

State of Texas

BOARD OF NURSING

REQUEST FOR PROPOSALS

DIGITAL IMAGING SERVICES

RFP No.507-17-139

Reference:

CLASS: 920 ITEM: 30

Posting Date: March 20, 2017

Proposal Due Date: April 17, 2017

Proposal Due Time: 5:00 pm (Central Standard Time)

****NOTE**** This RFP is composed of two parts: (1) Part A: Special Instructions, (including attachments and appendices, if any) and (2) Part B: General Instructions and Contract Terms and Conditions (including attachments and appendices, if any). In the event an instruction or term in Part A conflicts with an instruction or term in Part B, the instruction or term in Part A prevails, and any addenda or amendments to either Part A or Part B control over the original versions.

RESPONSE SUBMISSION CHECKLIST

IMPORTANT:

RESPONDENTS MUST ADDRESS ALL INQUIRIES AND COMMUNICATIONS CONCERNING THIS RFP TO THE INDIVIDUAL LISTED IN SECTION A.7.2 – POINT-OF-CONTACT OR THE HUB COORDINATOR IN SECTION A.46.

COMMUNICATIONS WITH ANYONE OTHER THAN THE POINT-OF-CONTACT OR THE HUB COORDINATOR MAY RESULT IN DISQUALIFICATION OF A RESPONSE.

Please read all instructions, documentation, and requirements contained within this RFP.

Respondents must complete and submit all required documents or documentation requested in this RFP to be considered responsive for evaluation and award.

Reference Section A.8 – Submission Requirements:

The Texas Board of Nursing may disqualify responses received without the required documentation identified below, except as noted.

1. CONFIDENTIAL/PROPRIETARY INFORMATION
2. EXECUTION OF PROPOSAL – ATTACHMENT A
3. DIGITAL IMAGING PRICING SUBMISSION – ATTACHMENT B
4. RESPONDENT INFORMATION AND BEST VALUE QUESTIONNAIRE – ATTACHMENT C
5. HUB SUBCONTRACTING PLAN (HSP) – Reference Section A.46 and B.2.5.

There are no exceptions for the submission of the HSP. Therefore, the TEXAS BOARD OF NURSING will reject responses received without the completed HSP as a material failure to comply with the requirements of this RFP and disqualify Respondents.

6. CONFLICT OF INTEREST DISCLOSURE (if applicable)
7. FINANCIAL RESPONSIBILITY/STABILITY

Respondent must submit an electronic response to the following e-mail address: keith.lasalle@bon.texas.gov

The TEXAS BOARD OF NURSING recommends beginning the process well in advance of 4:00 pm on the due date.

PART A: SPECIAL INSTRUCTIONS

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A.1. Introduction

The Texas Board of Nursing (BON) is issuing this Request for Proposals (RFP) to obtain the services of a Vendor to perform Digital Imaging Services as described herein. The BON has obtained a waiver from the Council for Competitive Government's (CCG) Digital Imaging Services Master Contract to issue this RFP for digital imaging services. The BON will only consider Responses from Vendors that are willing and able to fulfill all aspect of the requested services as outlined in this RFP.

A.2. BON Objectives

The objective of this RFP is to select a Vendor that can provide:

1. Timely and professional service in accordance with the requirements provide for secure data transfers, handling, and disposition/return of Source Media after Capture;
2. Successfully convert Source Media to Output Media, as specified;
3. Provide timely and secure electronic delivery of BON's Output Media, as specified, and;
4. Provide timely reports of key activities and respond to routine requests from BON to ensure that all Source Media and Output Media meet the BON's requirements, as specified.

A.3 Term of Contract

The contract for the shall begin upon issuance of a Contract by the BON and shall end upon completion of the contracted services on August 31, 2017. Following the initial term, the Contract may be renewed for up to three (3) one-year term(s).

A.4 Option to Extend

Awarded Vendor agrees that the BON may require continued performance beyond the initial or any renewal Contract term of any of the within described services at the rates specified in the Contract. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed one hundred twenty (120) calendar days or January 31, 2020, whichever is later. Such extension of services shall be subject to the requirements of the Contract, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. The BON may exercise this option upon thirty (30) calendar days' written notice to Awarded Vendor.

A.5 ACRONYMS, ABBREVIATIONS, AND DEFINITIONS

Acronyms

Acronym	Definition
BAFO	Best And Final Offer
BC/DR	Business Continuity / Disaster Recovery
BON	Board of Nursing
DDI	Design, Development and Implementation
NDA	Non-Disclosure Agreement
PO	Purchase Order
QA	Quality Assurance
QC	Quality Control
RFP	Request for Proposal
TSLAC	Texas State Library and Archives Commission

General Definitions and Abbreviations:

Addendum – A modification of the specifications issued by the Texas Board of Nursing and distributed to prospective Respondents prior to the opening of responses;

Best and Final Offer (BAFO) – A formal request made to selected Respondents for revisions to the originally submitted Proposal;

Contract – The contract awarded as a result of this RFP and all exhibits thereto. Exhibits will include this RFP, any Addendum issued in conjunction with this RFP, the successful Respondent’s Proposal, any BAFO, any subsequent submission by Respondent, and any Purchase Order (PO) issued as a result of the contract awarded as a result of this RFP.

Contractor/Vendor – Respondent whose Proposal results in a contract with The Texas Board of Nursing.

Customer – State of Texas agencies, institutions of higher education, and cooperative purchasing members, including the Texas Board of Nursing, that are required or permitted by law to purchase goods and services under contracts established by Texas Board of Nursing. The requirements and eligibility of any given state agency, institution of higher education, or other entity to purchase goods and services under Contracts established by the Texas Board of Nursing are subject to exceptions, restrictions, and change in accordance with applicable current or subsequent law and regulation.

ESBD - The Electronic State Business Daily, which is available online at <http://esbd>.

HSP – HUB Subcontracting Plan

Party or Parties - Either the Texas Board of Nursing or Respondent, separately or collectively

Proposal - A response submitted to the Texas Board of Nursing as a result of this solicitation.

Respondent - Any person or vendor who submits a Proposal in response to this solicitation. Unless the context clearly indicates otherwise, all terms and conditions of the Contract that refer to Respondent apply with equal force to Contractor/Vendor.

RFP - Request for Proposals, which is the type of solicitation embodied in this document.

Technical Definitions:

When capitalized, the following terms and acronyms have the meaning set forth below. All other terms have the meaning set forth in Merriam-Webster's Collegiate[®] Dictionary, Eleventh Edition.

AIIM	Association for Information and Image Management (www.aiim.org) – A global community that provides education, research and best practices for organizations to help find, control and optimize information.
ANSI	American National Standards Institute (www.ansi.org) – An official, non-profit organization within the United States that administers the voluntary development of standards for products, services, processes, systems and personnel. It is the US equivalent of the British Standards Institution.
Backup Files	Copies of files or databases kept for a specified time in case the original files or databases are damaged, lost or destroyed.
Business Day	The period of time from 7:00 a.m. to 6:00 p.m. Central Time exclusive of weekends and observed holidays when BON offices are closed. A holiday will be excluded in a computation of Business Days only when such holiday is observed by the BON.
Capture	Process of scanning, storing, and retrieving Documents regardless of original format, using micrographics and/or electronic imaging (i.e., Scanning, OCR, ICR, OMR, etc.). This includes working with born-digital Documents (i.e., capturing/indexing incoming virtual faxes) Born-digital Documents are Documents that were not created in paper form.
Chain of Custody	A documented, chronological process or audit trail for tracking the transfer and control of Documents and electronic information..
Check-in	The final step in the Chain of Custody process, when Awarded Vendor returns all Output Media, and any specifically requested Source Media, to the BON.
Check-out	The first step in the Chain of Custody process. Check-out occurs when Awarded Vendor takes possession of Source Media.
Contract	The entire agreement between the Bon and Awarded Vendor resulting from this procurement.
Digital Imaging	The process of Capturing a variety of source Documents from multiple Source Media with varying degrees of Image quality. Digital Imaging may use character recognition and file compression and deliver in multiple Output File Formats on a variety of Output Media.
Disaster Recovery	Disaster Recovery is defined as the contingency plan a Contractor has prepared that would enable it to continue to conduct normal operations should a natural or catastrophic situation cause normal production and distribution activities to be disrupted.

Document	A written or printed instrument that conveys information. Digital versions of Documents should adhere to ANSI/AIIM standards and any other standards per RFP. This includes working with born-digital Documents (i.e. capturing/indexing incoming virtual faxes) – Documents that that are never in paper form.
Document Handling	Document Handling describes how a Contractor’s equipment processes the Document. For example, scanners may be sheet-fed with or without a straight paper path. A straight paper path provides reliable Document transportation for most Documents. Scanners may be of several types, for example, flatbed, rotary, or planetary. Document Handling may include Secure overnight storage (e.g., vault), expert care and handling, stringent standards for temperature, humidity, light, air quality, gas fire suppression, UV light exposure limits, etc., as required by the BON.

Document Preparation	Document Preparation includes removing bindings, paper clips, attachments, and fasteners; photocopying oversize or undersize Documents; purging unnecessary information; or repairing damaged originals for Document receipt, inspection, and inventory. Also included is the mounting of notes or undersized documents to standard white sheets or on the back of the corresponding document if it is blank, unfolding of folded pages, the proper orientation of Images; and, the marking of illegible documents as "Best Available Copy".
DPI	Dots per inch – Dots per inch indicate the resolution of Images. The more dots per inch, the higher the resolution. A common resolution for laser printers is 600 dots per inch. This means 600 dots across and 600 dots down, so there are 360,000 dots per square inch.
File Format	A format for encoding information in a file. Each different type of file has a different File Format. The File Format specifies first whether the file is a binary or ASCII file, and second, how the information is organized. For example, raster Images, ASCII text, SGML tagged for electronic distribution or publishing, PDF Image files, etc.
Final Files and Materials	The Contractor shall provide Final Files and Materials in a format as agreed upon at project completion to the BON. The file shall conform to RFP requirements. The list of Documents converted shall, at a minimum, consist of each Document number, Document title, date, revision level, and page number. This file shall be structured from the source data as specified by the BON. The BON may request source Documents, Source Media, Images, indexes, audit trails, searchable text, data dictionary, etc. (in non- proprietary or widely available formats) including anything the Customer paid for and needs to continue business.

Gov't Code	The Texas Government Code.
Image	<p>When used as a noun: An electronic representation of content, such as a Document. It may be loosely divided into two types: master Images, which are Images prior to any enhancement or correction saved in an uncompressed format, and derivative Images, which may have been processed in some manner and are often saved at a lower resolution or in a different format for access purposes.</p> <p>When used as a verb: see definition of "Capture," above.</p>
Image Enhancement	Removal of date stamps and other markings, De-skewing Images to within five (5) degrees or less of skew, De-speckling, cropping, rotation, etc. Image Enhancement is a process to alter (usually in an automated manner) Images to render soiled, faded, speckled, deteriorated, and other aspects of Images to be more pleasing to viewers or more susceptible to automated extraction of text. The Image Enhancement process may reduce background noise and alter uneven line widths, dull edges, faded areas, and uneven illumination.

Image Repository	A central place where a collection of digital Images is kept and maintained in an organized way, usually in computer storage. It may be part of a Document management system with specific functionality to control the check in/out of material, version control, and look-up against defined attributes.
Independent Double Key Entry	The process whereby two different trained operators enter data at different times while looking at the same scanned Image. If the entered data does not match up perfectly (spelling, spacing, etc.), software rejects the data entry and it is routed (along with the Image in question) to a supervisor who resolves the difference. In this manner, every index field is verified at least twice for its veracity. This process helps ensure near one-hundred percent (100%) accuracy.
Indexing	Based on a pre-defined Taxonomy and Metadata, identification of specific attributes of a Document or database record to facilitate retrieval. For example, Images may be indexed by receive date in order to retrieve them in date order.
Intelligent Character Recognition (ICR)	The computer translation of manually entered text characters into machine readable characters.
Large Format Document	Source Media above 11" x 17" to accommodate maps, architectural and engineering Documents, for example.

Metadata	Data that provides information about other data. It is usually expressed as elements in a schema or fields in a database. Typical elements include "Identifier," "Title," "Author/Creator," "Date," and "Keywords," where keywords are terms used in natural language. Metadata may be used by Indexing systems to help retrieve specific items.
Microfiche	Sheet of Microfilm containing an array of micro-images arranged in accordance with a standard grid (e.g., seven (7) rows and fourteen (14) columns) and usually including an eye-legible title along the top edge. Frequently used in micropublishing applications.
Microfilm	High-resolution photographic film suitable for recording micro-images of Documents. Often used to refer to Microfilm in roll format (e.g., 16mm Microfilm).
Needs Assessment and Analysis (NAA)	A documented process to determine the feasibility and justification for Digital Imaging Services for state or local records including consideration of the retention period and activity rate of the records, advantages and limitations of alternate records media, protection of essential records, access or retrieval concerns, and cost comparisons.
Optical Character Recognition (OCR)	OCR is a technique by which Images of characters can be machine identified, then converted into computer codes for processing.
Optical Mark Recognition (OMR)	OMR is a technique to recognize check boxes, filled in bubbles, etc. and is highly accurate on properly marked forms. Typically, OMR is used to automatically tabulate the results into a database (such as for surveys or voting).
Output File Format	An Output File Format is a way for the BON to receive digital Images in digital files. The RFP may require multiple Output File Formats (i.e., single-page TIFFs with Group IV compression). Sample Output File Formats include, but are not limited to, PDF, PDF/A, searchable PDF, TIFF, JPEG, etc.

Output Media	Digitally converted data delivered to the BON in an Output Media as specified by the BON. Examples include: (1) transmitted via SSL, FTP, or VPN; or, (2) written to CD-ROM, 4mm DAT or 8mm magnetic tape; 9-Track 1600 BPI or (3) 6250 BPI magnetic tape; (4) 3.5 inch, 5.25 inch, 12 inch, or 14 inch Write-Once Read-Many (WORM) optical or magnetic disks and/or (5) Write-Many Read-Many optical disks and Output File Format; or other currently available technology.
Permanent Record	Any State Record or Local Government record for which the retention period on a retention schedule issued by TSLAC or approved by TSLAC as permanent.
PPI	Pixels per inch - PPI indicates the measurement of how a monitor displays an Image. The resolution of an Image displayed on a monitor is determined by its PPI, or the number of pixels contained within one square inch of monitor space.

Project Manager	The person responsible for leading a project from its inception to completion. This includes planning, execution and managing the people, resources and scope of the project. Project managers must have the discipline to create clear and attainable objectives and to see them through to successful completion. The Project Manager has full responsibility and authority to complete the assigned project. Project Managers may be required by the BON, vendor, or both.
Re-preparation	Re-preparation consists of reconstruction of the Documents including the attachment of fasteners and bindings, reassembling of the Documents into their original configuration, preparing a Document inventory listing, and packaging/packing for return shipment to the BON.
Secure	Administrative, technical and physical safeguards or, as applicable, use of such safeguards, to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual regarding whom information is maintained.
Source Media	The materials delivered to/received by the Contractor to digitally process including paper, aperture cards, Microfiche, Microfilm, roll film, bound books, etc.
Special Format Capture	The process of scanning non-standard Documents like bound book, photos (both prints and negatives), newspapers, textual materials, manuscripts, maps, drawings, and other formats. Usually, these Documents require special Document Handling or equipment due to age, fragility, size, etc.

State Record	Gov't Code 441.180 (11)"State Record" means any written, photographic, machine-readable, or other recorded information created or received by or on behalf of a state agency or an elected state official that documents activities in the conduct of the state business or use of public resources. The term includes any recorded information created or received by a Texas government official in the conduct of official business, including officials from periods in which Texas was a province, colony, republic, or state.
Taxonomy	A system for naming and organizing content into categories that share similar characteristics.
TIFF	Tagged Image File Format
Turnkey Solution	A solution that is immediately ready to use upon implementation and is designed to fulfill the required process.

A.6. Pricing Structure—Firm Price

Prices offered, as part of the Respondent's Proposal, to the State must be firm, fixed prices. The Texas Board of Nursing may negotiate this proposed pricing, and request a Best and Final Offer, prior to Contract award. In the event the Contractor offers or provides a lower price to a specific Customer(s) for the same commodities or services, under the same terms and conditions, provided for the State of Texas pursuant to its Contract, the Contractor must provide the same lower price to the Texas Board of Nursing.

A.6.1. Price Decreases or Discount Increases

Contractors are required to immediately implement any price decrease or discount increase that may become available. Contractor must notify the Texas Board of Nursing Contract Manager in writing so that the Texas Board of may update the Contract.

Notification of price decreases or discount increases should be sent by e-mail to the Contract Manager:

keith.lasalle@bon.texas.gov

Or mail to:

Texas Board of Nursing

Attn: Keith LaSalle

333 Guadalupe, Tower 3, Suite 460

Austin, Texas 78701

A.7. Procurement Process

A.7.1. Contract Documents

The contract resulting from this RFP will be comprised of the below listed documents, including their attachments, forms, exhibits and addenda. No prior agreement or understanding, oral or otherwise, of the parties or their agents will be valid or enforceable unless embodied in these documents. In the event of a conflict between the provisions of the below documents, the documents are given the following order of priority:

1. BON Final RFP, including all attachments and amendments; and
2. Awarded Vendor's Proposal, including any BAFO and post-proposal submissions

A.7.2. BON Points of Contact

Vendors shall address all communications concerning this RFP to the Point of Contact listed below, and shall make no contact with BON personnel unless instructed by the Point of Contact. Failure to comply with this requirement may result in disqualification.

BON Purchaser:

Keith LaSalle
Texas Board of Nursing
333 Guadalupe, Tower 3, Suite 460
Austin, Texas 78701
keith.lasalle@bon.texas.gov

A.7.3. Schedule of Events

- | | |
|--|-----------------------------|
| A. Distribution of RFP: | March 20, 2017 |
| B. Deadline for Submission of Questions: | March 31, 2017 |
| C. Proposal Due Date and Time: | April 17, 2017; 5:00 PM CST |
| D. Vendor Discussions: | Until Complete |
| E. Expected Award of Contract: | May 2017 |

The Texas Board of Nursing reserves the right to revise this schedule or any portion of this RFP by publishing an Addendum on the ESBD.

The Texas Board of Nursing will post any amendment to this solicitation as an addendum on the ESBD. Interested parties are responsible for periodically checking the ESBD for updates to the RFP prior to submitting a Proposal. Respondent's failure to check the ESBD will in no way release the selected Contractor(s) from the requirements of "addenda or additional information" nor will any resulting additional costs to meet the requirements be allowed after award(s).

A.7.4. Questions

Respondents must send all questions regarding this RFP to the Texas Board of Nursing Point-of-Contact identified in Section A.7.2. Respondents must reference the appropriate RFP page and section number in its questions, and must submit them by the deadline set forth in Section A.7.3. However, The Texas Board of Nursing, in its sole discretion, may respond to questions received after the deadline. The Texas Board of Nursing's responses to questions will be posted to the ESBD. The Texas Board of Nursing reserves the right to amend answers prior to the Proposal submission deadline.

Respondents must notify the Texas Board of Nursing of any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error in the RFP in the manner required and by the deadline for submitting questions. If a Respondents fail to notify the Texas Board of Nursing of such issues, Respondent submits its Proposal at its own risk, and if awarded a Contract: (1) waives any claim of error or ambiguity in the RFP or resulting Contract, (2) will not contest the Texas Board of Nursing's interpretation of such provision(s), and (3) is not entitled to additional compensation, relief, or time by reason of ambiguity, error, or later correction.

A.7.5. Confidential/Proprietary Information

If any material in the Proposal is considered by Respondent to be confidential or proprietary information, Respondent **must** clearly mark the applicable pages of Respondent's submission to indicate each claim of confidentiality. Additionally, Respondent must include a statement on company letterhead identifying all Proposal section(s) and page(s) that have been marked as

confidential. Merely making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable, and will make the entire Proposal subject to release under the Texas Public Information Act. See Section B.2.7, Part B: General Instructions and Contract Terms and Conditions.

By submitting a Proposal, each Respondent agrees to reproduction by the State of Texas, the Texas Board of Nursing, and other State agencies, without cost or liability, of any copyrighted portions of Respondent's proposal or other information submitted by Respondent to comply with any Legislative Budget Board reporting requirements or other reporting.

A.7.6. Conflict of Interest Disclosure

By signing the Execution of Proposal, Respondent affirms that the execution of an agreement between Respondent and the State will not create a conflict of interest or cause an appearance of a conflict of interest. In its Proposal, Respondent must disclose any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to Respondent's (and its proposed subcontractors') submission of a Proposal and possible selection as Contractor or its performance of the Contract. A description of some conflicts of interest may be found in Part B, General Instructions and Contract Terms and Conditions, Section B.1.2, but this list should not be considered exhaustive or limiting.

If the circumstances certified by Respondent change or additional information is obtained subsequent to submission of Proposals, Respondent agrees that by submitting a response, it is under a continuing duty to supplement its response under this provision, and Respondent shall submit updated information as soon as reasonably possible upon learning of any change to Respondent's affirmation.

A.8. Requirements for Submission

Vendor shall submit one (1) original and two (2) hard copies of the Proposal. Vendors shall also submit two (2) copies of media containing electronic copies in Microsoft Word format (*.doc) and Adobe Portable Document Format (*.pdf) of the Proposal. The electronic copies shall be indexed or book marked. Pages shall be numbered and contain an organized, paginated table of contents corresponding to the sections and pages of the Proposal. Major sections of the hardcopy Proposals shall be tabbed.

Except for the signatures associated with the one (1) original, the electronic copies and hard copies should be identical.

All Proposals must be submitted to the BON Point of Contact by mail or email:

Keith LaSalle
Texas Board of Nursing
333 Guadalupe, Tower 3, Suite 460
Austin, Texas 78701
keith.lasalle@bon.texas.gov

The Texas Board of Nursing may disqualify responses received without the required documentation identified below, except as noted. The Proposal shall, at a minimum, include all information required in this RFP and shall be in the format described in this document in order to be considered:

1. CONFIDENTIAL/PROPRIETARY INFORMATION
2. EXECUTION OF PROPOSAL – ATTACHMENT A
3. DIGITAL IMAGING PRICING SUBMISSION – ATTACHMENT B

4. RESPONDENT INFORMATION AND BEST VALUE QUESTIONNAIRE – ATTACHMENT C
5. HUB SUBCONTRACTING PLAN (HSP) – Reference Section A.46 and B.2.5.

There are no exceptions for the submission of the HSP. Therefore, the TEXAS BOARD OF NURSING will reject responses received without the completed HSP as a material failure to comply with the requirements of this RFP and disqualify Respondents.

6. CONFLICT OF INTEREST DISCLOSURE (if applicable)
7. FINANCIAL RESPONSIBILITY/STABILITY STATEMENT

The Respondent is solely responsible for thoroughly understanding the RFP and its attachments, exhibits, and forms. Any questions concerning this RFP should be directed to the Point of Contact by the Deadline for Submitting Questions identified in Part A.7.3. The Respondent is cautioned to pay particular attention to the clarity and completeness of its Proposal. The Respondent is solely responsible for its Proposal and all documentation submitted.

A Proposal constitutes a binding offer by the Respondent.

The Texas Board of Nursing will disqualify any response to this RFP that includes any type of disclaimer or other statement indicating that the response does not constitute a binding offer.

Respondent must submit signed addenda, if any, with its Proposal.

Respondent must be as precise, accurate, and succinct as possible. Respondent must provide detailed descriptions of how it will fulfill each requirement. Evaluators may consider the clarity and completeness of a Proposal.

A.9. Requirements and Specifications

A.9.1. Proposal Requirements

The Proposal shall include the following:

1. **Executive Summary:** A narrative describing how Awarded Vendor proposes to address the BON objectives (see Section A.2) and technical requirements discussed herein.
2. **Implementation Proposal:** A narrative describing how Awarded Vendor proposes to implement its solution in accordance with the requirements included below in Section A.9.2.
3. **Work Proposal:** A Proposal that addresses the Vendor's ability to meet the following primary technical specifications (Section A.9.2) and other requirements (Sections A.20 – A.30).

A.9.2. Specifications:

- A. Awarded Vendor shall Capture Source Media as multi-page Tagged Image File Format (TIFF) and Adobe Portable Document Format (PDF) files;
- B. Awarded Vendor shall index such captured Source Media using a Comma-Separated Value (CSV) file format usable with Microsoft Excel;
- C. Awarded Vendor shall Capture and convert TIFF images, and the CSV Microsoft Excel index file, to the following formats: Bitmap Image File (BMP), Joint Photographic Experts Group (JPEG), and Graphics Interchange Format (GIF), and Microfilm for permanent storage;

- D. Awarded Vendor shall Capture Source Media, including audio and video, from Compact Disc (CD), external hard drives, flash drives, and/or other digital data storage devices, and convert said Source Media into commonly used Output File Formats for return to the BON as Media Output;
- E. Awarded Vendor shall perform full Document Preparation of paper Source Media prior to Capture;
- F. Awarded Vendor shall produce Media Output on Microfilm, CD, flash media, external hard drives, and/or other common digital data storage devices;
- G. Awarded Vendor shall provide Secure Document Handling and Chain of Custody for the pick-up and Capture of Source Media from the BON, and to securely return Output Media to the BON;
- H. Awarded Vendor shall Capture and produce/return Output Media, as specified above, within ten (10) business days;
- I. Awarded Vendor shall provide Secure destruction of all original Source Media within thirty (30) days of the return of Output Media to the BON, and after written confirmation from the BON Information Technology Manager and/or other designated BON Staff;
- J. Awarded Vendor shall provide the Re-preparation and Secure, expedited, return of any Source Media to the BON, prior to Awarded Vendor's completion of Capture and the production of Output Media, if requested in writing from the BON;
- K. Awarded Vendor shall customize labels for Output Media, as specified by the BON;
- L. Awarded Vendor shall provide Media Output in Microfilm format packed in individual acid-free boxes/containers, as required by the Texas State Library and Archives Commission; and
- M. Following the implementation phase, Awarded Vendor shall attend annual meetings, or as needed, with the BON IT Manager and/or other staff;

A.9.3. Assumptions and Exceptions

Vendors shall explicitly set forth in this section any assumptions regarding, or exceptions to, any part of this RFP, noting the specific RFP section number. If there are no exceptions, Awarded Vendor shall explicitly state that Awarded Vendor takes no exception to any part of this RFP. Any exception may result in the Contract not being awarded.

A.9.4. Pricing Submission

Vendors shall submit one (1) original and two (2) hard copies of the Pricing Submission. In addition, Vendors shall provide two (2) copies of bookmarked media containing electronic copies of the Pricing Submission in Microsoft Word or Excel format (*.doc or *.xls) and/or Adobe Portable Document Format (*.pdf). Failure to submit a complete Pricing Submission may result in disqualification of the Proposal.

Except for the one (1) original, the electronic copies and hard copies should be identical.

The Pricing Submission (the original, the copies and the media with the electronic copies) should be sealed and clearly marked with the specified Proposal due date and time and the title: Board of Nursing Statement of Work for Digital Imaging Service Pricing Submission.

The Pricing Submission shall be sealed and submitted separately from the Requirements Submission. No price information shall be included in any other portion of the Proposal. Any Proposal that fails to adhere to this requirement may be disqualified. **Any price assumptions and/or price conditions document shall only be submitted in the Pricing Submission.**

The Pricing Submission shall consist of:

- A. The completed Pricing Form (the Pricing Form shall include all costs associated with any and all services to be provided; Awarded Vendors shall not modify the pricing line items on the Pricing Form); Awarded Vendors must address all services listed on the Pricing Form, but are not required to utilize the form itself when submitting a Pricing Submission (Vendors may use Microsoft Word or Excel documents, or PDF);
- B. Assumptions upon which the price amounts are based and/or conditions attached to any price amount (these assumptions and/or conditions must be set forth in a separate document from the Pricing Form and not contain any price amounts); and
- C. Vendor should address any value-added services offered, if any, with the submission of the completed Pricing Form.

A.10. Award

A notice of award will be issued by the BON to the successful Vendor via the ESBD. Subsequently, the final and complete Contract (see A.7.1) will be executed by both parties.

A.11. BON Rights

All submitted Proposals to this RFP become the property of the BON. The BON reserves the right to use any and all ideas presented in any Proposal to the RFP. Selection or rejection of any Proposal does not affect this right.

Additional rights of the BON include, but are not limited to:

- A. Cancellation of the RFP at its sole discretion;
- B. Suspension of the procurement process and issuance of RFP addenda;
- C. Rejection, in whole or in part, of any and all Proposals received in response to this RFP;
- D. Waiver of administrative deficiencies and/or minor technicalities in Proposals received;
- E. Utilization of any and all ideas submitted in the Proposals received;
- F. Directing any Respondent to submit Proposal modifications addressing subsequent RFP amendments;
- G. Elimination of any requirements that are not met by all Respondents upon notice to all parties submitting Proposals;
- H. Making typographical corrections to Proposals, with the concurrence of the Respondent;
- I. Changing computational errors with the written concurrence of the Respondent;
- J. Requesting Respondents to clarify their Proposals and/or submit additional information pertaining to their Proposal; and
- K. Making an award without:
 - a. Requesting clarification of the Proposals;
 - b. Allowing modifications of the Proposals;
 - c. Discussing and/or negotiating the Proposals; or
 - d. Requesting a Best and Final Offer (BAFO), as described below.

A.12. Discussions

The BON may discuss acceptable or potentially acceptable Proposals with Vendors in order to determine Awarded Vendors' ability to meet the RFP requirements and/or negotiate any Vendor's assumptions or exceptions. If discussions occur, all Vendors with Proposals found to be acceptable or potentially acceptable shall be given an opportunity to discuss their Proposals with the BON and, if applicable, revise Proposals accordingly through, and in accordance with, the BAFO process described below.

A.13. Best and Final Offer

A request for a BAFO is at the sole discretion of the BON, and if requested will be specified in writing. A time and place shall be set for receipt of any BAFO. Changes to Proposals or prices after BAFO shall only be allowed if the BON, in its sole discretion, determines that resubmission would be in the public interest.

A.14. Determining Best Value

1. Proposals will be evaluated on three general factors:
 - A. Whether the Proposal meets the mandatory proposal requirements, including an evaluation of Past Performance (PASS/FAIL)(Section A.14 (3)(C));
 - B. Pricing Submission (30%)(Section A.9.4); and
 - C. The Vendor's capability to securely and timely perform all of the requirements outlined in the RFP (70%)(Sections A.9. – 9.2. and A.20. – A.30).
2. Evaluation of Proposals: General Considerations
 - A. The BON reserves the right to award a Contract(s) without any negotiations and reserves the right to not make awards.
 - B. The BON shall award a Contract to the Vendor whose Proposals is considered to be the best value to the State, as defined in Texas Government Code §2155.074.
3. Evaluation of Proposals: Mandatory Requirements (Review Phase One: PASS/FAIL)
 - A. Proposals received will be reviewed to determine whether each Proposal has met all requirements of the RFP (summarized in the Proposal submission checklist), including financials, and is sufficiently responsive to permit further evaluation. In the mandatory requirements evaluation phase, each Proposal shall be evaluated as either "pass" or "fail." Any Proposal that has been rejected for a material failure to comply with the RFP requirements, any Proposal that is Non-Responsive to the RFP, or any Proposal that fails to include submission of required documentation or information will be evaluated as "fail" and will not be given further consideration.
 - B. The BON may, in its sole discretion, consider the submission of a fully explained exception to a requirement set forth in the RFP as addressing the item to which exception is taken. The BON

reserves the right to waive any minor or immaterial response requirements noted in the submission process.

C. Past Performance:

A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Texas Government Code §§ 2155.074, 2155.075, 2156.007, 2157.003, and 2157.125. Respondents may fail these selection criteria 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 Texas Board of Nursing;
- Having repeated negative Vendor Performance Reports for the same reason;
- Having a record of repeated non-responsiveness to Vendor Performance issues; or
- Having purchase orders that have been cancelled in the previous 12 months for non-performance (late delivery, etc.).

Contractor performance information can currently be accessed at:

http://www.window.state.tx.us/procurement/prog/vendor_performance/.

The Texas Board of Nursing 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), the Texas Board of Nursing 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. Such sources of vendor performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, the Texas Board of Nursing may initiate such examinations of Contractor performance based upon media reports. Any such investigations shall be at the sole discretion of the Texas Board of Nursing and any negative findings, as determined by the Texas Board of Nursing, may result in non-award to the Respondent.

4. Evaluation of Proposals: Pricing Submission (Review Phase Two: 30%)

- A. The BON shall evaluate the pricing submitted by the Respondent and rank all Proposals from lowest to highest cost.
- B. The BON reserves the right based on the evaluation of the cost proposals, to limit further evaluation of Proposals not found to be in a competitive range with those of other Respondents. Therefore, Respondents are cautioned to provide their most competitive pricing and terms in their original Proposals. The BON makes no guarantee that Respondents will have any additional opportunities to improve upon their Proposals.

5. Evaluation of Proposals: Evaluation of Requirements (Review Phase Three: 70%)

- A. The BON shall appoint an evaluation team comprised of BON employees to evaluate how each Proposal meets the RFP's requirements. The evaluation team will determine weights for each

RFP requirement outlined in Sections A.9 – A.9.2 and A.20 – A.30, not to exceed 70% of the total weight.

- B. The BON reserves the right to conduct further investigation, as necessary, to evaluate any Proposal. The evaluation team may determine a Proposal is non-responsive if it does not provide sufficient evidence of its ability to meet the requirements of the RFP.

PROJECT REQUIREMENTS

A.15. BON Implementation Project Manager

The BON will assign an Implementation Project Manager to this Contract. The Implementation Project Manager will work with Awarded Vendor to develop, review and approve an implementation plan, processes and operating procedures, as well as to coordinate the start-up and integration of Awarded Vendor's services with the BON.

The BON Implementation Project Manager will be the BON Information Resource Manager, or his/her designee, unless otherwise indicated.

A.16. BON Contract Manger

The BON will assign a Contract Manager to this Contract. Identification of the Contract Manager and any changes to this assignment will be documented in writing. The BON Contract Manager will have the authority to:

- sign written correspondence;
- serve as the day-to-day point-of-contact;
- coordinate quality control reviews;
- approve invoices;
- coordinate meetings with Awarded Vendor;
- investigate complaints;
- receive requests for substitutions or changes in goods or services awarded under the Contract;
- initiate contract amendments; and
- discuss pricing changes.

The BON Contract Manager will **not** have sole authority to agree to any:

- Contract amendment
- pricing change

A.17. BON Project Manager and Liaisons

The BON will assign a Project Manager to this Contract. The Project Manager will be the BON's Information Resource Manager, unless otherwise indicated. The Project Manager shall serve as the initial day-to-day point of contact for any communication regarding operations.

The Project Manager may designate additional Department Liaisons for each BON department. Department Liaisons will be able to coordinate with Awarded Vendor to arrange for the pick-up, preparation, and department specific requirements regarding Source Media. Department Liaisons may also take responsibility for guiding day-to-day operations. Department Liaisons will be designated during the Implementation phase.

A.18. Awarded Vendor Implementation Project Manager

Awarded Vendor shall designate, in writing, an Implementation Project Manager who will serve as Awarded Vendor's point of contact for all communication regarding the implementation of services described in this RFP.

Awarded Vendor's Implementation Project Manager shall work cooperatively with BON personnel, and, specifically, the BON Implementation Project Manager, to ensure smooth and efficient implementation of Digital Imaging services. This work shall include consulting with the BON to determine goals, time frames, strategies/contingencies, procedures and resources for accomplishing the project.

Awarded Vendor's Implementation Project Manager shall direct and coordinate Vendor's resources to ensure that implementation of services progresses on schedule.

A.19. Awarded Vendor Contract Manager

Awarded Vendor shall designate a Contract Manager who will serve as Awarded Vendor's point-of-contact for all communication regarding the Contract, invoicing, production reporting, post-implementation support, and improvements to Awarded Vendor's Digital Imaging Services.

Identification of Awarded Vendor's Contract Manager and any changes to this assignment shall be documented in writing. Awarded Vendor shall provide a fourteen (14) calendar day advance notification in writing to the BON Contract Manager of any changes in its Contract Manager.

Awarded Vendor's Contract Manager shall have the authority to:

- make decisions regarding the deliverables required by this Contract
- sign all written correspondence
- serve as the day to day point of contact
- coordinate Quality Control reviews
- coordinate meetings with the BON
- investigate complaints

A.20. Status Reports

Unless otherwise agreed to by the BON, Awarded Vendor shall provide bi-monthly, written status reports to the BON during implementation. Status reports shall be submitted in electronic format.

Unless otherwise agreed to by the BON, Awarded Vendor shall meet at least annually with the BON Contract Manager, or contract Project Manager, and/or BON Staff throughout the term of the Contract to discuss status, issues and other matters pertaining to the activities and services performed under this RFP.

A.21. Testing and Documentation Requirements

Awarded Vendor shall create and provide to the BON documentation of all proposed, existing or revised plans and processes that relate specifically to the work described in this RFP.

Awarded Vendor shall collaborate with the BON to allow the BON to verify, inspect, test or modify any plan or process prior to the start of production activities.

A.22. Document Tracking

Awarded Vendor shall maintain BON Chain of Custody logs that record the receipt, movement and Destruction of all Source Media and Output Media for the duration of the Contract.

Awarded Vendor shall provide the BON with quarterly Chain of Custody reports documenting, at a minimum, the following information:

- the date and time of Source Media Check-out at the BON;
- the name(s) of Awarded Vendor's staff and BON staff performing the Source Media Check-out;
- the name(s) of Awarded Vendor's staff transporting Source Media to Awarded Vendor's facility;
- the date and time that Source Media arrives at Awarded Vendor's facility;
- the name(s) of Awarded Vendor's staff verifying receipt of Source Media at Awarded Vendor's facility;
- the name of Awarded Vendor's staff performing Capture of Source Media;
- the unique filenames assigned by Awarded Vendor to the Output Media files created;
- the exact date and time (timestamp) each Output Media file, identified by its filename or its Unique Identifier, was created;
- the exact date and time (timestamp) each Output Media file, identified by its filename or its Unique Identifier, was transmitted, if applicable;
- the exact date and time (timestamp) each Output Media file, identified by its filename or its Unique Identifier, was purged from Awarded Vendor's system; and
- the exact date and time (timestamp) Source Media is securely destroyed by Awarded Vendor.

A.23. Transportation

As necessary, Awarded Vendor shall provide Secure Transportation of Source Media to and from the BON for Check-in and Check-out of all Source Media. The scheduled time(s) shall be determined during implementation.

A.24. Document Conversion Requirements

In addition to the requirements outlined herein, Awarded Vendor shall be capable of meeting the below requirements, and also able to adapt to changing BON needs, as necessary:

1. Awarded Vendor shall Capture all Source Media of the following sizes: letter, legal, envelope, postcard, standard photo sizes, and irregular (including torn) shapes and sizes not to exceed legal size (11 inches wide by 17 inches long).
2. Awarded Vendor shall sequence the images in each Output Media file according to the sequence of pages in the corresponding Source Media.
3. Awarded Vendor shall Capture each side of double-sided Source Media, including envelopes.
4. Awarded Vendor shall not Capture blank pages, if requested by the BON.
5. Awarded Vendor shall create black and white images from black and white pages contained in Source Media.
6. Awarded Vendor shall create color images from color pages contained in Source Media.

Awarded Vendor shall provide a "Best Possible Image" indication on, or unambiguously associated with, any Output Media that does not meet BON quality standards due to the condition or type of Source Media

provided to Awarded Vendor, and for which Awarded Vendor cannot fully compensate.

The BON will work with Awarded Vendor to develop specific instructions for indicating “Best Possible Image” during implementation.

A.25. General Imaging, Processing and Quality Assurance Standards

1. Awarded Vendor should be capable of follow the imaging, processing, and Quality Assurance standards below which are designed to ensure that digital Documents remain useful and legally valid. The standards help ensure high quality Document Images, retrieval, and storage well into the future. Key standards relative to Document processing include, but are not limited to:
 - ANSI/AIIM TR25-1995 – The Use of Optical Disks for Public Records
 - ANSI/AIIM TR27-1996 – Electronic Imaging Request to Proposal (RFP) Guidelines
 - ANSI/AIIM TR28-1991 –The Expungement of Information Recorded on Optical Write Once Read Many (WORM) Systems
 - ANSI/AIIM TR31-2004 – Legal Acceptance of Records Produced by Information Technology Systems
 - ANSI/AIIM TR32-1994 – Paper Forms Design Optimization for Electronic Image Management (EIM)
 - ANSI/AIIM TR 33-1998 – Selecting an Appropriate Image Compression method to Match User Requirements
 - ANSI/AIIM TR34-1996 – Sampling Procedures for Inspection by Attributes of Images in Electronic Image Management (EIM) and Micrographics Systems
 - ANSI/AIIM TR35-1995 – Human and Organizational Issues for Successful EIM System Implementation
 - ANSI/AIM TR40-1995 – Suggested Index Fields for Documents in Electronic Image (EIM) Environments
 - ANSI/AIIM MS52-1991 – Recommended Practice for the Requirements and Characteristics of Original Documents Intended for Optical Scanning
 - ANSI/AIIM MS53-1993 – Recommended Practice; File Format for Storage and Exchange of Image; Bi-Level Image File Format: Part 1
 - ANSI/AIIM MS55-1994 – Recommended Practice for the Identification and Indexing of page Components (Zones) for Automated Processing in an EIM Environment
2. Vendors must explain any inability to comply with the above processing standards.
3. Awarded Vendor shall inspect one-hundred percent (100%) of Output Media to verify that all document conversion requirements have been met as they are described in this RFP.

A.26. Administrative and Physical Security

1. At all times, Awarded Vendor shall be fully responsible to BON for the security of the storage, processing, compilation, or transmission of all BON Data to which it has access, and of all equipment, storage facilities, and transmission facilities on which or for which such BON data are stored, processed, compiled, or transmitted.
2. Awarded Vendor shall develop and implement internal protection systems, including information security access lists and physical security access lists (the “access protection lists”), designed to protect BON Data in accordance with applicable law and the provisions for Data Security, Physical Security, and Logical/Information System Protections contained in this RFP. The access protection lists shall document the name and other identifying data for any individual authorized to access, use or disclose BON Data, as well as any special conditions and limitations applicable to each authorization.

3. Awarded Vendor shall remove individuals from or change the access rights of individuals on the applicable access protection list immediately upon such individual no longer requiring certain access. At least monthly, Awarded Vendor shall review and update its access protection lists and ensure that the access protection lists accurately reflect the individuals and their access level currently authorized.
4. The BON shall have the right to review Awarded Vendor's internal protection systems and access protection lists for all areas of the work site(s).
5. Awarded Vendor shall immediately notify the BON Contract Manager and Project Manager when any person Vendor authorized to access BON Data is no longer authorized to have such access. This notice is appropriate when individuals have been re-assigned or terminated due to any alleged misconduct.
6. Awarded Vendor's physical access security and logical access security systems must track and log all access attempts and failures. The access security systems must produce access logs on request. These logs must identify all access failures and breaches. Notwithstanding anything to the contrary in this RFP, the physical access and logical access security systems logs for any particular calendar year must be retained for a period of seven (7) calendar years after the last calendar day of the calendar year in which they were created. Thus a log created on January 1, 2007 may be disposed of, with all other systems access logs created in 2007, on January 1, 2015. All physical access and logical access security systems logs must be stored to electronic media. Any stored log must be produced for viewing access and copying upon request of the BON within five (5) business days of the request.
7. The computer site and related infrastructures (e.g. information system servers, protected interface equipment, associated peripherals, communications equipment, wire closets, patch panels, etc.) must have physical security that at all times protects BON Data against any unauthorized access to, or routine viewing of, computer devices, access devices, and printed and stored data.
8. Data accessed shall always be maintained in a secure environment (with limited access by authorized personnel both during work and non-work hours) using devices and methods such as, but not limited to: alarm systems, locked containers of various types, fireproof safes, restricted areas, locked rooms, locked buildings, identification systems, guards, or other devices reasonably expected to prevent loss or unauthorized removal of manually held data. Vendor shall also protect against unauthorized use of passwords, keys, combinations, access logs, and badges.
9. Awarded Vendor agrees that the systems operation room (which houses network equipment, servers and other centralized processing hardware) shall be accessible only by authorized IT personnel or executive management.
10. Contractor shall protect information systems against environmental hazards and provide appropriate environmental protection in facilities containing information systems.

A.27. Security Incidents

1. Within one (1) hour of discovering or having any reason to believe that there has been, any physical, personnel, system, or other security incident, Awarded Vendor shall initiate risk mitigation and notify the BON Project Manager, by telephone and by email, of the Security Incident and the initial risk mitigation steps taken.
2. Within twenty-four (24) hours of the discovery, Awarded Vendor shall conduct a preliminary risk analysis of the Security Incident; commence an investigation into the incident; and provide a written report to the BON Project Manager, fully disclosing all information relating to the Security Incident and the results of the preliminary risk analysis. This initial report shall include, at a minimum: nature of the

incident (e.g., data loss/corruption/intrusion); cause(s); mitigation efforts; corrective actions; and estimated recovery time.

3. Within five (5) Business Days of completing the risk analysis and investigation, Awarded Vendor shall submit a written Final Report to the BON Project Manager that includes a detailed explanation of the cause(s) of the incident, the nature of the incident, the cure that will be implemented and when that implemented occurred or will occur. If a cure has not been implemented at the filing of the Final Report, Vendor shall provide a supplemental report within (30) calendar days indicating the cure has been implemented.
4. If Awarded Vendor fails to file a Final Report, and supplemental report, if necessary, within forty-five (45) calendar days, unless otherwise agreed to by the BON, the BON may exercise any remedy in equity, provided by law, or identified in the Contract.

A.28. Information Protection Systems

Awarded Vendor shall take all reasonable steps to ensure the logical security of all information systems used in the performance of this Contract, including:

1. Independent oversight of systems administrators and programmers;
2. Restriction of user, operator, and administrator accounts in accordance with job duties;
3. Authentication of users to the operating system and application software programs;
4. Awarded Vendor shall adhere to BON-approved access methods, and the protection and use of unique identifiers such as user identifications and passwords;
5. Awarded Vendor shall have an authorization process for user access and privileges. Any access not granted is prohibited;
6. Awarded Vendor shall maintain an access protection list that details the rights and privileges with respect to each such user;
7. Audit trails for user account adds, deletes, and changes, as well as, access attempts and updates to individual data records; and
8. Protection to prevent unauthorized processing in or changes to software, systems, and BON Data in the production environment.

Awarded Vendor shall also:

9. Implement protection for the prevention, detection and correction of processing failure, or deliberate or accidental acts that may threaten the confidentiality, availability, or integrity of BON Data;
10. Implement counter-protection against malicious software on Contractor's internal systems used in contract performance;
11. Ensure that relevant Security Incidents are identified, monitored, analyzed, and addressed;
12. Apply a high-level of protection toward hardening all security and critical server communications platforms and ensure that operating system versions are kept current; and
13. Awarded shall institute a process that provides for immediate revocation of a user's access rights and the termination of the connection between systems, if warranted by the nature of any Security Incident.
14. Be capable, upon written request by the BON, to encrypt data while at rest on any media (e.g., USB drives, laptops, workstations, and server hard drives), and during transport (i.e. the physical moving of media containing BON Source Media/Data). The BON will specify the minimum encryption level necessary, if requested.

In the event that Awarded Vendor fails to comply with any of the Information Protection provisions, BON may exercise any remedy, including, but not limited to, termination of the awarded contract.

A.29. Document Handling and Data Destruction Requirements

1. BON will organize Source Media prior to releasing it for Check-out by Awarded Vendor.
2. Awarded Vendor shall provide a Secure environment for all Source Media and Output Media while in Awarded Vendor's possession until they are either delivered to the BON or Destroyed.
3. Awarded Vendor shall ensure that all Source Media and Output Media are protected at all times from (but not limited to) damage, alteration, unauthorized viewing and loss, whether as a result of exposure to the elements, theft, security breach or other cause.
4. Awarded Vendor shall ensure that no Source Media is opened or viewed while in transit.
5. Awarded Vendor shall ensure that no Source Media is left unattended or unsecured, for any reason, while in transit.
6. Awarded Vendor shall not print Output Media without the BON's express, prior written consent.
7. Awarded Vendor shall engage in a continuous cycle of process improvement and vigilance to assess risks, monitor and test security protection, and implement change to protect BON Source Media and data. Vendor agrees to perform such continuous process improvement and to upgrade its security protection during the term of the contract.
8. Awarded Vendor shall provide Secure destruction of all Source Media, as follows:
 - o Destroy all BON Source Media or data within thirty (30) days of Check-in of Output Media, unless otherwise indicated;
 - o Destroy or purge any BON Source Media or data in a manner consistent with state policies and Federal regulations for destruction of private or confidential data in such a way so that the data are unusable and irrecoverable; and
 - o Destroy all hard copy BON Source Media or data by shredding to effect 5/16-inch-wide or smaller strips and then either incinerating or pulping the shredded material.

BUSINESS CONTINUITY / DISASTER RECOVERY REQUIREMENTS

A.30. Business Continuity and/or Disaster Recovery Plan

- I. Awarded Vendor shall submit a current BC/DR Plan that includes a detailed recovery plan for all parts of its operations (automated and otherwise) related to the services of the Contract (corporate level or generalized BC/DR Plan shall not be substituted) resulting from this RFP.

The plan must include a detailed listing of alternate service facilities, redundant computer/network systems, order processing systems/customer service personnel and equipment, redundant communications systems, etc. Indicate your companies "double" redundancies that will add assurance if both the primary and backup were compromised, data could be restored. In addition, the plan must describe in detail the methodology, technology and infrastructure necessary for Awarded Vendor to backup and restore the BON Source Media/Documents.

Current State of Texas requirements are listed in the Texas Administrative Code, Title 1 – Administration, Part 10 – Department of Information Resources, Chapter 202 – Information Security Standards, and can be accessed at the following site:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=4&ti=1&pt=10&ch=202](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=10&ch=202).

2. The BC/DR Plan shall include a contingency plan to avoid disruption of service due to any third party or subsidiary performance deficiencies, labor problems and any other event that could reasonably be foreseen to result in a disruption of services specified in the Contract resulting from this RFP.
3. Awarded Vendor shall maintain Backup Files for up to twelve (12) months after projection completion unless otherwise specified by the BON via written consent.

CONTRACT MANAGEMENT

A.31. Staffing

Awarded Vendor shall retain a specifically identified Project Manager for the term of the contract resulting from this RFP. The Project Manager shall coordinate all activities with the BON Project Manager.

A.32. Acceptance Process and Criteria

Awarded Vendor shall successfully demonstrate to the BON that plans for all processes necessary for Awarded Vendor to meet the requirements of this RFP have been submitted to the BON for approval.

Awarded Vendor shall successfully complete an implementation plan with the BON.

Awarded Vendor shall coordinate fully and appropriately with the BON throughout the development of deliverables, conducted reviews, and shared knowledge with the BON.

A.33. Performance Measures

Awarded Vendor shall perform all services under this RFP in accordance with the provisions, terms and conditions set forth therein. Awarded Vendor must meet all requirements (including, but not limited to, accuracy, completion, timeliness and reporting standards) and provide all deliverables as prescribed in the RFP.

During the implementation period, performance will be measured by Awarded Vendor's adherence to the approved implementation plan/schedule and successful completion of work as described in RFP Sections A.9 – A.9.2 and A.20 – A.30.

During the operational period and for the duration of the Contract, the BON may collect and monitor data regarding the:

1. Quantity of Source Media received by Awarded Vendor (Check-out) vs. quantity of Output Media (Check-in);
2. Timely and Secure Check-in and Check-out of Source Media;
3. Frequency and reason for rejection of Output Media that does not meet the BON's technical requirements or specifications (such as corrupt file, invalid file name, or missing pages);

4. Scheduled date of Destruction of Source Media vs. actual date of Destruction, per occurrence;
5. Inappropriate use of the "Best Possible Image" attribute, such as to avoid addressing Quality Assurance issues that are not, in fact, attributable to the quality of Source Media;
6. Elapsed time per month for Awarded Vendor to resolve any of the following: deviations from scheduled Check-out or Check-in; inability to reconcile the quantity of Source Media vs. Output Media; erroneous application of "Best Possible Image" and "cannot be successfully Captured" attributes; and image quality issues attributable to Awarded Vendor's equipment or staff.
7. At or near one-hundred (100) percent of Images are readable. An Image is not readable if it is excessively speckled, blurred, skewed as to lose content, or otherwise unusable.
8. Images are indexed at or near one-hundred (100) percent accuracy.

A.34. Remedies

The remedy for failure to perform services according to a provision, term or condition will be subject to the nature and extent of the non-compliance. The BON may apply one (1) or more of the remedies defined herein in response to non-compliance by Awarded Vendor. If Awarded Vendor's performance continues to be unacceptable, the BON may further exercise any available remedy at law or in equity, up to and including cancellation of the Contract. Such remedies are in addition to any and all additional remedies outlined in RFP Part B.

1. Before implementing any remedy for failure to perform services, the BON will issue a written demand via written correspondence and provide Awarded Vendor a reasonable period of time to achieve compliance.
2. The BON will allow Awarded Vendor a minimum of one (1) Business Day to remedy any failure to perform regarding lost, delayed, missing, damaged or otherwise unusable or unavailable Source Media or Output Media.
3. The BON will allow Awarded Vendor a minimum of five (5) Business Days to remedy any failure to perform regarding deviations from timeliness of Check-in, Check-out, or Destruction.
4. The BON will allow Awarded Vendor a minimum of ten (10) Business Days to remedy any Quality Assurance issues regarding processes, policies or procedures that the BON has identified through an audit or inspection of Awarded Vendor's facilities or work products.
5. Subject to the nature and extent of the non-compliance, the BON may withhold up to fifteen percent (15%) of payments due Awarded Vendor until compliance is achieved. The Bon will pay Awarded Vendor the withheld amounts, together with next regular monthly payment to Awarded Vendor, after Awarded Vendor has successfully demonstrated that compliance has been achieved.
6. If Awarded Vendor does not demonstrate that compliance has been achieved within the period of time allowed by the BON, the BON may require Awarded Vendor to forfeit the corresponding amounts withheld by the BON. The BON will provide notice of such forfeiture in writing. The BON may continue the process of issuing written demands, withholding payment, and requiring forfeiture of withheld amounts, until Awarded Vendor demonstrates to the BON that compliance has been achieved.

A.35. Contract Changes

The BON may request Awarded Vendor to perform tasks not directly specified in this RFP but that are within its general scope in order to implement regulatory or legislative changes, or to address missed requirements (“additional services”). The decision to obtain additional services will be at the sole discretion of the BON. In the event the BON elects to exercise this option, the BON shall provide Awarded Vendor with a statement of work and Awarded Vendor shall provide proposed pricing for the additional services. The BON may accept or reject these additional services from Awarded Vendor and refine the requirements and negotiate final costs.

A.36. Invoicing

The BON shall not be liable for any performances rendered or obligations incurred on behalf of the BON by Awarded Vendor before execution of a Contract. The BON shall process a properly prepared invoice for payment in accordance with the state procedures for issuing state payments and the Texas Prompt Payment Act (Texas Government Code Section 2251).

A.37. Invoice Submittal and Required Information

The items invoiced must be described in the same fashion as the BON’s Contract. Each invoice must include the following information:

1. Purchase Order Number
2. Awarded Vendor Name and Address
3. Contact Phone Number
4. Contract Number
5. Identification of Services Provided: By date, unit, and price for each service/item.
6. Awarded Vendor's Tax Identification Number

Invoices Shall be submitted to:

VIA Postal Service:

Accounting Department
Texas Board of Nursing
ATTN: Kizzie Gonzales
333 Guadalupe St., Suite 3-460
Austin, TX 78701

VIA email to the Accounting Division:

507accounting@bon.texas.gov

A.38. Invoice Schedule

Payment will be made upon submission of an invoice which shall be submitted in accordance with the specifications of this RFP. The BON may decline to pay any invoice for services or provided items not properly billed to the BON in the next three billing cycles immediately following the month in which Awarded Vendor provided the services or items. Awarded Vendor shall provide additional information and/or documentation as the BON reasonably may require. Awarded Vendor shall respond to any BON

request for additional information and/or documentation to support payment within five (5) calendar days of receipt. The BON shall not be liable for any performances rendered or obligations incurred on behalf of the BON by Awarded Vendor before execution of a Contract. The BON shall process a properly prepared invoice for payment in accordance with the state procedures for issuing state payments and the Texas Prompt Payment Act.

A.39. Invoice Review

The BON shall review each invoice for contract compliance and completeness. If the BON determines that an invoice is not acceptable under the provisions of the contract resulting from this RFP or is otherwise incomplete, Awarded Vendor shall correct any deficiencies before the BON will process the invoice for payment.

TERMS AND CONDITIONS

In addition to the Terms and Conditions included below, those outlined in RFP Part B: General Instructions and Contract Terms and Conditions also apply. In the event of any conflict between RFP Parts A and B, Part A controls.

A.40. Financial Terms and Conditions

A.40.1. Audit Exceptions

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

A.40.2. Audit and Investigation

Awarded Vendor understands that acceptance of funds under the Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Awarded Vendor further agrees to cooperate fully with the State Auditor's office or its successor in the conduct of the audit or investigation, including providing all records requested. Awarded Vendor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Awarded Vendor and the requirement to cooperate is included in any subcontract it awards.

A.40.3. Legislative Appropriations

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, provisions regarding termination shall apply. In addition, state agencies are prohibited from incurring obligations in excess of amounts lawfully appropriated by the Texas Legislature over the course of a biennium. See Excess Obligations.

<https://www.comptroller.texas.gov/purchasing/publications/procurement-manual.php>

In the event of such a termination, Awarded Vendor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. BON shall be liable for payments limited only to the portion of work the BON authorized in writing and which Awarded Vendor has completed, delivered to the BON, and which has been accepted by the BON. All such

work shall have been completed, per the Contract requirements, prior to the effective date of termination.

A.40.4. Antitrust and Assignment of Claims

Pursuant to 15 U.S.C. §1, et seq., and Tex. Bus. & Comm. Code §15.01, et seq., Awarded Vendor affirms that it has not violated the Texas antitrust laws or federal antitrust laws and has not communicated its bid for this Contract directly or indirectly to any competitor or any other person engaged in such line of business. Awarded Vendor hereby assigns to the BON any claims for overcharges associated with this Contract under 15 U.S.C. §1, et seq., and Tex. Bus. & Comm. Code §15.01, et seq.

A.41. Notices

1. Written Notices Delivery

Any notice required or permitted to be given under the Contract by one party to the other party shall be in writing and shall be addressed to the receiving party at the address hereinafter specified. The notice shall be deemed to have been given immediately if delivered in person to the recipient's address hereinafter specified. It shall be deemed to have been given on the date of certified receipt if placed in the United States mail, postage prepaid, by registered or certified mail with Return Receipt requested, addressed to the receiving party at the address hereinafter specified.

2. Awarded Vendor Address

The address of Awarded Vendor for all purposes under this RFP and for all notices hereunder shall be designated at the time of Contract Award.

3. BON

The address of the BON for all purposes under this RFP shall be:

Texas Board of Nursing
333 Guadalupe St., Suite 3-460
Austin, TX 78701

A.42. Dispute Resolution Process for Claims of Breach of Contract

Disputes under this agreement are subject to Chapter 2260, Texas Government Code.

A.43. Confidentiality and Security

Any information Awarded Vendor receives, compiles, or creates as a result of the Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. Awarded Vendor shall establish a method to secure the confidentiality of records and other information in accordance with applicable federal and state laws, rules, and regulations.

The obligations of Awarded Vendor under this Confidentiality and Security section shall survive this Contract and shall be included in all subcontracts.

A.44. Amendments

The Contract shall only be amended or modified when duly authorized representatives of the parties execute a writing denominated as an amendment to the Contract. Awarded Vendor shall not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

A.45. Termination of Contract

The Contract shall become effective on the date signed by the BON's Executive Director, and shall expire subject to Sections A.3 and A.4 of the RFP, unless otherwise sooner terminated as provided in the Contract. Notwithstanding the termination or expiration of the Contract, the provisions of the Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of the Contract. The BON may, in its sole discretion, terminate the Contract upon thirty (30) days' written notice to Contractor. Such notice may be provided by facsimile or certified mail, return receipt requested, and is effective upon Awarded Vendor's receipt.

A.45.1. Convenience

The BON may, in its sole discretion, terminate the Contract upon thirty (30) days' written notice to Awarded Vendor. Such notice may be provided by facsimile or certified mail return receipt requested and is effective upon Awarded Vendor's receipt. In the event of such termination, Awarded Vendor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The BON shall be liable only for payments for any goods or services ordered from Awarded Vendor before the termination date.

A.45.2. Cause/Default

If Awarded Vendor fails to provide the contracted for commodities and or services according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, the BON may, upon written notice of default to Awarded Vendor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

The BON may exercise any other right, remedy or privilege which may be available to it under applicable law of the State and any other applicable law or proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless the BON notifies Awarded Vendor in writing prior to the exercise of such remedy. Awarded Vendor will remain liable for all covenants and indemnities under the aforesaid agreement. Awarded Vendor will be liable for all costs and expenses, including court costs, incurred by the BON with respect to the enforcement of any of the remedies listed herein.

A.45.3. Change in Federal or State Requirements

If Federal or State laws or regulations or other Federal or State requirements are amended or judicially interpreted so that either party cannot reasonably fulfill this Contract and if the parties cannot agree to an amendment that would enable substantial continuation of the Contract, the parties shall be discharged from any further obligations under the contract.

A.45.4. Rights upon Termination of the Contract

In the event that the Contract is terminated for any reason, or upon its expiration, the BON shall retain ownership of all associated work products and documentation with any order that results from or is associated with the Contract in whatever form that they exist.

A.45.5. Survival of Terms

Termination of the Contract for any reason shall not release Awarded Vendor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination.

A.46. HUB Subcontracting Plan

Respondents must complete and return the HUB Subcontracting Plan (HSP) documentation with the proposal to be considered responsive. The Texas Board of Nursing will reject responses received without the HSP as a material failure to comply with the requirements of this RFP. Please see RFP Part B, Section B.2.5. HUB Subcontracting Plan Requirements.

For assistance with the HSP, obtaining HUB further explanation of the State of Texas HUB program, please contact use the following link: <https://comptroller.texas.gov/purchasing/vendor/hub/resources.php> or

For help, please contact the Statewide HUB Program or call 888-863-5881

A.47. Financial Responsibility/Stability

Respondent must provide evidence of financial responsibility and stability for performance of providing the goods and services for which Respondent is submitting a Proposal. Respondent must disclose the source of any outside financial resources that Respondent will utilize to enable it to perform any Contract awarded pursuant to the RFP. Respondent must show financial capability, demonstrate financial solvency, and verify the capacity to fulfill the requirements of the RFP. The Texas Board of Nursing reserves the right to determine the financial integrity and responsibility of a Respondent and to reject a Proposal on the grounds of Respondent's financial soundness.

Respondent must submit copies of the following documentation, as applicable. If not applicable, Respondent must explain why not.

1. Two of the most recent audited financial statements, including financial statements with all sub-schedules and footnotes, to include balance sheet, profit and loss statements, change in financial position and management letters, with findings and responses to findings.
2. For privately and singularly owned business where audited financial statements are not required, unaudited financials will suffice.
3. At least one rating from organizations such as Dunn & Bradstreet or Fitch Ratings.
4. A document with the following information:
 - a. Gross Revenues
 - b. Net Income

- c. Current Ratio
- d. Contingent liabilities to the extent that they would materially affect gross revenues, materially affect net income, or reduce the current ratio below 1.0.

A.48. Insurance Requirements

The Contractor will, within five (5) Business Days of the date of the Notice of Award, provide the BON with current certificates of insurance or other proof acceptable to the BON. The Contractor will maintain the required insurance during the initial term and any renewal period exercised and any extension period. All provisions below apply to all work for the BON engaged in by virtue of the Contract.

1. Commercial Insurance: All insurance policies shall be issued by companies authorized to do business in the state of Texas. Each insurance contract or certificate of insurance shall:
 - a. Be written on a primary and non-contributory basis.
 - b. Include a waiver of subrogation clause.
 - c. Provide 30 days' advance written notice to BON in the event any policy is canceled, non-renewed or materially changed.
 - d. Name as Additional Insureds to all applicable insurance coverage.
 - e. Be issued from a company or companies having both a Financial Strength Rating of "A" or better, and a Financial Size Category Class of "VII" or higher from A. M. Best Company, Inc.
 - f. All policies should be on an occurrence basis, with the exception of Professional Liability (Errors and Omissions) coverage which Contractor warrants that any retroactive date under the policy shall precede the effective date of the Contract and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under the Contract is completed.
 - g. Ensure all Certificates of insurance identify the described location site and the service or product being provided to the agency.
 - h. Renewal policies shall be furnished to BON 10 days prior to the expiration of the current policies with the appropriate specific endorsements included.
2. Minimum Required Amounts of Insurance Coverage:
 - a. Commercial Automobile Liability:
 - i. Coverage provided should include:
 1. Any automobile including hired and non-owned automobile liability at: \$1,000,000 combined single limit for each accident
 - b. General Liability, Occurrence Based, Bodily Injury and Property Damage:
 - i. Each occurrence limit: \$1,000,000
 - ii. Aggregate limit: \$2,000,000
 - iii. Medical Expense each person: \$5,000
 - iv. Personal Injury and Advertising Liability: \$1,000,000
 - v. Products /Completed Operations Aggregate Limit: \$2,000,000
 - vi. Damage to Premises Rented to You: \$50,000
3. Umbrella/ Excess Liability-Minimum of \$10,000,000
4. Workers Compensation & Employers Liability

- a. Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits covering all personnel who will provide services under the Contract.
 - b. Employers Liability: Each Accident \$1,000,000
 - c. Disease- Each Employee \$1,000,000
 - d. Disease-Policy Limit \$1,000,000
5. Professional Liability (Errors and Omissions) Minimum of \$1,000,000
 - a. Professional Liability covers professional errors and omissions or lack of ordinary skill for the work or professional services required by the Contract.
 6. Cyber Risk Insurance covering acts, errors and omissions arising out of Contractor's operations or Services in an amount not less than \$5,000,000 per occurrence with a privacy endorsement.
 7. Comprehensive Crime Insurance or Blanket Fidelity Bond, including Employee Dishonesty and Computer Fraud Insurance covering losses arising out of or in connection with any fraudulent or dishonest acts committed by Contractor's employees, acting alone or with others, in an amount not less than \$5,000,000 per occurrence.
 8. All-risk property insurance covering loss or damage to Contractor owned or leased equipment and other assets in an amount not less than the full replacement cost of such Equipment and assets.

A.49. Quantities

The BON does not guarantee a specific volume to be purchased throughout the term of the Contract. No minimum compensation to the Vendor is guaranteed.

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B.1 INTRODUCTION

B.1.1 Definitions

The definitions used in Part A of this RFP apply to this Part B as well. Unless the context clearly indicates otherwise, all terms and conditions of this Contract that refer to "Respondent" apply with equal force to Contractor/Vendor.

B.1.2 Conflicts of Interest

B.1.2.1 Actual and Perceived Conflicts

By submitting a Proposal, Respondent represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in entering a Contract with the Texas Board of Nursing. Respondent also represents and warrants that entering a Contract with the Texas Board of Nursing will not create the appearance of impropriety. In its Proposal, Respondent must disclose any existing or potential conflict of interest that it might have in contracting with the Texas Board of Nursing. The requirement to disclose any actual or potential conflict of interest will continue during the term of the contract, and will survive until the end of the recordkeeping requirement in B.7.4. The Texas Board of Nursing will decide, in its sole discretion, whether an actual or perceived conflict should result in Proposal disqualification or Contract termination.

B.1.2.2 Current and Former Texas Board of Nursing Employees

In addition to the disclosures required above, Respondent must also disclose any of its personnel who are current or former officers or employees of the Texas Board of Nursing or who are related, within the third degree by consanguinity (as defined by Texas Government Code § 573.023) or within the second degree by affinity (as defined by Texas Government Code § 573.025), to any current or former officers or employees of the Texas Board of Nursing.

Respondents must comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees (see e.g., Texas Government Code Chapters 572 and 573). Such "revolving door" provisions generally restrict former agency heads from communicating with or appearing before the agency on certain matters for two years after leaving the agency. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employees' official responsibility. Respondent, by signing this solicitation, certifies that it has complied with all applicable laws and regulations regarding former state employees.

Respondent must identify each employee who works for more than one staffing company at any facility and ensure that the employee's cumulative weekly hours worked at all state facilities through any one staffing company does not exceed 40 hours per week.

See also B.7.8.6, Certification Concerning Restricted Employment for Former State Officers or Employees under Texas Government Code § 572.069

B.1.3 Construction of this RFP and the Contract

B.1.3.1 Global Drafting Conventions

The terms "include," "includes," and "including" are terms of inclusion and enlargement. When used in this Contract these terms should be read as if followed by the phrase "without limitation."

Unless explicitly stated otherwise, any references to “Sections,” “Articles,” “Exhibits,” or “Attachments” are deemed to be references to the Sections, Articles, Exhibits, and Attachments to this RFP and the Contract.

B.1.3.2 Headings

The Article and Section headings in this RFP and the Contract are for reference and convenience only and may not be considered in the interpretation of this RFP or the Contract.

B.2 THE RFP PROCESS

B.2.1 Submitting Questions about the RFP

Respondent will have until the Deadline for Submitting Questions, identified in Part A, to submit in writing all questions regarding this RFP. Respondent may only send questions to the Point of Contact. All questions must precisely and specifically cite the RFP section to which the question refers. The Texas Board of Nursing will, at its discretion, answer the questions in a Question and Answer Document posted on the ESBD.

Only answers that the Texas Board of Nursing provides in writing are official. Information in any form other than the materials constituting this RFP, the Question and Answer Document, and any RFP addendum is not binding on the Texas Board of Nursing.

All questions submitted to the Texas Board of Nursing must include the identity of the sender, the sender’s title, company name, mailing address, telephone number, and facsimile number or e-mail address, as applicable.

Minor questions for which the answer will not affect the interpretation of the RFP or change the contents of a Proposal (for example, a question regarding delivery of the sealed Proposal) may be answered orally or by e-mail by the Texas Board of Nursing.

B.2 Addenda to the RFP

Should an addition or correction to this RFP become necessary, the Texas Board of Nursing will post an addendum relating the necessary information on the ESBD. Respondent is responsible for periodically checking the ESBD for addenda or additional information relating to this RFP. Respondent is required to acknowledge each addendum by returning a signed copy of the addendum with its Proposal.

B.2.3 Testing and Inspection

The Texas Board of Nursing may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFP and the Contract. The Texas Board of Nursing may also test and inspect goods and services before they are purchased under the Contract.

Authorized the Texas Board of Nursing personnel must have access to the Respondent’s place of business for the purpose of inspecting the goods. To the extent practical, the Texas Board of Nursing inspections will not disrupt the Respondent’s daily operations.

B.2.4 Accuracy of the Proposal

Respondent’s Proposal must be true and correct and must contain no cause for claim of omission or error. Proposals may be withdrawn in writing at any time prior to the submittal deadline.

B.2.5 HUB Subcontracting Plan Requirements

It is the policy of the Texas Board of Nursing to promote and encourage contracting and subcontracting opportunities for State of Texas certified Historically Underutilized Businesses (HUBs) in all contracts in

compliance with Texas Government Code Chapter 2161. Eligible Respondents are encouraged to become HUB certified. Respondents may find State of Texas HUB applications at:
<https://comptroller.texas.gov/purchasing/vendor/registration/>.

Definitions for State of Texas HUB certifiable businesses can be found in 34 Texas Administrative Code Chapter 20, Subchapter B, which is available at:
[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=B&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=B&rl=Y)

A HUB Subcontracting Plan Form must be filled out and returned with the Proposal to be considered responsive. If the Proposal does not include a HUB Subcontracting Plan, the Texas Board of Nursing will reject the Proposal as a material failure to comply with advertised specifications. The Texas Board of Nursing identified probable subcontracting opportunities in Part A. This list should not be considered a mandatory or an exhaustive list. Other areas of subcontracting may be more appropriate given the Respondent's business structure and internal resources. Please see the attached HUB Subcontracting Plan for further instructions that require vendors to identify the specific areas intended for subcontracting.

Search the State of Texas HUB Database for HUB vendors by the NIGP class and item at:
<https://mycpa.cpa.state.tx.us/tpassemblsearch/tpassemblsearch.do>.

Additional minority and women owned business association resources are available for subcontracting notices at: <https://comptroller.texas.gov/purchasing/vendor/hub/>.

Respondent can find additional information and training regarding how to complete a HUB Subcontracting Plan on the CPA Website at the following link:
<https://comptroller.texas.gov/purchasing/vendor/information.php>.

B.2.6 Cost of Submitting the Proposal

The Texas Board of Nursing will not reimburse the Respondent for any cost related to its Proposal. Respondent is responsible for any expense related to the preparation and submission of its Proposal.

B.2.7 Public Information Act Disclosures

The Texas Board of Nursing is a governmental body subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552. The Proposal and other information submitted to the Texas Board of Nursing by the Respondent are subject to release as public information by the Texas Board of Nursing. The Proposal and other submitted information is presumed subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the legal basis for confidentiality. Merely making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable, and will make the entire Proposal subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified by the Respondent as proprietary or confidential will be deemed subject to disclosure pursuant to the PIA. Respondent will irrevocably deem to have waived, and Respondent agrees to fully indemnify the State of Texas, the Texas Board of Nursing any claim of infringement by the Texas Board of Nursing regarding the intellectual property rights of Respondent or any third party for any materials appearing in the Proposal.

Contractor is required to make any information created or exchanged with a state governmental entity (as defined by Texas Government Code § 2252.907(d)) pursuant to this Contract, and not otherwise excepted from disclosure

under the Texas Public Information Act, available in at least one of the following formats that is accessible by the public at no additional charge to the State of Texas, the Texas Board of Nursing, : portable document format (pdf) compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).

If Respondent's Proposal contains any information, which Respondent claims is confidential and not subject to release under the PIA, Respondent must prepare and deliver to the Texas Board of Nursing four CDs containing the following information:

1. Two CDs containing complete copies of all of Respondent's submissions pursuant to this RFP. Respondent must mark these "Complete Proposal Documents, [Respondent's Name], the Texas Board of Nursing RFP [RFP Number]. CONTAINS CONFIDENTIAL INFORMATION."

2. Two CDs, each containing copies of all of Respondent's submissions with all information claimed as confidential excised, blacked out, or otherwise redacted. Each of these CDs must also contain an Appendix which contains clear references to all redacted information including a general description of the redacted information. Respondent must mark these CDs "For Public Release: Redacted Version of [Respondent's Name], the Texas Board of Nursing RFP [RFP Number]."

B.2.8 Agency Posting of Contracts

Without prior written notice to Respondent, the redacted Proposal submitted under Subsection 2 of Section B.2.7, Public Information Act Disclosures, may be posted on the Texas Board of Nursing's website as part of the Contract per Texas Government Code § 2261.253(a).

B.2.9 Irrevocability of the Proposal

The Proposal is irrevocable for 120 calendar days following the Proposal Opening Date and Time identified in Part A. The Texas Board of Nursing may extend this period with Respondent's written agreement.

B.3 CONTRACT INFORMATION

B.3.1 Amending the Contract

All alterations, additions, or deletions of the Contract must be in writing and mutually agreed upon by both Parties and put into effect with a Contract Amendment issued by the Texas Board of Nursing. Respondent will not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

B.3.2 Order of Precedence

In the event of any conflict or contradiction between or among these documents, the Notice of Award, as modified by any Contract Amendments, controls over the RFP and the Proposal. The RFP, as modified by any Addenda, controls over the Proposal. In the event of any conflicts or contradictions between RFP Parts A and B, Part A controls.

B.3.3 Terminating the Contract

B.3.3.1 Convenience of the State of Texas

The Texas Board of Nursing reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if the Texas Board of Nursing determines

that such termination is in the best interest of the state. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Texas Board of Nursing will be liable for payments for any goods or services ordered from Contractor before the termination date.

B.3.3.2 Cause/Default

If Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, the Texas Board of Nursing may, upon written notice of default to Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

The Texas Board of Nursing may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless the Texas Board of Nursing notifies Contractor in writing prior to the exercise of such remedy. Contractor will remain liable for all covenants and indemnities under the Contract. Contractor will be liable for all costs and expenses, including court costs, incurred by the Texas Board of Nursing with respect to the enforcement of any of the remedies listed in this Contract.

B.3.3.3 Change in Federal or State Requirements

If federal or state laws, regulations, or requirements are amended or judicially interpreted so that either the Texas Board of Nursing or Respondent cannot reasonably fulfill the Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties will be discharged from any further obligations under the Contract.

B.3.3.4 TCPPD Purchasing Preference

Pursuant to Texas Human Resources Code Chapter 122, state agencies must purchase products and services meeting the agency's specifications offered by a Community Rehabilitation Program (CRP) certified by the Texas Council on Purchasing from People with Disabilities (TCPPD), or its Central Nonprofit Agency, Texas Industries for the Blind and Handicapped (TIBH). Should any item(s) awarded under any contract pursuant to this RFP become available from a CRP through TIBH or TCPPD during the term of the contract, the state may cease all use of the awarded contract immediately upon the availability of such product or service, and may terminate the contract for some or all of such products or services awarded.

B.3.3.5 Rights upon Termination or Expiration of Contract

In the event that the Contract is terminated for any reason, or upon its expiration, the Texas Board of Nursing retains ownership of all associated work products and documentation obtained from Contractor under the Contract.

B.3.3.6 Survival of Terms

Termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

B.3.4 Contract Documentation

The Contract will consist of the Notice of Award, Listing of Awarded Items, and any Contract Amendments to these documents issued by the Texas Board of Nursing; this RFP, together with any modifications made through Addenda; and the successful Proposal, together with any clarifications that are submitted at the request of the Texas Board of Nursing.

B.4 CONTRACT MANAGEMENT

B.4.1 Contract Managers

B.4.1.1 The Texas Board of Nursing Contract Manager

The Texas Board of Nursing Contract Manager has the authority to:

1. sign written correspondence;
2. serve as the day-to-day point-of-contact;
3. coordinate quality control reviews;
4. approve invoices;
5. coordinate meetings with Respondent;
6. investigate complaints;
7. receive requests for substitutions or changes in goods or services awarded under the Contract;
8. initiate contract amendments; and
9. discuss pricing changes.

B.4.1.2 The Respondent's Contract Manager

Respondent must identify its Contract Manager to the Texas Board of Nursing in writing within 10 days of the issuance of the Purchase Order. Respondent should document all subsequent changes of Respondents Contract Manager through written correspondence. Respondent's Contract Manager must be someone with the authority to:

1. make decisions regarding the deliverables required by the Contract;
2. sign written correspondence;
3. serve as the day-to-day point-of-contact;
4. coordinate quality control reviews;
5. coordinate meetings with the Texas Board of Nursing; and
6. investigate complaints.

B.4.2 Written Correspondence

In order to track and document requests for decisions or information pertaining to the Contract, and the subsequent response to those requests, the Texas Board of Nursing and Respondent will use written correspondence.

B.4.3 Notices and Liaisons

B.4.3.1 Delivery of Written Notices

Both Parties must deliver any required notice in writing to the other Party and to the addresses specified in this Section or the Respondent Information Form. The Parties deem the notice to have been given immediately if delivered in person to the receiving Party's address. The Parties deem notice to have been given on the date of certified receipt, if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving Party at its specified address.

B.4.3.2 Notice to Respondent

Within 10 days of the issuance of the Notice of Award, Respondent must send the Texas Board of Nursing written notice of the address and contact person for legal notice and written correspondence purposes. If there is any change to this information during the term of the contract, Respondent must notify the Texas Board of Nursing by written correspondence.

B.4.3.3 Notice to the Texas Board of Nursing

Texas Board of Nursing's address for all purposes under this Contract is as follows.

Mailing Address

Texas Board of Nursing
Attn: Keith LaSalle
333 Guadalupe, Tower 3, Suite 460
Austin, Texas 78701
Email: keith.lasalle@bon.texas.gov

Physical Address

Texas Board of Nursing
Attn: Keith LaSalle
333 Guadalupe, Tower 3, Suite 460
Austin, Texas 78701

B.4.4 Subcontracting Approval

Respondent must perform the Contract with its own resources and those subcontractors identified in Respondent's HUB Subcontracting Plan. In the event that Respondent determines that it is necessary or expedient to execute additional or alternative subcontracts for any of the performances under the Contract, Respondent must submit a revised HUB Subcontracting Plan for prior approval before executing any subcontracts. Respondent must also transmit to the Texas Board of Nursing for review and prior Texas Board of Nursing approval a true copy of the subcontract it proposes to execute with a subcontractor.

Respondent, in subcontracting for any performances specified in the RFP or resulting Contract, expressly understands and acknowledges that in entering into such subcontract(s), the Texas Board of Nursing is in no manner liable to any subcontractor(s) of the Respondent. In no event will this provision relieve Respondent of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this RFP and Contract. Respondent must manage all quality and performance, project management, and schedules for subcontractors. Respondent is solely responsible and accountable for the completion of all work for which Respondent has subcontracted.

B.4.5 No Implied Authority

Any authority delegated to the Respondent by the Texas Board of Nursing is limited to the terms of the Contract. Respondent may not rely upon implied authority and specifically is not delegated authority under the Contract to: (1) make public policy; (2) promulgate, amend, or disregard the Texas Board of Nursing program policy; or (3) unilaterally communicate or negotiate, on behalf of the Texas Board of Nursing, with any member of the U.S. Congress or any member of their staff, any member of the Texas Legislature or any member of their staff, or any federal or state agency.

B.4.6 Cooperation with the Texas Board of Nursing

Respondent must ensure that it cooperates with the Texas Board of Nursing and other state or federal administrative agencies, at no charge to the Texas Board of Nursing, for purposes relating to the administration of the Contract. Respondent agrees to reasonably cooperate with and work with the Texas Board of Nursing's contractors, subcontractors, and third party representatives as requested by the Texas Board of Nursing.

B.4.7 Dispute Resolution

B.4.7.1 Informal Meetings

The Texas Board of Nursing and Contractor will meet as needed to implement the terms of this Contract and will make a good faith attempt to resolve any disputes informally.

B.4.7.2 Alternative Dispute Resolution at State Office of Administrative Hearings

If the Parties' attempts to resolve their disagreements informally fail, the parties may agree, but are not required, to utilize the non-binding alternative dispute resolution services of the State Office of Administrative Hearings (SOAH) to attempt to resolve their disagreements, claims, or disputes under this Contract. Contractor will pay all costs of the mediation unless the Texas Board of Nursing, in its sole good faith discretion, approves its payment of all or part of such costs. The Texas Board of Nursing or Contractor's participation in, or the results of, any mediation under this subsection or the provisions of this Section will not be construed as a waiver by the Texas Board of Nursing or Contractor of any rights, privileges, defenses, remedies, or immunities available to the parties under this Contract or available to the Texas Board of Nursing as an agency of the State of Texas.

B.4.7.3 Texas Government Code Chapter 2260

The Parties must use the dispute resolution process provided for in Texas Government Code Chapter 2260, as further described in this Section, to attempt to resolve any claim for breach of this Contract made by Contractor.

Contractor's must submit claims for breach of this Contract that the Parties cannot resolve in the ordinary course of business according to the negotiation process provided in Texas Government Code Chapter 2260, Subchapter B. To initiate the process, Contractor must submit written notice, as required by subchapter B, to the Texas Board of Nursing's Executive Director and to the Texas Board of Nursing as stated in Section B.4.3. This written notice must specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. Compliance by Company with subchapter B is a condition precedent to the filing of a contested case proceeding under Texas Government Code Chapter 2260, Subchapter C.

The contested case process provided in Texas Government Code Chapter 2260, Subchapter C is Contractor's sole and exclusive process for seeking a remedy for any alleged breach of this Contract by the Texas Board of Nursing if the Parties are unable to resolve their disputes informally. Compliance with the contested case process provided in Texas Government Code Chapter 2260, Subchapter C is a condition precedent to seeking consent to sue from the Legislature under Texas Civil Practices and Remedies Code Chapter 107. Neither the execution of

this Contract by the Texas Board of Nursing nor any other conduct of any the Texas Board of Nursing representative relating to this Contract will be considered a waiver of sovereign immunity.

The submission, processing, and resolution of Contractor's claim is governed by CPA's published rules, in 34 Tex. Admin. Code Chapter 1, Subchapter F.

B.4.7.4 Company's Continued Performance

Notwithstanding any other provision of this Contract to the contrary, unless otherwise requested or approved in writing by the Texas Board of Nursing, Contractor must continue performance and will not be excused from performance during the period any breach of contract claim, dispute or mediation is pending under either of the above processes.

However, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Texas Government Code § 2251.051 and such suspension of performance is expressly applicable and authorized under that law.

B.4.7.5 Fraud, Waste, and Abuse

By submitting a Proposal to the RFP, Respondent represents and warrants that it has read and understood and will comply with the Texas Board of Nursing's Anti-Fraud Policy, found at: <http://www.window.state.tx.us/ssv/ethics.html>, as such Policy currently reads and as it is amended throughout the term of the Contract.

B.4.8 Renegotiation of Price

The Texas Board of Nursing will monitor market prices and prices paid by other governmental entities or other states for substantially similar goods and services during the term of the Contract. If the Texas Board of Nursing determines that substantially similar goods and services are selling for meaningfully lower prices than the prices established in the Contract, the Texas Board of Nursing may initiate price renegotiations with Respondent and amend the Contract to reflect a new, lower price, if agreed to by the Parties.

B.4.9 Name Changes and Organizational Changes

Respondent must provide the Texas Board of Nursing with written notice of all name changes and organizational changes relating to Respondent including any merger, acquisition, or sale no later than ten business days of such change. Respondent, in its notice, must describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Respondent, Respondent must identify the new personnel and provide résumés to the Texas Board of Nursing, if résumés were originally required by the RFP. The Texas Board of Nursing may request other information about the change and its impact on the Contract and Respondent must supply the requested information within five working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Respondent or successor entity, as applicable, to maintain its status as a party to this Contract.

The Texas Board of Nursing may terminate the Contract due to any change to Respondent that materially alters the Respondent's ability to perform under the Contract. The Texas Board of Nursing has the sole discretion to determine if termination is appropriate. See also Section B.7.10 (No Assignment by Contractor).

B.4.10 News Releases

The Texas Board of Nursing does not endorse any vendor, commodity, or service. News releases pertaining to this transaction and/or advertisements, publications, declarations and any other pronouncements by the Respondent using any means or media mentioning the State of Texas or the Texas Board of Nursing must be approved in writing by the State of Texas, the Texas Board of Nursing as applicable, prior to public dissemination. Respondent may not send out unsolicited electronic mail or facsimile transmissions to the Texas Board of Nursing without prior written approval of the Contract Manager, regardless of whether the proposed communication specifically references the awarded contract.

B.5 FINANCIAL INFORMATION

B.5.1 Appropriations

All obligations of the Texas Board of Nursing are subject to the availability of legislative appropriations and, for expending federal funds, to the availability of the federal funds applicable to the Contract. Respondent acknowledges that the ability of the Texas Board of Nursing to make payments under the Contract is contingent upon the continued availability of funds. Respondent further acknowledges that funds may not be specifically appropriated for the Contract and the Texas Board of Nursing's continual ability to make payments under the Contract is contingent upon the funding levels appropriated for each particular appropriation period. The Texas Board of Nursing will use all reasonable efforts to ensure that such funds are available. Respondent agrees that if future levels of funding for the Texas Board of Nursing are not sufficient to continue operations without any operational reductions, the Texas Board of Nursing, in its discretion, may terminate the Contract, either in whole or in part, in its discretion, may terminate a pending order under the Contract, either in whole or in part. In the event of such termination, the Texas Board of Nursing will not be considered to be in default or breach under the Contract, nor will either be liable for any further payments ordinarily due under the Contract, nor will either be liable for any damages or any other amounts which are caused by or associated with such termination. The Texas Board of Nursing will make best efforts to provide reasonable written advance notice to the Respondent of any such Contract or order termination. In the event of such a termination, Respondent must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on that particular order if an order is being terminated, or the Contract, if the Contract is being terminated. The Texas Board of Nursing will be liable for payments limited only to the portion of work the authorized in writing and which the Respondent has completed, delivered to the Texas Board of Nursing, and which has been accepted by the Texas Board of Nursing. All such work must be completed, per the Contract requirements, prior to the effective date of termination.

B.5.2 Audit Requirements

Pursuant to Texas Government Code § 2262.154, the State Auditor's Office, or successor agency, may conduct an audit or investigation of Respondent or any other entity or person receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds by Respondent or any other entity or person directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office, 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 Respondent or other entity that is the subject of an audit or investigation must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. The Contract may be amended unilaterally by the Texas Board of Nursing to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of Texas Government Code § 2262.154. **Respondent must ensure that this clause concerning the authority to audit funds received**

indirectly by subcontractors through Respondent and the requirement to cooperate is included in any subcontract it awards.

B.5.3 Invoicing and Payment Requirements

If applicable, payments will be made in accordance with the Prompt Payment Act, Texas Government Code Section 2251. The payment of invoices is required within 30 days, and any payments later than 30 days will start to accrue interest. The items invoiced must be described in the same fashion as on the Texas Board of Nursing Purchase Order and must reference the Purchase Order number. Each invoice presented must include the Texas Board of Nursing's Purchase Order number, serial numbers (if applicable), the delivery date, the delivery location, and the unit price for each item within a shipment (if applicable). It is the policy of the Texas Board of Nursing to make payment on a properly prepared and submitted invoice within thirty (30) days of any final acceptance of performance under a procurement.

If applicable, the Texas Board of Nursing shall not be liable for any performances rendered or obligations incurred on behalf of Texas Board of Nursing by Respondent before execution of a Purchase Order. All obligations of the Texas Board of Nursing are subject to the availability of legislative appropriations and, federally funded procurements, to the availability of federal funds applicable to this procurement. The Texas Board of Nursing will not be in default for nonpayment under this contract if such appropriated funds or federal funds are not available to the Texas Board of Nursing for payment of Texas Board of Nursing's obligations under this contract.

B.5.4 Disputed Invoices

If applicable, contractor will receive notice of an error in an invoice submitted for payment by not later than the 21st day after the date the invoice was received by the state. If an invoice dispute is resolved in favor of the Contractor, the Contractor is entitled to receive interest on the unpaid balance of the invoice, beginning on the date the invoice became overdue, pursuant to Texas Government Code § 2251.021. If a dispute is resolved in favor of the Texas Board of Nursing, Contractor will submit a corrected invoice that must be paid in accordance with Texas Government Code § 2251.021. The unpaid balance accrues interest if the Texas Board of Nursing does not pay the corrected invoice by the appropriate date.

B.5.5 Time and Manner of Payment

Pursuant to Texas Government Code Chapter 2251, any payment by the Texas Board of Nursing is overdue on the 31st day after the later of: (1) the date the Texas Board of Nursing receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Texas Board of Nursing receives the invoice for the goods or service.

B.5.6 Antitrust and Assignment of Claims

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

Contractor assigns to the State of Texas all of Contractor's rights, title, and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with the Contract.

B.5.7 Debts and Delinquencies

The Texas Board of Nursing is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, the Texas Board of Nursing will apply any payments or other amounts Contractor is otherwise owed under this Contract toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

B.5.8 Liability for and Payment of Taxes

The Texas Board of Nursing is exempt from State Sales tax and Federal Excise tax. The Texas Board of Nursing will furnish Tax Exemption Certificate(s) to the Respondent upon request. The Respondent must pay all taxes resulting from the RFP and Contract including any federal, state, or local income, sales, excise, franchise, or property taxes. The Texas Board of Nursing is not liable to reimburse the Respondent for the payment of taxes incurred by Respondent in acquiring any goods or services as a part of any work called for in this RFP and Respondent's invoice may not include any amount for such taxes, as long as the Texas Board of Nursing has provided the requested Tax Exemption Certificates.

B.5.9 Method of Purchase and Vesting Ownership

The Texas Board of Nursing will purchase all goods or services through this Contract using an outright purchase.

B.5.10 No Debt Against the State

The Contract does not create any debt by or on behalf of the State of Texas.

B.5.11 Travel

Respondent is responsible for any travel or per diem required to perform its obligations under the Contract. All travel and per diem that the state requests in addition to what the Contract requires the Respondent to provide at the Respondent's expense will be paid in accordance with Texas Government Code, Chapter 660.

B.6 CONFIDENTIALITY AND SECURITY

Contractor must maintain and protect any information it receives, compiles, or creates as a result of the Contract in accordance with any federal, state, or local laws and regulations that apply. Contractor must establish a method to secure the confidentiality of records and other information relating to the Texas Board of Nursing in accordance with applicable federal and state laws, rules, and regulations.

The obligations of Contractor under this Confidentiality and Security section will survive this Contract and must be included in all subcontracts.

B.7 TERMS AND CONDITIONS

B.7.1 Affirmations

Submitting a Proposal with a false statement is a material breach of contract and the Proposal or the Contract will be void. Respondent will be removed from all bid lists. By submission of a signed Proposal, the Respondent certifies the following.

B.7.1.1 Respondent has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response. Violation of this requirement may result in the termination of the Contract at the Texas Board of Nursing's discretion.

B.7.1.2 Respondent waives any claim against and releases the Texas Board of Nursing, its officers, employees, agents, and attorneys from liability with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Respondent and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

B.7.1.3 Respondent will promptly notify the Texas Board of Nursing in the event that any representations and warranties provided in this Contract are no longer true and correct. Respondent acknowledges that all of its representations and warranties contained in any part of its Proposal and this Contract are material and have been relied upon by the Texas Board of Nursing in selecting the Respondent for the award of the Contract. Further, the Respondent warrants and represents that all of its statements and representations made to the Texas Board of Nursing prior to being awarded the Contract, and those made during the negotiation of this Contract, are material, true and correct.

B.7.2 Civil Rights

The Respondent agrees that no person will, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. Respondent will comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

B.7.3 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

The Texas Board of Nursing is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Respondent certifies that the responding 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 the Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent 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 <https://www.sam.gov>.

B.7.4 Records Retention

Respondent must retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. Respondent must retain these records for a period of seven years after the expiration of the Contract, or until the Texas Board of Nursing or the State Auditor's Office (SAO) is satisfied that all audit and litigation matters are resolved, whichever period is longer. Respondent will grant access to all books, records, and documents pertinent to the Contract to the Texas Board of Nursing, SAO, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

B.7.5 Environmental Protection

Respondent must comply with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1251 *et seq.*).

B.7.6 Prohibition on Lobbying

Respondent must comply with the provisions of a federal law known generally as the Lobbying Disclosure Act, 2 U.S.C. § 1601 *et seq.* By submitting a Proposal, Respondent certifies that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. It also certifies that Respondent will disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

B.7.7 Copyrights and Publications

Respondent understands and agrees that, where activities supported by the Contract produce original books, manuals, films, or other original material (referred to in this Contract as "the works"), Respondent may copyright the works subject to the reservation by the Texas Board of Nursing of a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state or political subdivision purposes:

1. the copyright in the works developed under the Contract, and
2. any rights of copyright to which Respondent purchases ownership with funding from the Contract.

Respondent may publish, at its expense, the results of Contract performance with prior the Texas Board of Nursing review and approval of that publication. Any publication (written, visual, or sound) must include acknowledgment of the support received from the Texas Board of Nursing. Respondent must provide one copy of any such publication to the Texas Board of Nursing. The Texas Board of Nursing reserves the right to require additional copies before or after the initial review. Respondent must provide all copies free of charge to the Texas Board of Nursing.

B.7.8 Certifications

B.7.8.1 Child Support Obligations

Under Texas Family Code § 231.006, (relating to child support) Respondent, by submitting its Proposal, certifies that it is not ineligible to receive payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

B.7.8.2 Franchise Tax Certification

Respondent, by submitting its Proposal, certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. If Respondent is a qualifying business entity type per Texas Comptroller of Public Accounts guidelines and is not set up in the Texas Franchise Tax system, Respondent must do so prior to contracting with the State of Texas.

B.7.8.3 Certification Concerning Dealings with Public Servants

Respondent, by submitting its Proposal, certifies that it has not given and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this transaction.

B.7.8.4 Certification Concerning Financial Participation

Under Texas Government Code § 2155.004, Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

B.7.8.5 Certification Concerning Hurricane Relief

A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

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

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

B.7.8.6 Certification Concerning Restricted Employment for Former State Officers or Employees under Texas Government Code § 572.069

Respondent certifies that it has not employed and will not employ a former the Texas Board of Nursing or state officer who participated in a procurement or contract negotiation for the Texas Board of Nursing involving Respondent within two years after the state officer or employee left state agency employment or service.

This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

B.7.9 Independent Contractor

Respondent is not an employee, officer, or agent of the Texas Board of Nursing for any purpose under this solicitation or Contract. Respondent is and remains an independent contractor in relationship to the Texas Board of Nursing. The Texas Board of Nursing is not responsible for withholding taxes from payments made under the Contract. Respondent may not claim vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind from the Texas Board of Nursing.

B.7.10 No Assignment by Contractor

Respondent may not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the Texas Board of Nursing.

B.7.11 Indemnification and Liability

Acts or Omissions

Contractor shall indemnify and hold harmless the State of Texas, the Texas Board of Nursing, , AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Contractor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE Texas Board of Nursing AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Infringements

a) Contractor shall indemnify and hold harmless the State of Texas, the Texas Board of Nursing, , 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 CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE the Texas Board of Nursing AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Contractor 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 Contractor's written

approval, (iii) any modifications made to the product by the Contractor pursuant to [AGENCY'S] specific instructions, (iv) any intellectual property right owned by or licensed to the Texas Board of Nursing, or (v) any use of the product or service by the Texas Board of Nursing that is not in conformity with the terms of any applicable license agreement.

c) If Contractor becomes aware of an actual or potential claim, provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against the Texas Board of Nursing, shall), at Contractor's sole option and expense; (i) procure for the the Texas Board of Nursing 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 [AGENCY'S] use is non-infringing.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

1) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS, the Texas Board of Nursing SHALL NOT BE LIABLE TO THE CONTRACTOR, 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) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, the Texas Board of Nursing, 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. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE the Texas Board of Nursing AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

B.7.12 Respondent Liability for Damage to Government Property

Respondent is liable for all damages to government-owned, leased, or occupied property and equipment caused by Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. Respondent must notify the Texas Board of Nursing Contract Manager in writing of any such damage within one calendar day.

B.7.13 Force Majeure

The Texas Board of Nursing and Respondent will not be responsible for delays in performance under the Contract should it be prevented from 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 Texas Board of Nursing, or Respondent.

In the event of an occurrence under this Section, the Texas Board of Nursing or Respondent (parties) will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The party will immediately notify the other party by telephone (to be confirmed in writing within five calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

B.7.14 Buy Texas

In accordance with Texas Government Code § 2155.4441, Respondent must, in performing any services under the Contract, purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside Texas.

B.7.15 Miscellaneous Terms and Conditions

B.7.15.1 Permits

Respondent will be responsible, at the Respondent's expense, for obtaining all permits or licenses required by city, county, state, or federal rules, regulations, law, or codes that pertain to the Contract.

B.7.15.2 Electrical Items

All electrical items provided by Respondent to the Texas Board of Nursing under the Contract must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA, or other applicable regulating body.

B.7.15.3 Executive Head

Pursuant to Texas Government Code § 669.003, the Texas Board of Nursing may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. By submitting a Proposal, Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years.

B.7.15.4 Terminated Contracts

By submitting a Proposal, Respondent certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five years nor is it currently prohibited from contracting with a governmental agency. If the Respondent does have such a terminated contract, Respondent must identify each and provide an explanation for the termination.

B.7.16 Non-Waiver of Rights

Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract operates to limit, impair, preclude, cancel, waive, or otherwise affect such right

or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

B.7.17 No Waiver

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

Nothing in this Contract should be construed as a waiver of the sovereign immunity of the State of Texas, the Texas Board of Nursing. This Contract does not constitute or should not be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, the Texas Board of Nursing. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas, the Texas Board of Nursing, under this Contract or under applicable law does not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. The Texas Board of Nursing does not waive any privileges, rights, defenses, or immunities available to the Texas Board of Nursing by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

B.7.18 Severability

If any provision of the Contract is for any reason held to be unenforceable, the rest of it remains fully enforceable.

B.7.19 Applicable Law and Venue

Respondent agrees that the Contract in all respects will be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. Respondent also agrees that the exclusive venue and jurisdiction of any legal action or suit concerning the Texas Board of Nursing under this Contract is, and that any such legal action or suit will be brought, in a court of competent jurisdiction in Travis County, Texas.

B.7.20 Compliance with Laws; Dealing with Public Servants

The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) Texas Penal Code § 36.02, which prohibits bribery; (ii) Texas Penal Code § 36.09, which prohibits the offering or conferring of benefits to public servants; (iii) Texas Government Code § 2155.003, which prohibits the chief clerk or any other employee of the Texas Board of Nursing from having 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 accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

Respondent must give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract. Except where otherwise expressly required by applicable laws and regulations, the Texas Board of Nursing is not responsible for monitoring Respondent's compliance with any laws or regulations. If Respondent performs any work knowing or having reason to know that it is contrary to laws or regulations, Respondent bears all claims, costs, losses and damages caused by, arising out of or resulting.

B.7.21 Insurance and Other Security

Respondent represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required specifically by Part A of this RFP and generally to ensure proper fulfillment of the Contract and its liabilities thereunder. Respondent will insure any of its motor vehicles used to fulfill its duties under the Contract

and ensure that its subcontractors do the same. Such insurance must comply with Texas statutory requirements and also cover any cargo being delivered to the Texas Board of Nursing.

B.7.22 Deceptive Trade Practices; Unfair Business Practices

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

B.7.23 Immigration

The Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

B.7.24 Key Personnel Change Management

Respondent agrees that the key personnel assigned to the Contract will remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by Respondent or unless the Texas Board of Nursing agrees to a change in the key personnel.

B.7.25 Federal, State, and Local Laws, Regulations, and Requirements

The Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. The Texas Board of Nursing reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for the Texas Board of Nursing or Contractor's compliance with all applicable federal, state, and local laws and regulations.

Contractor will indemnify the State of Texas and will pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

B.7.26 Taxes

B.7.26.1 State and Federal Tax Law.

Respondent must comply will all federal and state tax laws and withholding requirements.

B.7.26.2 Federal Tax Reform Act.

Contractor must demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2s to common law employees.

B.7.27 Worker's Compensation

Respondent is responsible for both federal and state unemployment insurance coverage and standard Worker's Compensation insurance coverage. The State of Texas is not liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage or any federal or state withholding requirements.

B.7.28 No Liability Upon Termination

If this Contract is terminated for any reason, the State of Texas and the Texas Board of Nursing are not liable to Respondent for any damages, claims, losses, or any other amounts arising from or related to termination. However, Respondent may be entitled to the remedies provided in Texas Government Code Chapter 2260.

B.7.29 Felony Criminal Convictions

Respondent represents and warrants that Respondent has not and Respondent's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised the Texas Board of Nursing as to the facts and circumstances surrounding the conviction. If awarded the contract, Respondent has a continuing duty to amend, supplement, or correct this representation and warranty not later than ten days after discovering additional information relating to felony criminal convictions of Respondent or any of its employees. Respondent will not allow any employee convicted of a felony criminal offense to perform tasks related to the contract without such disclosure and express permission from the Texas Board of Nursing.

B.7.30 Drug-Free Workplace

Respondent must comply with the applicable provisions of the Drug-Free Work Place Act of 1988.

B.7.31 Vendor Performance Before and After Award

In accordance with Texas Government Code §§ 2155.074 and 2262.055, vendor performance may be used as a disqualification factor in the award of any contract resulting from this solicitation.

The Texas Board of Nursing may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (VPTS) as authorized by 34 Texas Administrative Code § 20.108, the Texas Board of Nursing may examine other sources of Respondent performance including notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. These sources of Respondent performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the federal government. Further, the Texas Board of Nursing may initiate these examinations of Respondent's performance based upon media reports. Any investigations are at the Texas Board of Nursing's sole discretion, and any negative findings, as determined by the Texas Board of Nursing, may result in a non-award to Respondent. Information pertaining to VPTS is located on CPA's website at: <https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>.

Additionally, per Texas Government Code § 2155.089, the Texas Board of Nursing will review successful Respondent's performance under a contract resulting from this solicitation after the contract is completed or otherwise terminated. These reviews and any resulting classification grades will be posted on the Vendor Performance Tracking System as noted in Texas Government Code § 2262.055.

B.7.32 State of Texas Debarment

In the event that Respondent has repeated unfavorable VPTS performance reviews, repeated unfavorable VPTS grading classifications, or has more than two contract terminations within the preceding three years for unsatisfactory performance, the Texas Comptroller of Public Accounts may bar a vendor from participating in state contracts for a period commensurate with the seriousness of Respondent's action and the damage to the state's interests.



ATTACHMENT A

EXECUTION OF OFFER

RFP #507-17-139

NOTE: THIS EXHIBIT MUST BE SIGNED AND RETURNED WITH THE PROPOSAL. PROPOSALS THAT DO NOT INCLUDE THIS EXHIBIT WILL BE DISQUALIFIED. THE PROPOSAL SHALL BE VOID IF FALSE STATEMENTS ARE CONTAINED IN THIS EXHIBIT.

By signature hereon, Respondent certifies that:

All statements and information prepared and submitted in the response to this RFP are current, complete, and accurate.

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

Neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent or anyone acting for such firm, corporation, or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated the contents of this Proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for this RFP.

When a Texas business address shown hereon that address is, in fact, the legal business address of Respondent and Respondent qualifies as a Texas Resident Bidder under Texas Administrative Code, Title 34, Part 1, Chapter 20.

Under Government Code § 2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent's Proposal. If Respondent is not eligible, then any contract resulting from this RFP shall be immediately terminated. Furthermore, "under Section 2155.004, Government Code, the vendor Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

Under Family Code § 231.006, relating to child support obligations, Respondent and any other individual or business entity named in this solicitation are eligible to receive the specified payment and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate.

Any Proposal submitted under this RFP shall contain the names and social security numbers of person or entity holding at least a twenty-five percent (25%) ownership interest in the business entity submitting the Proposal. Respondent must complete the following:

_____	_____
Name	Social Security Number
_____	_____
Name	Social Security Number
_____	_____
Name	Social Security Number
_____	_____
Name	Social Security Number

Under Government Code § 669.003, relating to contracting with an executive of a state agency, Respondent represents that no person who, in the past four years, served as an executive of the Texas Board of Nursing any other state agency, was involved with or has any interest in this Proposal or any contract resulting from this RFP. If Respondent employs or has used the services of a former executive head of the Texas Board of Nursing or other state agency, then Respondent shall provide the following information: Name of former executive, name of state agency, date of separation from state agency, position with Respondent, and date of employment with Respondent.

Respondent 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.

The Texas Board of Nursing is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS), <http://www.epls.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Respondent certifies that the responding 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 Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent 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.sam.gov>.

Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award

a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.

Pursuant to Section 2262.003 of the Texas Government Code, the state auditor may conduct an audit or investigation of the vendor 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 Respondent 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 Respondent 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. Respondent will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.

PREFERENCES

Check below to claim a preference under 34 TAC Rule 20.38

- Supplies, materials or equipment produced in TX or offered by TX bidder or TX bidder that is owned by a service disabled veteran *
- 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
- Vendors that meet or exceed air quality standards
- Recycled or Reused Computer Equipment of Other
- Foods of Higher Nutritional Value

Respondent represents and warrants that the individual signing this Execution of Proposal is authorized to sign this document on behalf of Respondent and to bind Respondent under any contract resulting from this Proposal.

RESPONDENT (COMPANY): _____

SIGNATURE (INK): _____

NAME (TYPED/PRINTED) _____

TITLE: _____ **DATE:** _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE AND FACSIMILE NUMBERS: _____

TEXAS IDENTIFICATION NUMBER (TIN): _____



Attachment B
Pricing Form
RFP No. 507-17-139

Imaging Services	Item	Item Description	Pricing Unit	Price
Black and White Image Capture	1	Low (200 DPI)	Per Image	
	2	Medium (300 DPI)	Per Image	
	3	High (400 DPI)	Per Image	
	4	Very High (600 DPI +)	Per Image	
	5	Preservation < 600 PPI	Per Image Ranges	
	6	Preservation >= 600 PPI	Per Image Ranges	
Color Image Capture	7	Medium (300 DPI)	Per Image	
	8	High (400 DPI)	Per Image	
	9	Very High (600 DPI +)	Per Image	
	10	Preservation < 600 PPI	Per Image Ranges	
	11	Preservation >= 600 PPI	Per Image Ranges	
Large Format Image Capture	12	Medium (300 DPI)	Per Image	
	13	High (400 DPI)	Per Image	
	14	Very High (600 DPI +)	Per Image	
Transparent Media Image Capture	15	Medium (1200 PPI)	Per Image	
	16	High (2400 PPI)	Per Image	
	17	Very High (4000 PPI +)	Per Image	
Image Processing	18	Low (200 DPI)	Per Image	

	19	Medium (300 DPI)	Per Image	
	20	High (400 DPI)	Per Image	
	21	Very High (600 DPI +)	Per Image	
	22	Preservation < 600 PPI	Per Image	
	23	Preservation >= 600 PPI	Per Image	
Microfilm Conversion	24	Conversion of microfilm to digital Images	Per Image	
Microfiche Conversion	25	Conversion of microfiche to digital Images	Per Image	
Index Field - Type 1	26	Up to 15 Characters	Per Document	
	27	16-30 Characters	Per Document	
	28	31-45 Characters	Per Document	
Index Field - Type 2	29	Up to 15 Characters	Per Document	
	30	16-30 Characters	Per Document	
	31	31-45 Characters	Per Document	
Searchable PDF Documents	32	Scanned images with text portions	Per Image	
Special Document Handling	33	Handling includes overnight vault storage services	Per Day	
	34	Special handling for fragile materials	Per Image	
	35	Handling includes stringent environmental requirements	Per Day	
Capture from Special Formats	36	Photographic prints	Per Image	
	37	Photographic negatives	Per Image	
	38	Newspapers	Per Image	
	39	X-Rays	Per Image	
	40	Manuscripts	Per Image	
	41	Drawings	Per Image	
	42	Bound Books	Per Image	
Enhancing Images	43	Bit depth	Per Image	
	44	Resolution	Per Image	
	45	Tonal dynamic range	Per Image	

	46	Contrast	Per Image	
	47	Color space	Per Image	
Delivery Media	48	CD	Per Disc	
	49	DVD	Per Disc	
	50	USB	Per Device	
	51	External hard drive	Per Drive	
	52	Flash memory device	Per Device	
	53	Microfilm (Digital Archive Writer)	Per Image	
	54	Microfilm (Digital Archive Writer)	Per Roll	
Data Exchange	55	Compatible & Secure electronic data Exchange	Per gigabyte	
Image Repository Hosting	56	Central hosting of digital Images including routine backups	Per Image/ Per month	
	57	Redundant Hosting at alternate location	Per Image/ Per month	
Image Repository Maintenance	58	Image repository additions and maintenance	Per Hour	
Adding Electronic Images to Image Library	59	Processing images already in electronic format	Per Image	
Personnel	60	Project Manager	Per Hour	
	61	Certified Digital Imaging Architect	Per Hour	
	62	Programming Support	Per Hour	
	63	Technical Support	Per Hour	
	64	Data Entry	Per Hour	
	65	Document Preparation	Per Hour	
	66	Advanced Document Preparation	Per Hour	
	67	Re-preparation Services	Per Hour	
	68	Training Specialist	Per Hour	
Needs Assessment and Analysis	69	Project Planning Report	Per Hour	
Transportation of Source Material	70	Vehicle charge per round trip (1st 20 miles included)	Per Trip	

	71	Vehicle charge per mile over 20 miles round trip	Per mile	
	72	Secure carrier charge for each box in shipment	Per Box	
Secure Document Destruction	73	Paper Destruction	Per pound	
	74	Non-paper Destruction	Per pound	
Output File Formatting	75	Image output in non-proprietary file formats	Per Image	
	76	Indexes, audit trails, etc. (Non-Proprietary file formats)	Per gigabyte	
Location of Scanning	77	Performed at Contractor's facility, by contractor's staff	Per Image	
	78	Performed at PA facility by Contractor's staff	Per Image	
	79	Performed at Secure Mobile Scanning Unit by Contractor Staff	Per Image	
Desk Top Scanning	80	Performed at PA location by PA staff using Contractor's equipment	Per Image	
Extended Storage of Source Documents	82	Storage and security levels as per PA SOW.	Per day, per box	



Attachment C

Respondent Information and Best Value Questionnaire

RFP No. 507-17-139

Respondents must complete all of the following blanks and include all required attachments in Respondent's Proposal AT THE TIME OF THE INITIAL SUBMISSION OF THE PROPOSAL TO Agency.

A. Respondent's Contact Person. Respondent must list the name, title, email address of business, phone, number, fax number and email address of the individual who will be the contact person for the term of any PO resulting from this RFP.

Name: _____

Title: _____

E-mail Address of Business: _____

Telephone: _____

Fax: _____

Email Address of Contact: _____

B. References. Respondent must provide a list of four (4) state agencies, corporations or other entities other than agency for which Respondent has provided the requested or similar items in the RFP during the past three (3) years. Respondent must include dates when requested or similar items in the RFP were provided, names, telephone numbers and email addresses of state agency's or firm's contact person. If none, specify none.

This information will be used in evaluating Respondent's references, Respondent's prior performance and other indicators of Respondent's probable performance under any PO resulting from this RFP.

(1) State Agency or Other Entity: _____

Date Item Provided: _____

Name of Contact: _____

Telephone Number of Contact: _____

Email Address of Contact: _____

(2) State Agency or Other Entity: _____

Date Item Provided: _____

Name of Contact: _____

Telephone Number of Contact: _____

Email Address of Contact: _____

(3) State Agency or Other Entity: _____

Date Item Provided: _____

Name of Contact: _____

Telephone Number of Contact: _____

Email Address of Contact: _____

(4) State Agency or Other Entity: _____

Date Item Provided: _____

Name of Contact: _____

Telephone Number of Contact: _____

Email Address of Contact: _____

C. Cancellations or Terminations. Respondents must list all contracts or purchase orders that Respondent executed or accepted within the last three (3) years and which were canceled or terminated prior to completion by any state agency or other entity with which Respondent contracted. For each such contract or purchase order, Respondent must include a detailed explanation for the cancellation or termination and final resolution of the matter. Include the names and telephone numbers of each such state agency's or firm's contact person. If none, specify none.

This information will be used in evaluating Respondent's references, Respondent's prior performance and best value criteria such as other indicators of Respondent's probable performance under any PO resulting from this RFP.

D. Profile. Respondent must include the following profile that:

(a) describes the general nature of previous similar work performed by Respondent, particularly work in the last three (3) years;

(b) describes the size and scope of all operations, including number of Respondent's employees and years in business;

(c) describes Respondent's prior contracting experience with state agencies and similar entities; and

(d) any other information Respondent believes is pertinent to this RFP.

E. Personnel. Respondent must provide in detail the qualifications, education, training, experience and certifications of all Respondent's employees who will or may provide the items

under any PO resulting from this RFP. Respondent must provide this information for each such employee. If additional pages are required, use this format on any additional pages.

Employee's Name: _____

Qualifications: _____

Education: _____

Training: _____

Experience: _____

Certifications: _____

Licenses: _____

Employee's Name: _____

Qualifications: _____

Education: _____

Training: _____

Experience: _____

Certifications: _____

Licenses: _____

Employee's Name: _____

Qualifications: _____

Education: _____

Training: _____

Experience: _____

Certifications: _____

Licenses: _____

F. Narrative. Respondents must submit a detailed narrative explanation of how the offered items will meet the requirements of the RFP. If agency requires a copy of this narrative, it must be submitted in Microsoft Word format.

Signature of Authorized Representative

Title

Date

Digital Imaging RFP Services RFP 507-17-139 Q&A

INQUIRIES:

What is the volume of source documents by format? Paper, Film, Audio, Video

Will all data captured require microfilm output?

How will scheduling for source document pick-up be handled?

What is the targeted completion date?

List of Items, Schedule of Requirements, Scope of Work, Terms of Reference, Bill of Materials required.

Soft Copy of the Tender Document through email?

Names of countries that will be eligible to participate in this tender?

Information about the Tendering Procedure and Guidelines?

Estimated Budget for this Purchase?

Any Extension of Bidding Deadline?

Any Addendum or Pre Bid meeting Minutes?

BOARD OF NURSING RESPONSE:

1. Both paper and microfiche/digital source documents, approximately 20,000 to 40,000 documents per month, but the volume will vary month to month based on seasonal needs.
2. The majority of paper AND digital media source documents will require Microfilm AND/OR digital media output.
3. Source document pick-up will be coordinated on an as-needed basis with Board Staff.
4. The project will be on-going for the term of the contract.
5. The requested information is included in Request for Proposal No. 507-17-139.
6. A soft copy is not available.
7. All registered Texas vendors on the Texas Centralized Master Bidders List (CMBL) are eligible to submit a proposal.
8. In addition to the procedures and guidelines established in Request for Proposal No. 507-17-139, Vendors can review Texas contracting resources at <https://comptroller.texas.gov/purchasing/>.
9. Generally, past digital imaging costs have been approximately between \$1,500.00 and \$3,500.00 per month, but the costs will vary based upon seasonal increases in workflow.
10. Any extensions of proposal submission deadlines will be published for all vendors on the Texas ESBD.
11. No additional addendum or meetings minutes are available.

Second round: Inquiries posted for RFP 507-17-139 Digital Imaging

Texas Board of Nursing – Digital Imaging RFP #507-17-139 -- Questions

Section	Page #	Question
A.9.2; C	15	Is it a requirement to convert all images to microfilm? If not, what percentage of documents or files will need to be converted to microfilm?
A.9.2; D	16	Does the BON have an estimate as to the number of audio and video files that will need to be converted? Related to this question, does the BON have a specified format for these files or is the objective to collect these files from various storage devices and locations and organize them on centralized storage media?
A.9.2; F	16	Has the BON decided on any specific output storage for the scanned images? The BON lists multiple options for storage of the output. There may be a difference in cost between converting and outputting images to microfilm versus simply outputting converted images to an external hard drive or other storage device.
A.9.4	16	Can the BON provide any estimate of the number of files, documents or images that need to be scanned and converted? Information on volumes is particularly important for a fixed price project.
A.9.4	16	Can the BON provide any further detail on the indexing specifications for this project?
A.19	21	Is it acceptable for the Vendor Project Manager to also perform the roles and responsibilities of the Vendor Contract Manager, or must these be different people?

1. Vendor should have the ability to convert all images to Microfilm, and often provide a CD with indexing to be used for importing into the BON's Laserfiche system, usually as multipage TIF documents. Vendor should also be capable of converting TIF and PDF files to create Microfilm.
2. While the number of audio or video files will likely be a very small percentage, and any such files would likely be stored on either a CD or DVD.
3. The majority of scanned images will need to be stored on Microfilm, but the Vendor should also be able to store images on common digital media storage devices. Further, Vendor should also be capable of converting digital files, such as TIF and PDF files from Laserfiche, into Microfilm.
4. Both paper and microfiche/digital source documents, approximately 20,000 to 40,000 documents per month, but the volume will vary month to month based on seasonal needs. Peak seasons are usually around February/March, May, July/August, October, and December. The increased workload correlates with nursing school graduation schedules.
5. Indexing is what the BON uses to locate the documents. The BON typically uses indexing with license#, SSN, last name, first name, etc., depending on the type of document. When documents are scanned by a vendor that are not in Laserfiche, the BON should receive a disk with multipage TIF documents associated with a CSV spreadsheet with the proper indexing fields. This is what allows the BON to import into the Laserfiche system. Those same documents are also converted to Microfilm by the vendor. The BON has documents that may be exported from Laserfiche that will need to be converted to Microfilm. The majority of those documents will be in TIF or PDF forms, and must be converted to Microfilm.
6. The same individual could certainly serve as the Vendor Project Manager and Vendor Contract Manager.

Additional inquiries received by the BON – RFP 507-17-139