuant to this RFP.
- 1.4 **Schedule of Events.** The BON will make a good faith effort to follow the timeline below for evaluating, negotiating and issuing an award, although they are tentative and subject to change:

<u>Event</u>	<u>Date</u>
RFP Distributed to Contractors	7/27/15
Deadline for Questions	8/1/15
Deadline for Delivery of Proposals	8/14/15
Deadline for Requests for Clarification	8/17/15
Deadline to Responses for Requests for Clarification	8/19/15
Evaluation of Proposals	8/21/15
Award Recommendation	8/21/15
Issuance of Contract	10/23/15

**SECTION TWO:
RFP REQUIREMENTS**

- 2.1 **Right to Modify, Rescind, or Revoke RFP.** The BON reserves the rights to modify, rescind, or revoke this RFP, in whole or in part, at any time prior to the date on which the authorized representative of the BON executes a Contract with the Selected Contractor.
- 2.2 **Compliance with RFP Requirements.** By submission of a Proposal, a Contractor agrees to be bound by the requirements set forth in this RFP. The BON, at its sole discretion, may disqualify a Proposal from consideration, if the BON determines a Proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.
- 2.3 **Binding Effect of Proposal.** Unless otherwise agreed in writing signed by an "Officer of Record" for the Texas Board of Nursing, each Contractor agrees to and shall be bound by the information and documentation provided with the Proposal, including prices quoted for Services.
- 2.4 **Signature, Certification of Contractor.** The Proposal must be signed and dated by a representative of the Contractor who is authorized to bind the Contractor to the terms and conditions contained in this RFP and to compliance with the information submitted in the Proposal. Each Contractor submitting a Proposal certifies to both (a) the completeness, veracity, and accuracy of the information provided in the Proposal and (b) the authority of the individual whose signature appears on the Proposal to bind the Contractor to the terms and conditions set forth in this RFP. Proposals submitted without the required signature shall be disqualified.

- 2.5 **Requirements for Submission.** Each Contractor shall submit one (1) original- which must be clearly defined as the ORIGINAL and one copy of the Proposal in digital format on CD-R. The original shall be prepared and formatted in at least 10-point-font that is clearly readable. The original and digital copy on CD-R of the Proposal shall be submitted to the Point of Contact person in a sealed package, clearly labeled as follows:

Peer Assistance Program 507-16-001

TEXAS BOARD OF NURSING

Attn: Mark Majek
Tower ID, Suite 3-460
333 Guadalupe Street
Austin, TX 78701

- 2.6 **Deadline for Proposals.** Proposals must be received in the TEXAS BOARD OF NURSING, at the address specified in Section 2.5 of this RFP, no later than 4:00 p.m., Central Standard Time, on the date specified for Delivery of Proposals in Section 1.4 of this RFP.

**ANY PROPOSAL RECEIVED AFTER EXPIRATION OF THE DEADLINE WILL BE
IMMEDIATELY DISQUALIFIED FROM CONSIDERATION, AND WILL BE
RETURNED UNOPENED TO THE CONTRACTOR.**

- 2.7 **Risk of Loss, Damage, Delay.** Contractor acknowledges and agrees to release and hold harmless the TEXAS BOARD OF NURSING, Board Officers, employees, agents, and personnel, from and against any and all claims, liability, damages, and costs, including court costs and attorneys' fees, arising out of or pursuant to delivery of the Proposal or failure to deliver the Proposal to the Texas Board of Nursing office, as designated in Sections 2.5 and 2.6 of this RFP. The BON will not be liable for late delivery of proposals by the carrier.
- 2.8 **Ownership of Proposals.** All Proposals become the physical and intellectual property of the BON upon receipt.
- 2.9 **Use and Disclosure of Information.** Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise accepted 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. Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise accepted 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. To the extent permitted by law, information labeled by the Contractor as "Privileged and Confidential – Proprietary Information" will be used by the BON only for purposes related to or arising out of the (a) evaluation of Proposals, (b) selection of a Contractor pursuant to the RFP process, and (c) negotiation and execution of a Contract, if any, with the Contractor selected.
- 2.10 **Costs of Participation.** The BON specifically disclaims responsibility and/or liability for any and all costs, expenses, or claims related to or arising out of the Contractors participation in this RFP process, including but not limited to costs incurred as a result of preparing, copying, shipping, presenting, and/or clarifying the Proposal and the information relevant to the Proposal.
- 2.11 **Compliance with Applicable Laws, Regulations, Ordinances, BON Policies and Procedures.** By submitting a Proposal, the Contractor agrees to and shall comply with all applicable local, state and federal laws and regulations, as well as with all applicable Rules and Regulations of the TEXAS BOARD OF NURSING. BON Rules and Regulations may be accessed at the following Internet address: <https://www.bon.texas.gov/>
- 2.12 **HUB Subcontracting Plan.** The Texas Board of Nursing in accordance with Texas Gov't Code §2161.252 and Texas Administrative Code §111.14, has determined the possibility of subcontracting opportunities that are available under the contract. Failure to respond and not include the (HSP) will be cause for disqualification to participate in this RFP, if you are not subcontracting any portion of the contract the (HSP) form must still be completed where applicable and returned with the bid. Please see Attachment A for the required information.

SECTION THREE:
RFP ROCEDURES

- 3.1 **Rescission of Proposal.** A Proposal can be withdrawn from consideration at any time prior to expiration of the Deadline for Proposals, as stated in Section 1.4 of this RFP, pursuant to a written request sent to the Point of Contact.

- 3.2 **Request for Electronic Copy.** A Contractor may request an electronic copy on CD-R of the RFP from the contact name given in Section 2.5 of this RFP. Electronic copies can also be downloaded from the following web address bon.state.tx.us or requested as an attachment through email addresses only.
- 3.3 **Request for Clarification.** The BON reserves the right to request clarification of any information contained in a proposal. The BON may toll its evaluation of Proposals and award of a contract while it awaits receipt of the additional information requested from a bidder. The Board will make every reasonable effort to comply with Section 1.4 of the RFP in this regard.
- 3.4 **Questions by Contractors.** The deadline for questions submitted by Contractors is stated in Section 1.4 of this RFP. The BON will accept no questions after this date. Questions must be submitted in writing; the question, written BON response, and addenda, if any, related to the RFP will be distributed to all Contractors. If the BON determines a question has been sufficiently answered in the RFP, the inquiring Contractor will be referred to the relevant section of the RFP. Questions may be emailed to (mark.majek@bon.texas.gov).
- 3.5 **Addenda to the RFP.** Each Contractor will be provided with copies of the BON approved addenda, including amendments to the RFP. If and as necessary, as determined by the BON, Contractors will, in turn, be allowed time to revise or supply additional information in response to such addenda.
- 3.6 **Communications with BON Personnel.** Except as provided in this RFP and as is otherwise necessary for the conduct of ongoing BON business operations, Contractors are expressly and absolutely prohibited from engaging in communications with BON personnel who are involved in any manner in the review and/or evaluation of the Proposals; selection of a Contractor; and/or negotiations or formalization of a Contract. If any Contractor engages in conduct or communications that the BON determines are contrary to the prohibitions set forth in this Section 3.7, the BON may, at its sole discretion, disqualify the Contractor and withdraw the Contractor's Proposal from consideration.

Any notice under this Agreement shall be in writing and delivered to the party to be notified either by messenger service or United States mail. Notice will be effective upon delivery by messenger service or four (4) business days after the date of mailing by prepaid certified mail, return receipt requested. For purposes of notice, the name and address of the "Point of Contact" to be notified on behalf of the BON is:

Texas Board of Nursing
ATTN: Mark Majek
Tower 3, Suite 3-460
333 Guadalupe Street
Austin, TX 78701
Telephone: (512) 305-6801

- 3.7 **Evaluation of Proposals.** The Selection Committee will review Proposals in accordance with the procedure and criteria set forth in this RFP. Proposals that are (i) incomplete, (ii) not properly certified and signed, (iii) not in the required format, or (iv) otherwise non-compliant, in whole or in part, with any of the requirements set forth in this RFP, as determined by the BON, may be disqualified by the BON.

SECTION FOUR: SPECIFICATIONS

- 1.0 **Funding.** In compliance with the General Appropriations Act, the Peer Assistance Program contractor will be funded with monthly transfers from fees collected by the BON not to exceed the appropriated amount of \$873,558 per fiscal year unless, future approved appropriations for this program exceed this amount. Funds will be awarded for a period through August 31, 2017 coinciding with the fiscal biennium but, may be extended for two additional two year periods if, mutually agreed upon by the contracted parties. The contract will be in accordance with the General Appropriations Act and its provisions will be at least as rigorous as the rules of the Texas Department of State Health Services (Title 25, Health Services; Part I, Texas Department of State Health Services; Chapter 451, Peer Assistance). Funding for the specific bidder will depend upon the amount of peer assistance fees collected by the BON but will not exceed the line-item appropriation for peer assistance in the BON appropriation. Contingent upon the amount collected and the number of participants, funding could be less than the line-item appropriation and is subject to legislative restraints and/or limitations on the BON's appropriation for the fiscal year.

- 2.0 **Required Documentation.** To be eligible to bid, the bidder shall provide copies of the Certification referenced in 2.1 below. Failure to provide this documentation will disqualify the bid.
- 2.1 **Certification** by the Texas Department of State Health Services as meeting all rules and criteria for peer assistance programs, (i.e., Title 25, Health Services; Part I, Texas Department of State Health Services; Chapter 451. Peer Assistance), pursuant to H.B. 1, 75th Legislature, R.S., Art. VIII, Sec. 3 Peer Assistance Program Funding Requirements.
- 3.0 **Additional Eligibility Requirements.** To be eligible to bid, each bidder shall meet the minimum eligibility criteria in this section for a Peer Assistance Program. By signature on a proposal, bidder certifies that he/she meets or exceeds the following eligibility criteria:
- 3.1 Employment of a full-time Director of the Peer-Assistance Program, who shall be a licensed mental health professional as defined by 25 TAC 451.106 and preferably a registered nurse, who shall have primary responsibility for managing the Program:
- 3.2 Director must have knowledge of the Nursing Practice Act (NPA) and applicable regulations of the BON.
- 3.3 Sufficient administrative oversight and legal counsel to support program administration.
- 3.4 Program must have an adequate number of staff and staffing as defined by 25 TAC 451.106.
- 3.5 Maintenance of a permanent, publicized business address within Texas, which shall be open for business between 8:00a.m. and 5:00p.m. Monday through Friday, except Federal holidays.
- 3.6 Documented history of intervention, assessment/initial evaluation, referral, and monitoring of impaired health-care professionals (preferably in the nursing profession) impaired by a substance use disorder and mental illness including diagnoses of major depression, bipolar disorder, anxiety disorder, schizophrenia and schizoaffective disorder.
- 3.7 Ability to ensure continuity of programs for persons currently enrolled in the existing Peer Assistance Program.
- 3.8 An advisory committee to oversee the Peer Assistance Program, which shall be composed of statewide nursing organization and health related entities involved in substance use disorder and mental health and one representative of the Board of Nursing who shall serve as an ex-officio member of the Advisory Committee.
- 3.9 A program to accept self-referrals and third party referrals of nurses impaired by a substance use disorder, specific mental illnesses, from any person and from the BON.
- 3.10 A statewide intervention program where Texas licensed Nurses act as case managers to provide assistance to all licensed nurses referred to the Peer Assistance Program and a program to recruit and train case managers.
- 3.11 A statewide program, which includes volunteer licensed nurses trained as advocates according to Texas Department of State Health Services criteria.
- 3.12 An ongoing program for promotion and publicity to encourage referrals.
- 3.13 A program to contract in writing with eligible individuals, including contract terms that specify return to work agreements and the individual's treatment and rehabilitation program.

- 3.14 A program to assess the severity of a mental health and/or substance use disorder using the criteria and diagnoses listed in the Diagnostic and Statistical Manual of Mental Health Disorders V (Manual) and its successor(s), if any. The program must be able to satisfactorily address the various diagnoses within the Manual, paying special attention to the spectrum of substance abuse disorders (mild, moderate, and severe). The program must be able to monitor the eligible individuals after intervention or referral, including monitoring compliance with the terms of the participation contract and a treatment/rehabilitation program for mental health and/or substance use disorders. The program must be able to monitor LVN's and RN's for a period of at least three years, monitor APRN's for a period of at least five years, and monitor participants with mental health issues for a period of at least 1 year. The program must be able to monitor compliance with the mental-health professional recommendations.
- 3.15 A program that can provide an extended evaluation period which includes monitoring for a period of one year through voluntary abstinence of participant with random drug screening.
- 3.16 A program to conduct random and discretionary urinalysis or other types of drug analyses including comprehensive Health professional panel for testing; chain of custody assurance and documentation, testing in a federally certified laboratory, and timely reporting and monitoring of results; (prefer computer randomization of drug screens). The program must be able to customize drug screen panels at the request of the BON. The program must also maintain regular telephone visits with participating individuals. The program may subcontract to a third party for drug screening services provided that the third party meets all drug screening services requirements under this RFP and subsequent contract.
- 3.17 Procedures to refer to the Texas State Board of Nursing all eligible individuals, as required by the Nursing Practice Act, or those who have not complied with the terms of the Peer Assistance Program.
- 3.18 A program to maintain effective controls to comply with applicable confidentiality requirements under Texas law.
- 3.19 A program to provide education licensed nurses and nursing programs regarding substance abuse and the Peer Assistance Program.
- 3.20 A program, which uses financial accounting procedures that, adhere to generally acceptable accounting principles.
- 3.21 The program must submit to financial and/or performance audit(s) at the discretion of the Board of Nursing, State Auditor's Office, or Legislative Budget Board. The audit may be performed by the Board of Nursing, the Board of Nursing's designee, the State Auditor's Office, or the Legislative Budget Board. The program must maintain documentation showing ongoing compliance with all statutory and contract criteria. Further, the program must be able to demonstrate sufficient managerial control over the program; an ability to construct, produce, and maintain meaningful performance measures for the program; an ability to meet and adjust to the changing needs of the participants; a commitment to providing non-punitive, rehabilitative services to participants; an ability to construct budgetary constraints designed to sustain and enhance the longevity of the program; an ability to timely enroll new participants in the program, minimize attrition, and incentivize completion of the program. A program may, as part of an audit, be required to produce evidence of the program's overall performance under the contract, whether the program is performing as expected and whether it is in the public interest to continue the contract. The audit should review all internal performance metrics, the existence of and adherence to internal guidelines and policies, adherence to the policies of the Board of Nursing, consistency and fairness in the treatment of participants, the program's method(s) of internal record keeping, the appropriateness of fees paid by participants, enrollment trends, including waiting period(s) for enrollment into the program and the program's sustained enrollment rate(s), satisfaction ratings of participants who complete and/or do not complete the program, the completion rate of participants, and any other factor relevant to the furtherance of the Board of Nursing's mission, as determined by the Board of Nursing.
- 3.22 An itemized annual operating budget not to exceed contract limits, which shall include but not be limited to all Peer Assistance Program expenditures and an arrangement for routine financial audits to be conducted by the State Auditor and/or a qualified accounting firm designated by the BON. The results of such audits shall be submitted to the BON.
- 3.23 An active plan for ongoing program evaluation including a definition or criteria for program success, and the submission of quarterly reports to the Board of Nursing reflecting:
1. Number of individuals referred and those who have signed participation agreements with the program.
 2. Details on each referred individual, including demographic information; referral source (board, self, other); number referred to the Board; number closed, no action; number of active cases; number employed in nursing;

significant activities, accomplishments or changes in program staff or key processes.

3. Monitoring activities, including the number of drug screens requested, conducted and results of these test;
4. Any other pertinent information requested by the BON, the State Auditor, or the L.B.B. including the items listed in Section 3.21 of this RFP.

3.24 Maintenance of records regarding performance data and submission of an annual report providing a summary of program activities. Such reports shall include Legislative Budget Board performance measure information such as: recidivism rate, one year completion rate, percent of non-board referrals reported to the BON, and number of eligible individuals participating in program.

3.25 Maintenance of Policy and Procedure manual to include policies that are at least as rigorous as those set forth in 25 TAC 451.108, and which shall include:

1. Statement of purpose and service responsibility to the public, the nursing profession and the BON;
2. Explanation of preventive and rehabilitative nature of the program;
3. Procedural outline for operating the program, stressing the need for early identification and intervention;
4. Procedures used by the program for identification, intervention, referral and follow-up;
5. Information about re-entry into the nursing profession and relapse potential;
6. Information about aftercare programs, and ways in which aftercare, if appropriate will be encouraged;
7. Information about criteria for evaluation of referral and evaluation services, treatment programs and aftercare programs;
8. Information about return to work agreements and conditions of participation;
9. Information about evaluating the success of the program;
10. Policies and procedures for scheduling and conducting advisory committee meetings and training events for case managers and advocates including the policies regarding the frequency and content of meetings and training events.
11. Samples of forms and/or form letters.

3.26 Provide a comprehensive annual operating budget for the program.

4.0 Criteria to Score and to Rank Eligible Bidders. Each bidder shall provide written responses for each criterion set forth below. Noted parenthetically after each criterion is the maximum numerical (percent) value that can be assessed by the BON staff upon evaluation of each bid. The total numerical value that can be assessed is 100. Documentation for each item listed under 4.0 must be numbered to correspond to the particular item, e.g. all documents submitted in response to 4.0, item 4.1 must be identified with a 4.1 in the top right hand corner of the document.

- 4.1 Maintenance of documentation showing ongoing compliance with statutory and contract criteria and maintenance of program financial records; such documentation shall be subject to audit by the L.B.B., State Auditor, the Board of Nursing, or any auditor designated by the Board of Nursing. The results shall be submitted to the BON. (10%)
- 4.2 An active program for ongoing program evaluation including a definition or criteria for program success and submission of reports as required. Such reports shall include monthly reports of program activities, quarterly reports of applicable LBB performance measure data and an annual report of program activities. Reports shall reflect data mentioned in items 3.22 and 3.23 of this invitation to bid. (45%)
- 4.3 Maintenance of a Policy and Procedure Manual to include policies that are at least as rigorous as those set forth in 25 TAC, Ch. 451, and which shall include those items listed in Section 3 of this invitation to bid. (5%)
- 4.4 An itemized budget not to exceed contract limits, which shall reflect all Peer Assistance program expenditures. (40%)

5.0 Contract Pricing and Billing. Contractor shall be paid in monthly installment transfers from fees collected from each nurse who renews his or her license during each month of this contract, not to exceed the appropriated amount per fiscal year. It is understood that BON will pay this amount from a surcharge it collects pursuant to Section 467.004, Health & Safety Code, from each nurse who renews his or her license. In no event shall the BON be obligated to pay Contractor more than the total amount collected by agency through this surcharge.

- 6.0 **Amendments.** BON and the contractor reserve the right to amend the purchase order by mutual agreement, at any time during the term of service, as may be necessary for achieving the highest quality of service by the most efficient and cost-effective means or to include a different element or special feature that was not contemplated or fully developed at the time of bid. Amendments may also be made to add more participants and other licensees to be actively monitored as necessary. The amendment process will be accomplished through a Purchase Order Change Notice (POCN) or letter. A copy of the POCN or letter will be forwarded to the Texas Procurement and Support Services referencing the original Purchase Order.
- 7.0 **Terms.** The term of this contract shall begin on 10/23/15 and shall terminate 8/31/17 and may be renewed for two additional two year periods by mutual consent. The contract shall renew automatically unless terminated by one of the parties with 90 days notice before the end of the renewal period.
- 8.0 **Cancellation Information:** This contract may be cancelled upon 30 days written notice upon occurrence of any of the following conditions:
- 8.1 By mutual written agreement between BON and Contractor.
- 8.2 If BON withdraws recognition of Contractor as an approved peer assistance program under Chapter 467, Texas Health and Safety Code.
- 8.3 If the Texas Department of State Health Services withdraws certification granted to Contractor as complying with the Commission's rules under Chapter 467, Texas Health and Safety Code.
- 8.4 If Contractor voluntarily ceases to operate as an approved peer assistance program under Chapter 467, Texas Health and Safety Code.
- 8.5 By BON, if the Texas Legislature does not appropriate the funds necessary for it to meet its obligations under this contract unless a new fee has been negotiated under Article VIII.
- 8.6 By satisfactory completion of all services and obligations required under this contract.
- 8.7 Should the contract be terminated, no fees other than fees due and payable at the time of termination shall be paid to the Contractor. Payment shall be based on work completed at time of termination. The termination of the contract and payment of an amount in settlement as described above shall extinguish all rights, duties, obligations and liabilities of the BON and the Contractor under the Contract. The decision of BON with respect to the amount due Contractor shall be final and conclusive unless, within thirty (30) days from the date of receipt of a written copy of the decision, Contractor notifies BON of its dissent from its decision. If Contractor's dissent cannot be resolved, the matter shall be submitted to mediation before a mutually agreed mediator.
- 8.8 BON and Contractor may provide for a winding down period as part of the termination of this contract. The date of termination of this Contract shall be the last day of such winding down period. The winding down period may run after the natural expiration of this contract.
- 8.9 **Authorized Relief from Performance (Force Majeure):** The State will grant relief, as necessary, from performance of the contract if vendor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the contractor. The burden of proof for the need of such relief rests with the vendor. To obtain release based on Force Majeure, the vendor must provide the Texas Procurement and Support Services (TPASS) and BON with sufficient documentation to show that suitable merchandise or service is unobtainable from any source.
- 8.10 Open Market Purchase Orders completed by TPASS may only be cancelled by the TPASS.
- 9.0 **Excess Obligations.** Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.
- 10.0 **Funding.** This contract is subject to cancellation without penalty, either in whole or in part, if funds are not appropriated by

the Texas Legislature.

- 11.0 **State Entities.** In addition to providing the services specified for the BON, the awarded contractor agrees to allow the State of Texas departments, commissions, and agencies the option to participate in the contract awarded as a result of this RFP under the same terms and conditions specified.

Each agency electing to participate under this contract will issue a purchase order to the awarded contractor, referring to the terms and conditions specified in this RFP. Awarded vendor(s) will invoice each agency directly for that agency's charges.

- 12.0 **Cooperative Purchasing Members.** The purchase order will be available for use by qualified entities participating in the TPASS Cooperative Purchasing Program providing it does not conflict with the entities statutes, policies or procedures.

Qualified ordering entities may use the prices shown in the purchase order to issue purchase orders for stated quantity(ies) and delivery(ies) location(s). Locations must be different than the originating agency's location(s). All purchase orders should reference the purchase order number, order date and requisition number. Any actions necessary for the administration of the purchase order(s) issued by participating entities are the responsibility of the entity and will not be assumed or managed by the originating agency. These actions include, but are not limited to funding, delivery, invoice processing, renewal, cancellation, problem resolution, and/or any other actions between the vendor and the entity.

- 13.0 **BON Contact:** For additional information, contact: Mark Majek, (512)305-6801 or email: mark.majek@bon.texas.gov.

TEXAS BOARD OF NURSING
STANDARD TERMS AND CONDITIONS:
ITEMS BELOW APPLY TO AND BECOME PART OF BID.
ANY EXCEPTIONS THERETO MUST BE IN WRITING.

1. BIDDING REQUIREMENTS:

- 1.01. Bidders must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
- 1.02. Bids should be submitted on this form. Bidders must price per unit shown. Unit prices shall govern in the event of extension errors. If a price quotation is submitted as part of the bid, the quotation must be referenced on the bid document and signed by the bidder to establish formal linkage to the bid.
- 1.03. Bids must be time stamped at Texas Board of Nursing (BON) on or before the hour and date specified for the bid opening.
- 1.04. Late and/or unsigned bids will not be considered under any circumstances. Person signing bid must have the authority to bind the firm in a contract.
- 1.05. Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 1.06. Bid prices are requested to be firm for BON acceptance for 30 days from bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts offered will be taken if earned.
- 1.07. Bidder should enter Texas Identification Number System (TINS) number, full firm name and address of bidder on the face of this form. Enter in the space provided, if not shown. Additionally, firm name should appear on each continuation page of a bid, in the block provided in the upper right hand corner.
- 1.08. Bid cannot be altered or amended after opening time. Alterations made before opening time should be initialed by bidder or his authorized agent. No bid can be withdrawn after opening time without approval by the BON on an acceptable written reason. Purchases made for State agency use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.
- 1.09. AWARD NOTICE: The BON reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items at the sole discretion of the BON.
- 1.10. The BON also reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the State. Any contract may also be extended up to three months at the sole discretion of the State. Consistent and continued tie bidding could cause rejection of bids by the BON and/or investigation for antitrust violations.
- 1.11. The telephone number for FAX submission of bids is 512-305-7401. This is the only number that will be used for the receipt of bids.
- 1.12. The BON shall not be responsible for failure of electronic equipment or operator error. Late, illegible, incomplete, or otherwise non-responsive bids will not be considered. Call 512-305-6801 for confirmation.
- 1.13. Inquiries pertaining to this RFP must include the requisition number, class/item codes, and opening date.

2. SPECIFICATION:

- 2.01. Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality will be considered unless advertised under §2155.067, Texas Government Code (Gov't Code). If bidding on other than references, bid should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require bidder to furnish specified brand names, numbers, etc.
- 2.02. Unless otherwise specified, items shall be new and unused and of current production.
- 2.03. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 2.04. Samples, when requested, must be furnished free of expense to the BON. If not destroyed in examination, they will be returned to the bidder, on request, at bidder's expense. Each sample should be marked with bidder's name and address, and requisition number. Do not enclose in or attach bid to sample.
- 2.05. The BON will not be bound by any oral statement or representation contrary to the written specifications of this Request for Proposal (RFP).
- 2.06. Manufacturer's standard warranty shall apply unless otherwise stated in the RFP.

3. TIE BIDS:

Awards will be made in accordance with 34 TAC Rules 20.36(b)(3) and 20.38 (Preferences).

4. DELIVERY:

- 4.01. Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates bidder to deliver in 14 calendar days. Unrealistic delivery promises may cause bid to be disregarded.
- 4.02. If delay is foreseen, bidder shall give written notice to the BON. Bidder must keep the BON advised at all times of status of order.

- 4.03. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the BON to purchase the goods or services of this RFP elsewhere and charge any increased costs for the goods or services, including the cost of rebidding, to the bidder.
- 4.04. No substitutions permitted without written approval of BON.
- 4.05. Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency.

5. INSPECTION AND TESTS:

All goods will be subject to inspection and test by the BON. Authorized BON personnel shall have access to supplier's place of business for the purpose of inspections. Tests shall be performed on samples submitted with the bid or on samples taken from regular shipment. All costs shall be borne by the bidder in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the BON's option, be returned to the bidder or held for disposition at bidder's expense. Latent defects may result in revocation of acceptance.

6. AWARD OF CONTRACT:

A response to this RFP is an offer to contract based upon the terms, conditions, and specifications contained herein. Bids do not become contracts until they are accepted through an open market purchase order. The contract shall be governed, construed, and interpreted under the laws of the State of Texas. The factors listed in §§2155.074, 2155.144, 2156.007, and 2157.003, Gov't Code, shall also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.

7. PAYMENT:

Bidder shall submit 2 copies of an itemized invoice showing BON order number on all copies. The BON will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. Payment shall be made in accordance with Chapter 2251, Gov't Code.

8. PATENTS, TRADEMARKS, OR COPYRIGHTS:

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

9. BIDDER ASSIGNMENTS:

Bidder hereby assigns to the BON any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. §1, *et seq.*, and the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code §15.01, *et seq.*

10. BIDDER AFFIRMATIONS:

Signing this bid with a false statement is a material breach of contract and shall void the submitted bid and any resulting contracts, and the bidder shall be removed from all bid lists. By submitting a proposal, the bidder hereby certifies that:

- 10.01. The bidder 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 bid.
- 10.02. Pursuant to 15 U.S.C. §1, *et seq.* and Tex. Bus. & Comm. Code §15.01, *et seq.* neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- 10.03. Pursuant to §2155.004, Gov't Code, neither the bidder nor any person or entity which will participate financially in any contract resulting from this RFP has received compensation for participation in the preparation of the specifications for this RFP.
- 10.04. Pursuant to §231.006(d), Texas Family Code, regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to §231.006, Gov't Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

- 10.05. Under §2155.004, Gov't Code, the bidder certifies that the individual or business entity named in this bid or any contract resulting from this RFP is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.
- 10.06. As required by §2252.903, Gov't Code, bidder agrees that any payments due under a contract resulting from this RFP shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. Bidder shall comply with rules adopted by BON under §§403.055, 403.0551, 2252.903, Gov't Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- 10.07. Pursuant to §669.003, Gov't Code, BON may not enter into a contract with a person who employs a current or former executive head of the BON until four years has passed since that person was the executive head of the BON. By submitting a bid, the bidder certifies that it does not employ any person who was the executive head of the BON in the past four years. If bidder does employ a person who was the executive head of the BON, provide the following information:
- Name of Former Executive:
- Name of State Agency:
- Date of Separation from State Agency
- Position with Bidder:
- Date of Employment with Bidder:
- 10.08. In accordance with §2155.4441, Gov't Code, bidder agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- 10.09. Bidder certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that bidder is in compliance with the State of Texas statutes and rules relating to procurement and that bidder is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>
- 10.10. Sections 2155.006 and 2261.053, Gov't Code, prohibit state agencies from awarding contracts to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005. Under §2155.006, Gov't Code, bidder certifies that the individual or business entity named in its bid is not ineligible to receive a contract and acknowledges that any contract resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
11. Bidder represents and warrants that payment to the bidder and the bidder's receipt of appropriated or other funds under any contract resulting from this RFP are not prohibited by §556.005 or §556.008, Gov't Code, relating to the prohibition of using state funds for lobbying activities.
- 11.01. Bidder represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to BON under the RFP and any resulting contract, if any, and that bidder's provision of the requested items under the RFP and any resulting contract, if any, would not reasonably create an appearance of impropriety.

11.02 A Respondent's past performance will be measured based upon pass/fail criteria in compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:

A score of less than 90% in the Vendor Performance System, Currently under a Corrective Action Plan through the CPA, having repeated negative Vendor Performance Reports for the same reason; or

Having purchase orders that have been cancelled in the previous 12 non-performance (i.e. late delivery, etc.). Contractor performance information is located on the CPA web site at:
http://www.window.state.tx.us/procurement/prog/contractor_performance/

CPA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), CPA may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of CPA, and any negative findings, as determined by CPA, may result in non-award to the Respondent.

By signing this bid, bidder certifies that if a Texas address is shown as the address of the bidder, bidder qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

11.03 Worker's Compensation & Employers Liability. Contractor must maintain workers Compensation Insurance Coverage in accordance with statutory limits if required by law. The limits are listed below.

Workers Compensation: Statutory Limits
Employers Liability: Each Accident \$1,000,000
Disease- Each Employee \$1,000,000
Disease-Policy Limit \$1,000,000
Commercial General Liability:
Occurrence based:
Bodily Injury and Property Damage
Each occurrence limit: \$1,000,000
Aggregate limit: \$2,000,000
Medical Expense each person: \$5,000
Personal Injury and Advertising Liability: \$1,000,000
Products /Completed Operations Aggregate Limit: \$2,000,000
Damage to Premises Rented to You: \$50,000

12. NOTE TO BIDDER:

If bidder takes any exceptions to any provisions of the RFP, these exceptions must be specifically and clearly identified by section in bidder's bid in response to the RFP and bidder's proposed alternative must also be provided in the bid. Bidders cannot take a 'blanket exception' to the entire RFP. If any bidder takes a 'blanket exception' to the entire RFP or does not provide proposed alternative language, the bidder's bid may be disqualified from further consideration.

13. PROTEST PROCEDURES:

Any actual or prospective bidder who is aggrieved in connection with this RFP, evaluation, or award of any contract resulting from this RFP may formally protest as provided in CPA's rules at 34 TAC Rule 20.384.

14. DISPUTE RESOLUTION:

The dispute resolution process provided for in Chapter 2260, Gov't Code must be used by the BON and the bidder to attempt to resolve any dispute arising under any contract resulting from this RFP.

15. NON-APPROPRIATION OF FUNDS:

Any contract resulting from this RFP is subject to termination or cancellation, without penalty to BON, either in whole or in part, subject to the availability of state funds. BON is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If BON becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render BON's or bidder's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, BON will not be liable to bidder for any damages, which are caused or associated with such termination, or cancellation and BON will not be required to give prior notice.

16. TEXAS PUBLIC INFORMATION ACT:

Notwithstanding any provisions of this RFP to the contrary, bidder understands that BON will comply with the Texas Public Information Act (Chapter 552, Gov't Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. Within three (3) days of receipt, bidder will refer to BON any third party requests, received directly by bidder, for information to which bidder has access as a result of or in the course of performance

under any contract resulting from this RFP. Any part of the solicitation response that is of a confidential or proprietary nature must be clearly and prominently marked as such by the bidder.

17. CONFLICT OF INTEREST:

Under §2155.003, Gov't Code, a BON employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and bidders who interact with public purchasers in the conduct of state business, and with any opinions or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of BON or purchasers of other state agencies.

18. FORCE MAJEURE:

Neither bidder nor BON shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

19. INDEPENDENT CONTRACTOR:

Bidder is and shall remain an independent contractor in relationship to the BON. The BON shall not be responsible for withholding taxes from payments made under any contract resulting from this RFP. Bidder shall have no claim against the BON

for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

20. INDEMNIFICATION:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

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

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

21. Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE

PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/ OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

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

22. RIGHT TO AUDIT:

In addition to and without limitation on the other audit provisions of this RFP, pursuant to § 2262.003, Texas Government Code, the state auditor may conduct an audit or investigation of the bidder or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the bidder or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the bidder or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This RFP or any contract resulting from this RFP may be amended unilaterally by BON to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.003, Texas Government Code. Bidder will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the bidder and the requirement to cooperate is included in any subcontract it awards.

Texas Board of Nursing
333 Guadalupe Street, Suite 3-460
Austin, TX 778701

Request for Proposal No. 507-16-001

To facilitate your firm's participation in the Texas Board of Nursing's bid process, we respectfully request that you fill in the requested information below as acknowledgement that you have received the bid noted above. By completing this we will be able also to provide notification to you of any addenda to this solicitation. A "No Bid" response on this form will not preclude your firm's receipt of future invitations to bid unless you request removal from the certified Master Bidder's List or CMBL by so indicating below.

Respondent: _____

Vendor Name: _____

Contact Person: _____

Phone: _____ **Fax:** _____

Address: _____

Yes, our company does have an interest in responding.
We hereby submit a "No Bid" because:

1. We are not interested in providing services or commodities through the bid process.
2. We are unable to prepare the bid in time to meet the bid due date.
3. We do not wish to bid under the required Terms and Conditions.

Objections: _____

4. We do not feel we can be competitive.
5. We cannot submit bid because of:

Objections: _____

6. We do not wish to provide services or commodities to a state agency.

Objections: _____

7. We do not sell the services or commodities as stated on the bid document.

We wish to:

Remain on the CMBL list

Be deleted from the CMBL list

Please indicate if you are:

HUB

Non - HUB

Interested in becoming a HUB

BON bids may be downloaded at:

<http://www.bon.state.tx.us/about/news062209.html> or <http://esbd.cpa.state.tx.us/>

Signed: _____ **Date:** _____