REQUEST FOR PROPOSALS

FOR

APPLICANT/LICENSEE DRUG TESTING SERVICES

Texas Board of Nursing

RFP No. 507-23-001

NIGP: 952-07

Posting Date: June 12, 2023

Proposal Due Date: July 12, 2023

Proposal Due Time: 5:00 PM

Table of Contents

1 DEFINITIONS 1
2 GENERAL INFORMATION 2
2.1 Scope of Work 2
2.2 Background 2
2.3 Historically Underutilized Businesses (HUBs) 2
2.4 BON's Right to Reject 2
2.5 Schedule of Events 2
2.6 Term of Contract 2
2.7 Compensation, Fees, and Pricing 3
2.7.1 PRICING STRUCTURE 3
2.7.2 PRICE DECREASES OR DISCOUNT INCREASES 3
2.8 Construction of this RFP and the Contract 3
2.8.1 GLOBAL DRAFTING CONVENTIONS 3
2.8.2 HEADINGS 3
3 PROGRAM REQUIREMENTS AND SPECIFICATIONS 3
3.1 Quantities 3
3.2 Specifications 4
3.3 Timeliness 6
4 PROPOSAL INFORMATION 6
4.1 Responsiveness Screening 6
4.2 Compliance with RFP Requirements. 6
4.3 Binding Effect of Proposal. 6
4.4 Signature and Certification of Respondent. 6
4.5 Subcontracting Plan. 7
4.6 Requirements for Submission. 7
4.7 Use and Disclosure of Information. 7
4.8 Confidentiality, Proprietary Information, and the Texas Public Information Act 8
4.9 Terms and Conditions Attached to Proposal. 8
4.10 Risk of Loss, Damage, and Delay 8
4.11 Ownership of Proposals. 8
4.12 Costs of Participation. 8
4.13 Compliance with Applicable Laws, Regulations, Ordinances, Policies, and BON Policies and Procedures. 9
5 RFP PROCEDURES 9
5.1 Deadline for Proposals. 9
5.2 Right to Modify, Rescind, or Revoke RFP 9

5.3 Reservation of Rights....9
5.4 Changes....9
5.5 Rescission of Proposal....9
5.6 Request for Electronic Copy....9
5.7 Request for Clarification....9
5.8 Questions by Respondents....10
5.9 Addenda to the RFP....10
5.10 Communications with BON Personnel....10
5.11 Media Releases....11
6 PROPOSAL ORGANIZATION....11
6.1 Execution of Proposal – Attachment A....11
6.2 Drug Testing Panels and Pricing – Attachment B....11
6.3 Respondent Information and Best Value Questionnaire – Attachment C....11
6.4 HUB Subcontracting Plan....11
6.5 Assumptions and Exceptions....11
6.6 Conflict of Interest Disclosure....12
6.7 Drug Screening/Testing Locations List – Attachment D....12
6.8 Financial Responsibility/Stability....12
6.9 Signed Addenda to RFP....12
7 EVALUATION, SELECTION, AWARD....13
7.1 Modification of Proposals....13
7.2 Selection of Respondent....13
7.3 Evaluation of Proposals....13
7.4 Evaluation Criteria....13
7.5 Consideration of Additional Information....14
7.6 Best Value....14
7.7 Award Notice....14
8 INSURANCE....15
8.1 Required Coverage....15
8.2 Effect of Indemnification Obligations....15
8.3 Additional Named Insured, Subrogation....15
8.4 Certificates of Coverage....15
8.5 Notification of Cancellation....15
9 CONTRACT TERMS AND CONDITIONS....15
10 CONTRACT MANAGEMENT....24
10.1 Contract Managers....24
10.2 Controlled Correspondence....24

ATTACHMENT A ..... A
ATTACHMENT B ..... B
ATTACHMENT C C
ATTACHMENT D ..... D

1 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 ® Dictionary.

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

Participant – Includes applicants, enrollees, and licensees. Refers to individuals who are subject to testing for alcohol and drugs.

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

Board or BON - Refers to the Texas Board of Nursing.

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, and subsequent submission by Respondent.

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 on the Texas Comptroller of Public Accounts' website.

HSP – HUB Subcontracting Plan.

GC/MS – Gas Chromatography/mass spectrometry.

GC/FID – Gas Chromatography with flame-ionization.

LC/MS/MS – Liquid Chromatography/Tandem Mass Spectrometry.

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.

2 GENERAL INFORMATION

2.1 SCOPE OF WORK

The Texas Board of Nursing (the "Board" or "BON"), through the use of this Request for Proposals (the "RFP"), is soliciting proposals ("Proposals") from qualified individuals or entities ("Respondents") to provide a complete performance of drug testing services for licensees ("Licensees") and individuals wishing to pursue licensure ("Applicants"). A contract resulting from this RFP (the "Contract") will be used by the Texas Board of Nursing to satisfy Board orders requiring Licensees and Applicants ("the Participants") to be tested by the Texas Board of Nursing for alcohol and drugs.

The selected vendor's program must contain a schedule for random testing of urine, blood, hair, fingernail/toenail, and other bodily fluids (e.g., oral, sweat, breath, and other specimen collections). However, the BON is primarily seeking comprehensive expertise in urine drug screening. The ability to conduct laboratory specimen analysis, interpretation, record keeping, and the supervision of record access should be addressed in a Respondent's Proposal. Additionally, reporting of testing results, management of the information, and timely reports are required. The awarded Respondent (the "Contractor" or "Vendor") may be required to testify at Board hearings.

2.2 BACKGROUND

The BON is a State of Texas Agency, whose physical location is 1801 Congress Avenue, Suite #10-200, Austin, Texas. The mission of the BON is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a nurse in the State of Texas is competent to practice safely.

The BON fiscal year is from September 1 through August 31 of each year.

2.3 HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS)

The BON endeavors to promote full and equal opportunity for businesses to supply the BON with goods and/or services that are necessary to support the BON's mission. In this regard, the BON commits to select a Respondent in accordance with (i) BON needs, (ii) BON resources, (iii) HUB goals and guidelines established by the Texas Legislature and the Texas Comptroller of Public Accounts, and (iv) BON policies and procedures for contracting with Historically Underutilized Businesses.

2.4 BON'S RIGHT TO REJECT

This RFP does not commit the BON to select a Respondent or to award a contract to any Respondent. The BON reserves the right to accept or reject, in whole or in part, any Proposal it receives pursuant to this RFP.

2.5 SCHEDULE OF EVENTS

Issue Request for Proposals	June 12, 2023
Questions Due	June 19, 2023
Questions and Answers Posted	June 26, 2023
Closing Date	July 12, 2023
Anticipated Date of Award	August 15, 2023

The Texas Board of Nursing reserves the right to revise this schedule or any portion of this RFP by published Addendum on the Electronic State Business Daily ("ESBD").

2.6 TERM OF CONTRACT

The term of a contract entered into as a result of this RFP will be effective on September 1, 2023, and will terminate on August 31, 2024. The term of a contract entered into as a result of this RFP may be renewed for up to three (3) additional one-year periods following the initial awarded one-year contracting period without the need for an additional rebidding process. Further, the Texas Board of Nursing may extend a contract for six (6) months following the last period of renewal or for such additional time as the Texas Comptroller of Public Accounts deems necessary to secure and transition to a new contract.

2.7 COMPENSATION, FEES, AND PRICING

No payment by the Texas Board of Nursing to Contractor is contemplated by the Contract. Participants will solely be responsible for all fees and/or payments at the time of drug screening, at the collection site. Any and all proposed prices to the Texas Board of Nursing reflect the drug screening costs to be paid by the Participants.

Proposed prices or discounts offered to the State may be considered the Respondent's most favored Customer pricing. However, the Texas Board of Nursing reserves the right to negotiate pricing. In the event that Contractor offers or provides a decrease in price or an increase in discount to its customers for the same commodities or services, under the same terms and conditions, provided for the State of Texas pursuant to its Contract, Contractor must provide the same decrease in price or increase in discount for the State of Texas.

2.7.1 PRICING STRUCTURE

Prices offered, as part of the Respondent's Proposal, to the State must be firm, fixed prices. However, 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's Participants.

2.7.2 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's Legal Department in writing so that the Texas Board of Nursing may update the Contract.

> Notification of price decreases or discount increases should be sent by e-mail to Brian L. Miller Jr.: Brian.Miller@bon.texas.gov

Or mail to:

> Texas Board of Nursing
> ATTN: Legal Department, Brian L. Miller Jr.
> 1801 Congress Avenue, Suite #10-200
> Austin, Texas 78701

2.8 CONSTRUCTION OF THIS RFP AND THE CONTRACT

2.8.1 GLOBAL DRAFTING CONVENTIONS

The terms "include," "includes," and "including" are terms of inclusion and enlargement. When used in the RFP and 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.

2.8.2 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.

3 PROGRAM REQUIREMENTS AND SPECIFICATIONS

3.1 QUANTITIES

The State of Texas does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this RFP and resulting Contract.

3.2 SPECIFICATIONS

1. Program Initiation Requirements:

- Vendor will be required to set up Participant's testing program within a week of receiving a request from Board staff, including setting up chain of custody forms.
- Vendor must notify the Board, via email, when a Participant initiates participation.
- Vendor must allow the Participant to initiate participation via telephone or through Vendor's website.
- Vendor must notify the Board when Participant fails to set up testing program.

2. Scheduling Random Testing Requirements:

- Vendor must communicate daily with Participant as to whether or not Participant is required to test that day.
- Vendor must provide sufficient test sites in Texas and the United States to provide a site within 30 miles of the Participant's location in counties with a population of more than 5,000 people.
- Vendor must schedule frequency, type (urine, blood, hair, nails, oral fluids, and other specimen collection), and drug panel to be used as determined for each Participant by the Board.
- Vendor is responsible for developing and maintaining an appropriate chain of custody for each test.

3. Urine, Blood, Hair, Oral Fluids, Breath, Nails, and Other Specimen Collection Requirements:

- Must be able to test urine, blood, hair, breath, fingernails/toenails and/or oral fluids.
- All urine specimens collected shall be observed from urethra to cup by an observer.
- The collection site shall furnish collection containers and shipping supplies at time of collection.
- The collection site staff shall require and review photo identification or other approved biometric identifier to be produced by Participant before each collection.
- The collection site staff shall document any failure by Participant to cooperate with the testing staff and shall send this information to the Board.
- Temperature of the samples must be tested within four minutes of production of the sample, and samples out of the normal range must be rejected.

4. Laboratory Specimen Analysis and Interpretation Requirements:

- Must be able to test for all listed panels **and** individual drugs (Attachment B).
- Must be able to modify panels upon request.
- Must be able to vary the frequency of multiple panels (Ex. Panel A, 25%; Panel B, 25%; Panel C, 25%; Panel D, 25%; Panel E, 25%).
- Must be able to test for alcohol using EtG, EtS, and PEth methodology.
- Must be able to provide expedited results as needed.
- All laboratories used must be certified by the Substance Abuse and Mental Health Services Administration ("SAMHSA"), unless an express exception is granted by the Board.
- All tests must be split sample tests.
- All initial assay/cut-offs must be conducted by immunoassay, GC/MS (Gas Chromatography/mass spectrometry), or thin layer, as determined by the Board.
- All confirmation/cut-offs must be performed by Gas Chromatography/mass spectrometry (GC/MS), Gas Chromatography with flame-ionization detection (GC/FID) or Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS).
- All tests must meet standards as determined by the Board.
- All confirmed positive tests must be stored for at least one (1) year.

5. Record Keeping and Supervision of Record Access Requirements:

- All records must be stored for at least five (5) years.
- All reports are confidential and cannot be disclosed except as determined by the Board.

6. Timely Reporting of Drug Scheduling and Testing Results Requirements:

- Daily Reports to Board. All daily reports shall be sent to the Board via email or fax within 24 hours. Reports must also be available for download from a third party website and/or uploaded into the Board of Nursing database. Daily reports shall include information on:
  i. Participants who do not access their daily "Test or Don't Test" instructions;
  ii. Participants scheduled to test who do not test;
  iii. Participants who test positive;
  iv. Participants whose test sample is a diluted negative;
  v. Participants who show low creatinine levels;
  vi. Participants whose test sample is rejected or found to be adulterated;
  vii. Participants whose test was waived and the reason why the test was waived; and
  viii. Participants who fail to cooperate with the testing staff.
- Weekly Reports to the Board. All weekly (Sunday to Saturday) reports shall be sent to the Board via email by the following Monday. Weekly reports shall include information on:
  i. Participants who test negative.
- Reports to Participants or their Authorized Representative. Results of tests shall be sent to the Participant or his/her authorized representative if the Participant has submitted a written request with appropriate signed release as determined by the Board.

7. Timely Management Information Reports Requirements:

- All scheduling, collection, analysis and interpretation, and management information shall be stored in a relational database management system.

8. Litigation Requirements:

- Vendor must provide certified copies or self-authenticated copies of all documentation concerning a drug analysis if required by the Board.
- Vendor must provide chain of custody records from specimen collection through final laboratory testing.
- Vendor must provide explanatory documentation of all testing procedures performed and methodology used in analysis of specimen, complete laboratory analysis of drug screening performed, documentation of drug screening results with quantitative results, and medical review analysis and documentation. All records provided must be accompanied with a notarized business record affidavit from the authorized custodian of record.
- Vendor must provide a witness of fact for all informal settlement conferences and hearings, including testimony and depositions, if required by the Board.
- Vendor must provide a toxicologist to serve as an expert witness who has previously been qualified as an expert in federal or state district court. The toxicologist must be available by telephone for informal settlement conferences and in person at all contested cases before the State Office of Administrative Hearings (SOAH), including testimony and depositions, if required by the Board. The expert shall testify at no additional charge, other than for travel expenses, at the rate paid to state employees.

9. Website Requirements:

- Vendor must provide a web-based service that allows Board staff to access, via secure login, the scheduling and testing data related to the Participants. At a minimum, the data should show the testing frequency, billing account information, testing schedule, test results, and testing locations.
- The Participant should be able to access a web-based service, via secure login, that will show the Participant's testing frequency, whether the Participant is required to test that day, the Participant's billing account information, and a searchable listing of all available testing locations and their hours.
- The Texas Board of Nursing must be able to release specific testing results to the Participant via the web-based service.

- The chain of custody form must be accessible and be able to be completed via the web-based service. There must be security protocols in place that ensure that the portion of the form that should be completed by the lab employees may only be accessed by lab employees.

10. Toxicologist & Medical Review Officer (MRO) Support Service:

- Vendor must provide a certified Medical Review Officer ("MRO") and toxicologist who will be available during normal business hours to discuss results testing, and any other questions or issue for which the Board needs assistance.

11. Additional Requirements:

- Vendor must maintain a "Testing Participant's Help Desk" from Monday to Friday, 8 am to 5 pm, with sufficient employees to staff the Help Desk.
- Vendor must provide sufficient access to notification system by Participants.
- Vendor must use the current standards recognized by the industry.
- Vendor must notify the Board of changes and implementation schedules sixty (60) days prior to change.
- Vendor must work with the Board to create new tests and testing methods as the need arises.
- The Board must approve all changes in advance and in writing.

3.3 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.

3.4 TIMELINESS

Failure to timely meet all requirements including, but not limited to, scheduling, collection, analysis and interpretation, and reporting schedules will be cause for cancellation of the Contract.

4 PROPOSAL INFORMATION

4.1 RESPONSIVENESS SCREENING

The Texas Board of Nursing will perform an initial responsiveness screening of the Proposal to verify completion and signature of all required documentation. Proposals determined not to be responsive will be disqualified.

Respondents are to provide their best response to the specifications and terms and conditions contained in the RFP. Based upon the Texas Board of Nursing's evaluation of the Respondents' responses to this RFP, the Texas Board of Nursing shall determine if there is a need to solicit a "Best and Final Offer". A request for a "Best and Final Offer" shall be at the sole discretion of the Texas Board of Nursing and shall be requested in writing from the Texas Board of Nursing's Purchasing Division. Any unsolicited Respondent's request for a "Best and Final" offer shall not be considered.

4.2 COMPLIANCE WITH RFP REQUIREMENTS.

By submission of a Proposal, Respondent agrees to be bound by the requirements set forth in this RFP. The BON, at its sole discretion, may disqualify a Proposal from consideration, if the BON determines a Proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

4.3 BINDING EFFECT OF PROPOSAL.

Unless otherwise agreed in writing signed by the Executive Director or Designee, each Respondent agrees to and shall be bound by the information and documentation provided with the RFP, including prices quoted for services.

4.4 SIGNATURE AND CERTIFICATION OF RESPONDENT.

The Proposal must be signed and dated by the Respondent who is authorized to bind the Respondent to the terms and conditions contained in this RFP, and who can verify compliance with the information submitted in the Proposal. Each Respondent submitting a Proposal certifies to both (a) the completeness, veracity, and accuracy of the

information provided in the Proposal, and (b) the authority of the individual whose signature appears on the Proposal to bind the Respondent to the terms and conditions set forth in this RFP. Proposals submitted without the required signature shall be disqualified.

4.5 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.

For assistance with the HSP, obtaining HUB lists if web access is not possible, or for further explanation of the Texas Board of Nursing HUB program, please contact:

Kizzie Gonzales, HUB Program Coordinator
1801 Congress Avenue, Suite #10-200
Austin, Texas 78701
Email: kizzie.gonzales@bon.texas.gov

4.6 REQUIREMENTS FOR SUBMISSION.

A. Hard Copy Submission Required. Each Respondent shall submit one (1) original -- which must be clearly defined as the ORIGINAL -- and two (2) copies of the Proposal. The original shall be prepared and formatted in at least 10-point-font that is clearly readable. The copies shall be of good, readable quality. The original and each copy shall be submitted in a three-ring binder, on three-hole-punch, letter-size (8.5” x 11”) paper. Both the cover and the spine of each binder shall reflect the name of the Respondent. The binder cover shall also reflect the subject matter of the Proposal as follows: RFP 507-23-001 FOR APPLICANT/LICENSEE DRUG TESTING SERVICES.

B. Electronic Copy Submission Required. Each Respondent shall also submit one (1) electronic copy of the Proposal, in the format described above, in a compact disk (CD) or jump drive. The electronic copy should be submitted in Microsoft Office® Formats (Word® and Excel®) or in a format that may be read by Microsoft Office® Software. Any documents with signatures shall be submitted as an Adobe® Portable Document Format (PDF) file.

The Texas Board of Nursing is not responsible for documents that cannot be read or converted. Unreadable Proposals may be, in the Texas Board of Nursing’s discretion, rejected as nonresponsive.

The hard copies of the Proposal (3) and electronic copy of the Proposal (1) shall be submitted in a sealed box, clearly labeled as follows:

RFP #507-23-001

TEXAS BOARD OF NURSING
ATTN: Kizzie Gonzales
1801 Congress Avenue, #10-200
Austin, TX 78701

4.7 USE AND DISCLOSURE OF INFORMATION.

If a Proposal includes proprietary data, trade secrets, or information the Respondent wishes to except from public disclosure, then the Respondent must specifically label such data, secrets, or information as follows: "**PRIVILEGED AND CONFIDENTIAL -- PROPRIETARY INFORMATION**." To the extent permitted by law, information labeled by the Respondent as proprietary will be used by the BON only for purposes related to or arising out of the (a) evaluation of Proposals, (b) selection of a Respondent pursuant to the RFP process, and (c) negotiation and

execution of a Contract, if any, with the Respondent selected. Additionally, Respondent must include a statement on company letterhead identifying all Proposal section(s) and page(s) that have been marked as confidential.

Without prior written notice to the awarded Respondent, a redacted version of the Proposal submitted under this section may be posted on the Texas Board of Nursing's website as part of the Contract, in accordance with section 2261.253(a) of the Texas Government Code.

4.8 CONFIDENTIALITY, PROPRIETARY INFORMATION, AND THE TEXAS PUBLIC INFORMATION ACT

The Texas Board of Nursing is a governmental body and therefore, is subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552, as interpreted by judicial opinions and the opinions of the Office of the Attorney General; as well as contract reporting requirements. The Proposal and other submitted information is presumed subject to disclosure unless a specific exception to disclosure under the PIA applies.

Responses to requests for Respondents' information shall be handled in accordance with the provisions of the Public Information Act. If a Respondent's confidential or proprietary information is requested pursuant to the Public Information Act, the Board will notify the Respondent not later than the tenth business day after the date the Board receives the request for information. Respondents have the right to object to the release of their records by submitting written arguments to the Office of the Texas Attorney General that one or more exceptions apply to the records. The Attorney General is generally required to issue a decision within 45 business days.

Respondent will be required to make any information created or exchanged with a state governmental entity, 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, and 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).

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, in order to comply with any Legislative Budget Board reporting requirements or other reporting requirements mandated by law.

4.9 TERMS AND CONDITIONS ATTACHED TO PROPOSAL.

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

4.10 RISK OF LOSS, DAMAGE, AND DELAY.

Respondent acknowledges and agrees to release and hold harmless the BON's officers, employees, agents, and personnel, from and against any and all claims, liability, damages, and costs, including court costs and attorneys' fees, arising out of or pursuant to delivery of the Proposal or failure to deliver the Proposal to the BON. The BON will not be liable for late delivery of Proposals by the carrier.

4.11 OWNERSHIP OF PROPOSALS.

All Proposals become the physical property of the BON upon receipt.

4.12 COSTS OF PARTICIPATION.

The BON specifically disclaims responsibility and/or liability for any and all costs, expenses, or claims related to or arising out of the Respondent's participation in this RFP process, including but not limited to, costs incurred as a result of preparing, copying, shipping, presenting, and/or clarifying the Proposal and the information relevant to the Proposal.

4.13 COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, ORDINANCES, POLICIES, AND BON POLICIES AND PROCEDURES.

By submitting a Proposal, the Respondent agrees to and shall comply with all applicable local, state and federal laws and regulations, as well as with all applicable policies and procedures of the BON. BON policies and procedures may be accessed on the BON's website.

5 RFP PROCEDURES

5.1 DEADLINE FOR PROPOSALS.

Proposals must be received in the BON Purchasing Office, in the manner and to the address specified in Section 4.6 of this RFP, no later than 5:00 p.m., Central Standard Time, on July 12, 2023.

ANY PROPOSAL RECEIVED AFTER THE DEADLINE WILL BE IMMEDIATELY DISQUALIFIED FROM CONSIDERATION AND WILL BE RETURNED UNOPENED TO THE RESPONDENT.

5.2 RIGHT TO MODIFY, RESCIND, OR REVOKE RFP

The BON reserves the right to modify, rescind, or revoke this RFP, in whole or in part, at any time prior to the date on which the authorized representative of the BON executes a contract with the selected Respondent.

5.3 RESERVATION OF RIGHTS

The rights of the Texas Board of Nursing include, but are not limited to:

1. Rejection of any and all offers received.
2. Cancellation of the RFP at its sole discretion.
3. Suspension of the procurement process.
4. Request Respondents to clarify their offer and/or submit additional information pertaining to the offer, including issuance of RFP addenda.

This RFP does not commit the Texas Board of Nursing to make an award, nor does it obligate it to pay any costs incurred in preparation and submission of offers or in anticipation of a Contract.

Should an award be made, a Contract will be issued. The resulting Contract is binding and will be inclusive of the RFP (with all supplements, terms and conditions, appendix, or other attachments), any Addenda to the RFP, and the awarded Respondent's Proposal.

5.4 CHANGES

Subsequent to an award, the Texas Board of Nursing, at any time by written Addendum, make changes within the general scope of this procurement, including, but not limited to, changes in the specifications, the manner of performance of the work, or directing acceleration in the performance of the work.

Except as provided in this RFP, no order, statement, or conduct of the Texas Board of Nursing shall be treated as a change under this section or entitle the awarded Contractor to an equitable adjustment.

5.5 RESCISSION OF PROPOSAL.

A Proposal may be withdrawn from consideration at any time prior to expiration of the Deadline for Proposals, pursuant to a written request sent to the BON.

5.6 REQUEST FOR ELECTRONIC COPY.

Requests for electronic copies of the RFP will be referred to the link on the Electronic State Business daily (ESBD).

5.7 REQUEST FOR CLARIFICATION.

The BON reserves the right to request clarification of any information contained in a Respondent's Proposal.

5.8 QUESTIONS BY RESPONDENTS.

The deadline for questions submitted by Respondents is June 19, 2023. The BON will not accept any questions after this date. Questions must be submitted in writing. All questions must include the identity of the sender, the sender's title, company name, mailing address, telephone number, and facsimile number, as applicable.

Respondents must reference the appropriate RFP page and section number in its questions. The question, written BON response(s), and addenda, if any, related to the RFP will be distributed to all Respondents via the link on the Electronic State Business Daily. If the BON determines a question has been sufficiently answered in the RFP, the inquiring Respondent will be referred to the relevant section of the RFP.

Questions may be emailed to: Brian.Miller@bon.texas.gov

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 Respondent fails 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.

5.9 ADDENDA TO THE RFP.

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).

Each Respondent will be provided with the website link for the approved addenda, including amendments to the RFP via the ESBD. If, and as necessary, as determined by the BON, Respondents will, in turn, be allowed time to revise or supply additional information in response to such addenda.

5.10 COMMUNICATIONS WITH BON PERSONNEL.

The Board adopts the Texas Comptroller of Public Accounts' Vendor Communication Policy. Respondents must direct all inquiries and communications concerning this RFP to the Point-of-Contact listed below.

Respondents may communicate solely with the Texas Board of Nursing Point-of-Contact, except as expressly approved in advance by the Texas Board of Nursing's Point-of-Contact.

Failure to comply with these requirements and communications with anyone other than the Point-of-Contact without express prior approval may result in disqualification of a Response.

Respondents may not use the e-mail address listed below for submission of a Response. Follow the instructions outlined in Sections 4.6 for proper submission.

Mailing Address/E-mail Address

Texas Board of Nursing
Attn: Brian L. Miller Jr.
1801 Congress Avenue, #10-200
Austin, Texas 78701
Email: Brian.Miller@bon.texas.gov

Physical Address

Texas Board of Nursing
Attn: Brian L. Miller Jr.
1801 Congress Avenue, #10-200
Austin, Texas 78701

After award of any Contract resulting from this RFP, all requests for Contract changes and all communications relating to the Contract will be processed through the Texas Board of Nursing's Legal Department.

5.11 MEDIA RELEASES.

Respondents shall not use the Board's name, logo, or other likeness in any press release, marketing material, or other announcement without the Board's prior written approval. The Board does not endorse any vendor, commodity, or service. Respondent is not authorized to make or participate in any media releases or public announcements pertaining to this procurement and the respondent or the services to which they relate without the Board's prior written consent, and then only in accordance with explicit written instructions from the Board.

6 PROPOSAL ORGANIZATION

Proposals shall include all information required in this RFP and shall be in the format described in this RFP. 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 Proposals. 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 be as precise, accurate, and succinct in its Proposal as possible. Respondent must provide detailed descriptions of how they will fulfill each requirement. Evaluators may consider the clarity and completeness of a Proposal as part of the selection process.

6.1 EXECUTION OF OFFER – ATTACHMENT A

Respondent is required to complete, sign, and submit the Execution of Offer – Attachment A. Failure to complete, sign, and submit this form with Respondent's Proposal may disqualify the Proposal.

6.2 DRUG TESTING PANELS AND PRICING – ATTACHMENT B

The required drug screening price lists must be included with the Proposal. The price list must include prices for all offered drug screening panels **and** costs for each drug listed in Attachment B.

6.3 RESPONDENT INFORMATION AND BEST VALUE QUESTIONNAIRE – ATTACHMENT C

Respondents must complete this attachment. Failure to complete, sign, and submit this form with Respondent's Proposal may disqualify the Proposal.

6.4 HUB SUBCONTRACTING PLAN

The Respondent must fill out the HUB Subcontracting Plan (HSP) and submit it 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.

6.5 ASSUMPTIONS AND EXCEPTIONS

No assumptions should be included in a Proposal. All issues or questions that might be advanced or addressed by way of assumption should be submitted to the Texas Board of Nursing pursuant to Section 5.8 of this RFP. **The inclusion of assumptions in a Proposal may result in a Respondent not being awarded a contract.**

Respondents are encouraged, in lieu of including exceptions in their Proposals, to address all issues that might be advanced by way of exception by submitting such issues to the Texas Board of Nursing pursuant to Section 5.8 of this RFP. Any exception included in a Proposal may result in a Respondent not being awarded a contract. However, if a Respondent includes exceptions in its Proposal, the Respondent shall clearly identify each exception it takes, noting the specific RFP section number, section title, detailed description of exception taken, and Respondent's proposed language advanced in lieu of the language to which exception is taken. If there are no exceptions, the Respondent shall explicitly state that the Respondent takes no exception to any part of this RFP.

The Texas Board of Nursing is prevented by the Texas Constitution from indemnifying vendors. The Respondent is discouraged from including a term in its Proposal that requires the Texas Board of Nursing to indemnify it. Such a term may result in the Proposal being deemed non-responsive.

Any exception that does not provide all information required (e.g., the specific RFP section number, section title, detailed description of exception taken, and Respondent's proposed language advanced in lieu of the language to which exception is taken) in the format set forth above will be rejected without consideration.

6.6 CONFLICT OF INTEREST DISCLOSURE

By signing the Execution of Offer, Attachment A, Respondent affirms that the execution of a Contract 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.

If the circumstances certified by Respondent change or additional information is obtained subsequent to submission of Proposals, by submitting a response, Respondent agrees that 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.

6.7 DRUG SCREENING/TESTING LOCATIONS LIST – ATTACHMENT D

The Respondent must complete this attachment **and** provide a list of all current testing sites it currently has available in the State of Texas.

6.8 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 provide an explanation.

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.

6.9 SIGNED ADDENDA TO RFP

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

7 EVALUATION, SELECTION, AWARD

The Texas Board of Nursing reserves the right to award a contract(s) without any negotiations and reserves the right to not make awards.

7.1 MODIFICATION OF PROPOSALS.

All Eligible Respondents will be afforded the opportunity to submit Best and Final Offers if (a) negotiations with any other Respondent result in a material alteration to the RFP and (b) such material alteration has a cost consequence that could alter the Respondent's quotations regarding rates for services.

7.2 SELECTION OF RESPONDENT.

The Respondent selected for the Contract will be the Respondent whose Proposal, as presented in response to this RFP, and as determined by the BON, in accordance with the evaluation criteria set forth in Section 7.4, to be the most advantageous to the BON. Respondents acknowledge that the BON is not bound to accept the lowest-priced Proposal.

7.3 EVALUATION OF PROPOSALS.

BON personnel, including personnel who serve on the Evaluation Committee, will evaluate Proposals. Proposals that are (i) incomplete; (ii) not properly certified and signed; (iii) not in the required format; or (iv) otherwise non-compliant, in whole or in part, with any of the requirements set forth in this RFP, may be disqualified by the BON. Submission of a Proposal indicates the Respondent's acceptance of the evaluation process set forth in this RFP and the Respondent's acknowledgement that subjective judgments must be made by the BON in regard to the evaluation process.

7.4 EVALUATION CRITERIA.

The award will be made to the Respondent whose Proposal provides the best value for the state and is in the state's best interest. The Texas Board of Nursing will do an initial responsiveness screening of the Proposals to verify compliance with the requirements of this RFP, which includes signature on all required documentation. The remaining responsive Proposals will be evaluated to determine which one offers the best value and is in the state's best interest. In determining which Proposal provides the best value and is in the state's best interest, the Texas Board of Nursing will consider the criteria listed below. The relative weights of each criterion will be as listed.

Criteria	Weight (%)
Respondent's Past Performance	10%
Ability to Satisfy Regulatory Needs	50%
Screening Fees	30%
References	10%

A. **Respondent's Past Performance (10%)** – Respondent must demonstrate experience in managing and administering drug and alcohol screening programs on an on-going basis for health care professionals. It is preferred that the Respondent have a minimum of five (5) years of experience in managing and administering drug and alcohol screening programs on an on-going basis for health care professionals. Respondent shall provide documentation of experience, including a representative client list. Respondent shall also provide proof of current state, federal, and industry certifications.

A Respondent's past performance will be measured based upon pass/fail criteria. 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 be accessed on the Texas Comptroller of Public Account's website.

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, 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.

B. **Ability to Satisfy Regulatory Needs (50%)** – Based upon the ability of Respondent to meet the regulatory needs of the Texas Board of Nursing. The Respondent's ability to communicate effectively through the use of technology is relevant to this factor. Respondent shall employ staff with sufficient knowledge about required protocols and procedures established by applicable federal and state agencies, including confidentiality requirements. Respondent shall employ a sufficient number of staff to handle caseload with prompt, professional, and accurate services.

C. **Screening Fees (30%) -** Total average cost to the Participant for a single test using testing panel, plus all other charges incurred by the Participant related to a test, including but not limited to, collection fees and any other related expenses. It is preferred that a supply of Chain-of-Custody Forms be provided to each Participant at no charge and then charge the Participant for the Chain-of-Custody form only upon use. Any fee that Respondent charges Participants for extra services should be reasonable.

D. **References (10%) –** Relevance and quality of references is relevant to this factor.

The Texas Board of Nursing reserves the right to conduct studies and other investigations as necessary to evaluate any Proposal. The Texas Board of Nursing reserves the right to waive any minor or immaterial response requirements noted in the submission process. Submission of Proposals confers no legal rights upon any Respondent. The Texas Board of Nursing will determine whether negotiations or Best and Final Offers are necessary and may invite selected Respondents to provide oral presentations of their Proposals.

Respondent(s) should be aware that sealed Proposals and information regarding sealed Proposals cannot and will not be disclosed to the public prior to award of Contract(s).

7.5 CONSIDERATION OF ADDITIONAL INFORMATION.

The BON reserves the right to ask for and consider any additional information deemed beneficial to the BON in evaluation of the Proposals.

7.6 BEST VALUE

The Texas Board of Nursing will consider best value for the state as directed by Texas Gov't Code § 2155.074 when awarding a Contract to a Respondent.

7.7 AWARD NOTICE

If the RFP is awarded, the Texas Board of Nursing will issue a notice of award to the successful Respondent in response to this RFP. However, there is no guarantee that an award or any Contract will result from this solicitation.

8 INSURANCE

8.1 REQUIRED COVERAGE.

For the duration of any contract entered into as a result of this RFP, for all renewal terms, and for purposes of indemnification obligations that are specified to survive termination or expiration of the contract, Respondent shall obtain, at its sole expense and at no cost to the BON, the following coverage and shall maintain such coverage in full force and effect:

A. **Worker's Compensation.** Workers' Compensation covering all individuals who provide services pursuant to the RFP or Contract awarded as a result of this RFP, at the statutory limits in effect as of the Effective Date of the Contract and as modified from time to time by the regulatory body or insurance carrier charged with administering Workers' Compensation for the State of Texas, if applicable;

B. **Commercial General Liability.** Commercial General Liability, including operations, Contractual liability, and products liability in a combined single limit if applicable; and

D. **Employer's Legal Liability.** Employer's Legal Liability must be maintained while performing the duties prescribed per this RFP if applicable.

8.2 EFFECT OF INDEMNIFICATION OBLIGATIONS.

No provision, term, or condition in this RFP or in a Contract issued as a result of this RFP regarding indemnification obligations shall be construed to limit the application of insurance procured by the Respondent in accordance with requirements set forth in the RFP or resulting Contract.

8.3 ADDITIONAL NAMED INSURED, SUBROGATION.

With the exception of the Workers' Compensation policy, the BON shall be an additional-named insured on all policies, and subrogation against the BON must be waived.

8.4 CERTIFICATES OF COVERAGE.

At least thirty (30) days prior to the Effective Date of the Contract awarded as a result of this RFP, and at least thirty (30) days prior to the commencement of any renewal term of the awarded Contract, the Respondent shall furnish the BON with certificates of insurance in a form acceptable to the BON certifying that the Respondent carries the required insurance policies and coverage. The certificates shall be sent to the BON, at the address listed in this RFP.

8.5 NOTIFICATION OF CANCELLATION.

Each insurance policy shall contain a covenant by the insurance company issuing the policy that the policy will not be modified or canceled unless thirty (30)-days' prior written notice of modification or cancellation is given to the BON. In the event the Respondent receives notice of modification or cancellation of any of the policies required under this RFP or a Contract awarded as a result of this RFP, then, prior to the effective date of modification or cancellation of the policy, the Respondent shall obtain a policy of insurance affording the required coverage from an insurance carrier acceptable to the BON. If the Respondent fails to obtain such an insurance policy, the BON may immediately terminate the Contract without further notice to the Respondent.

9 CONTRACT TERMS AND CONDITIONS

By submitting a Proposal in response to this RFP, Respondent acknowledges and agrees that the following contract terms and conditions will be incorporated into a Contract with the BON:

A. Disaster Recovery Plan. In accordance with 13 Texas Administrative Code § 6.94(a)(9), relating to third-party custodians of records, the Contractor shall provide to the Board the descriptions of its business continuity and disaster recovery plans in regards to the Board's vital state records.

B. Dispute Resolution. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under this Contract. If the Contractor's claim for breach of

contract cannot be resolved informally with the Board, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice to the Board, as required by Chapter 2260. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under Section 2260.051 of the Texas Government Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by the OAG if the parties are unable to resolve their disputes as described above.

Notwithstanding any other provision of this Contract to the contrary, unless otherwise requested or approved in writing by the Board, the Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or while the dispute is pending. However, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051 of the Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

C. Excess Obligations Prohibited; Non-Appropriation of Funds; Legislative Action. The Contractor acknowledges that the ability of the Board to make payments under the Contract is contingent upon the continued availability of funds. The Contractor further acknowledges that funds may not be specifically appropriated for the Contract and the Board's continual ability to make payments under the Contract is contingent upon the funding levels appropriated to the Board. The Board will use all reasonable efforts to ensure that such funds are available. The Contractor agrees that if future levels of funding for the Board are not sufficient to continue operations without any operational reductions, the Board, in its discretion, may terminate the Contract or a pending order under the Contract, either in whole or in part. In the event of such termination, the Board will not be considered to be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. The Board shall make best efforts to provide reasonable written advance notice to the Contractor of any such Contract or order termination. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on the particular order if an order is being terminated, or the Contract, if the Contract is being terminated. The Board shall be liable for payments limited only to the portion of work the Board authorized in writing and which the Contractor has completed, delivered to the Board, and which has been accepted by the Board. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

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

E. Indemnification. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND THE BOARD, 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 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 TEXAS 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 TEXAS ATTORNEY GENERAL. CONTRACTOR AND THE BOARD AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

F. Confidentiality; Property Rights; and the Texas Public Information Act.

1. For purposes of the Contract, the term "Work" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the Contract. The Contractor agrees to keep all information to which it is privy under the Contract confidential, privileged and protected from disclosure, unless the Contractor obtains the prior written consent of the Board. Further, any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under the Contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the State by the Contractor upon completion, termination, or cancellation of the Contract.
2. Contractor agrees to keep all information to which it is privy under the Contract confidential, privileged, and protected from disclosure, unless the Contractor obtains the prior written consent of the Board. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and the Board, its officers and employees for any claims or damages that arise from the disclosure by Contractor or its subcontractors of information held by the Board. Further, any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligations under the Contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the State by the Contractor upon completion, termination, or cancellation of the Contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of Contractor's obligations under the Contract without the prior written consent of the Board.
3. Contractor understands that the Board will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with the Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

G. State Auditor's Right to Audit. Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds directly under this Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. The Contractor will ensure that this Section concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards, should subcontracting be authorized. The Contractor further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of the Contractor relating to this Contract.

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

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

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

In accordance with Section 2157.005 of the Texas Government Code (repealed by Acts 2005, 79th Legislature, ch. 750, § 2(a), eff. September 1, 2006), the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

I. Terms and Conditions Attached to Response. Any terms and conditions attached to Contractor's Response will not be considered unless specifically referred to in the Response.

J. Agency's Right to Audit. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by the Board and the State of Texas.

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

L. Binding Effect. This Contract shall be binding upon and shall inure to the benefit of the Board and Contractor and to their representatives, successors, and assigns.

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

N. Damage to Government Property. In the event of loss, destruction, or damage to any Board or State of Texas property by Contractor or Contractor's employees, agents, subcontractors, and suppliers, Contractor shall be liable to the Board and the State of Texas the full cost of repair, reconstruction, or replacement of the lost,

destroyed, or damaged property. Contractor will reimburse the Board and the State of Texas for such property damage within ten (10) calendar days after Contractor's receipt of the Board's notice of amount due.

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

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

Q. Force Majeure. Neither Contractor nor the Board shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

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

S. License Grant. Contractor hereby grants to the Board a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to Contractor; and (b) to sublicense any or all such rights to third parties.

T. Limitation on Authority. Contractor shall have no authority to act for or on behalf of the Board or the State of Texas except as expressly provided for in this Contract. No other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expenses, or liability of any kind on behalf of the Board or the State of Texas.

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

V. 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.

W. No Third-Party Beneficiaries. The Contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

X. Property Rights. For purposes of the Contract, the term "Work" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the Contract. The Board and the Contractor intend this agreement to be a Contract for services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Contractor to be a work made for hire. Contractor and Contractor's employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of the Board.

Contractor acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of the Board. If for any reason the Work would not be considered a work-for-hire under applicable law, Contractor does hereby sell, assign, and transfer to the Board, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other property rights, as the Board may deem necessary to secure for the Board or its designee the rights herein assigned.

In the event that Contractor has any rights in and to the Work that cannot be assigned to the Board, Contractor hereby grants to the Board an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the Contract or upon the Board's request, Contractor shall deliver to the Board all completed, or partially completed, Work and any and all documentation or other products and results of the services. Failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of the Contract. Contractor will not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of the Board.

Y. Records Retention. Contractor shall maintain and retain all records relating to the performance of this Contract, including supporting fiscal documents adequate to ensure that claims for Contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Contractor for a period of seven (7) years after the Contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

Z. Secure Erasure of Hard Disk Capability. All equipment provided to the Board by Contractor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.)

shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC Chapter 202.

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

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

CC. Subcontractors. Contractor must perform the Contract with its own resources and those subcontractors identified in the Contractor's HUB Subcontracting Plan. Contractor may not subcontract any or all of the work and/or obligations due under the Contract without prior written approval of the Board. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the Contract. Should Contractor subcontract any of the services required in the Contract, Contactor expressly understands and acknowledges that in entering into such subcontract(s), the Board is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.

DD. Survival. Expiration or 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 expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

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

FF. Termination for Cause. If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract, the Board may, upon written notice of default to the 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 as provided in equity, by law or under the Contract. The Board 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. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless the Board notifies the Contractor in writing prior to the exercise of such remedy. The Contractor shall be liable for all costs and expenses, including court costs, incurred by the Board with respect to the enforcement of any of the remedies listed herein.

GG. Termination for Convenience. The Board reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if the Board determines that such termination is in the best interest of the State. In the event of such a termination, the Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Board shall be liable only to the portion of work the Board authorized in writing and which Contractor has completed, delivered to the Board, and which has been accepted by the Board. All such

work shall have been completed, in accordance with Contract requirements, prior to the effective date of termination. The Board shall have no other liability, including no liability for any costs associated with the termination.

HH. Use of State Property. Contractor is prohibited from using State Property for any purpose other than performing the services authorized under the Contract. State Property includes, but is not limited to, the Board's office space, identification badges, Board information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Board-issued software, and the Board's Virtual Private Network (VPN client)), and any other resources of the Board. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access the Board's network or e-mail while outside of the continental United States. Contractor shall not perform any maintenance services on State Property unless the Contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for (i) all repair and replacement charges incurred by the Board that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Contractor's use of State Property that exceeds the Contract scope. Contractor shall fully reimburse such charges to the Board within ten (10) calendar days of Contractor's receipt of the Board's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to the Board under the Contract, at law, or in equity.

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

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

KK. Contractor's Continued Performance. Notwithstanding any other provision of the 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 Section 2251.051 of the Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

LL. 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 Contractor and amend the Contract to reflect a new, lower price, if agreed to by the Parties.

MM. No Debt Against the State. The Contract does not create any debt by or on behalf of the State of Texas.

NN. Travel. Contractor 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 Contractor to provide at the Contractor's expense will be paid in accordance with Texas Government Code, Chapter 660.

OO. Key Personnel Change Management. Contractor agrees that the key personnel assigned to the Contract will remain available throughout the Contract as long as that individual is employed by Contractor or unless the Board agrees to a change in the key personnel.

PP. Name Changes and Organizational Changes. Contractor must provide the Board with written notice of all name changes and organizational changes relating to the Contractor, including any merger, acquisition, or sale, no later than ten (10) business days of such change. In its notice, Contractor 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 Contractor, Contractor must identify the new personnel and provide resumes to the Board, if resumes 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 Contractor must supply the requested information within five (5) 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 the continued right of Contractor or successor entity, as applicable, to maintain its status as a party to this Contract.

The Board may terminate the Contract due to any change that materially alters the Contractor's ability to perform the Contract. The Board has the sole discretion to determine if termination is appropriate.

QQ. Vendor Performance Tracking System. Contractor understands that the Board is required to report vendor performance through the Vendor Performance Tracking System ("VPTS") on every purchase over $25,000 in the manner prescribed by the Comptroller. The Board, at its discretion, may also report vendor performance on purchases under $25,000.

RR. 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. Contractor will not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

SS. Order of Precedence. In the event of any conflict or contradiction between or among these documents, the Contract, as modified by any Contract Amendments, controls over the RFP and the Proposal. The RFP, as modified by any Addenda, controls over the Proposal.

TT. Headings. The headings contained in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of the Contract.

UU. Antitrust Affirmation. Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Respondent.

10 CONTRACT MANAGEMENT

10.1 CONTRACT MANAGERS

The Texas Board of Nursing Contract Manager

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

1. sign Controlled Correspondence;
2. serve as the day-to-day point-of-contact;
3. coordinate quality control reviews;
4. approve invoices;
5. coordinate meetings with Contractor;
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.

The Contractor's Contract Manager

The Contractor must identify its Contract Manager to the Texas Board of Nursing in writing within ten (10) days of the issuance of the Contract. Contractor should document all subsequent changes of Contractor's Contract Manager through Controlled Correspondence. Contractor's Contract Manager must be someone with the authority to:

1. make decisions regarding the deliverables required by the Contract;
2. sign Controlled 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.

10.2 CONTROLLED 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 Controlled Correspondence as discussed throughout the Contract. The Texas Board of Nursing will manage the Controlled Correspondence for the Contract. For each Controlled Correspondence document, the Texas Board of Nursing will assign a tracking number and the appropriate Party's Contract Manager will sign the document.

Controlled Correspondence cannot be used to change pricing or alter the terms of the Contract. Controlled Correspondence cannot be the basis of a claim for equitable adjustment of pricing. Any changes that involve the pricing or the terms of the Contract must be by a properly executed Contract amendment. However, the Controlled Correspondence process may be used to document refinements and interpretations of the provisions of the Contract, to document the cost impacts of proposed changes, and to document the Texas Board of Nursing-approved changes to Respondent's HUB subcontracting plan.

Both Parties will maintain Controlled Correspondence documents in ongoing logs as part of the normal status reporting process. Any communication not generated in accordance with this process is not binding upon the Parties and is of no effect.

10.3 NOTICES AND LIAISONS

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.

Notice to Contractor

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

Notice to the Texas Board of Nursing

Texas Board of Nursing's address for all purposes under the Contract other than Controlled Correspondence is as follows:

Mailing Address/E-mail Address

Texas Board of Nursing
ATTN: Legal Department, Brian L. Miller Jr.
1801 Congress Avenue, #10-200
Austin, Texas 78701
Brian.Miller@bon.texas.gov

Physical Address

Texas Board of Nursing
ATTN: Legal Department, Brian L. Miller Jr.
1801 Congress Avenue, #10-200
Austin, Texas 78701

ATTACHMENT A

ATTACHMENT A

EXECUTION OF OFFER

RFP NO. 507-23-001

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

By signature hereon, Respondent certifies to the following:

A. Antitrust Affirmation. Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of its Response to any competitor or any other person engaged in the same line of business as Respondent.

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

C. Child Support Obligation Affirmation. Under Section 231.006 of the Family Code, the Respondent certifies that the individual or business entity named in this Contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

D. Computer Equipment Recycling Program. Respondent certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 Texas Administrative Code Chapter 328.

E. COVID-19 Vaccine Passport Prohibition.
Under Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract.

F. Critical Infrastructure Affirmation.
Pursuant to Government Code Section 2274.0102, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority

owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

G. Data Management and Security Controls.
In accordance with Section 2054.138 of the Texas Government Code, Respondent certifies that it will comply with the security controls required under this Contract and will maintain records and make them available to the Board as evidence of Respondent's compliance with the required controls.

H. Dealings with Public Servants Affirmation. Pursuant to Section 2155.003 of the Texas Government Code, Respondent represents and warrants that it 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 Contract.

I. Debts and Delinquencies Affirmation. Respondent agrees that any payments due under the Contract shall be applied towards any debt or delinquency that is owed to the State of Texas. In accordance with Section 403.0551 Texas Government Code, the Respondent acknowledges that any payments due to the Respondent under this Contract will be first applied toward any debt and/or back taxes the Respondent owes the State of Texas. Payments will be so applied until such debts and taxes are paid in full. This Section does not apply if federal law requires payment to be made to the Respondent for the services and may not apply if federal law conditions the receipt of the money for this service to the State or the basis of payment being made to the Respondent.

J. Disclosure of Prior State Employment. In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by the Board or another agency at any time during the two years preceding this Contract or, in the alternative, Respondent has disclosed to the Board the following: (i) the nature of the previous employment with the Board or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

K. Entities that Boycott Israel. Respondent represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Respondent shall promptly notify the Board.

L. E-Verify Program. Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:
    a. All persons employed by Respondent to perform duties within Texas; and

b. All persons, including subcontractors, assigned by Respondent to perform work pursuant to the Contract within the United States of America.

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

N. Executive Head of a State Agency Affirmation. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it does not employ, or has disclosed its employment of, any former executive head of the Board.

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State agency: _____

Position with Respondent: _____

Date of Employment with Respondent: _____

O. False Statements. Respondent represents and warrants that all statements and information prepared and submitted in connection with this Contract are current, complete, true, and accurate. Submitting a false statement or making material misrepresentations to the Board during the performance of this Contract constitute a material breach of the Contract and may void the Contract.

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

Q. Foreign Terrorist Organizations. Section 2252.152 of the Texas Government Code prohibits the Board from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Respondent certifies that it not ineligible to receive the Contract.

R. Former Agency Employees. Respondent represents and warrants that none of its employees including, but not limited to, those authorized to provide services under this Contract, were former employees of the Board during the twelve (12) month period immediately prior to the date of execution of the Contract.

S. No Conflicts of Interest. Respondent represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

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

U. Signature Authority. The undersigned certifies that he or she is authorized to execute a contract as an authorized representative of the Respondent.

V. Suspension and Debarment. Respondent certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.

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

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

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

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

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

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

CC. Federal Occupational Safety and Health Law. Respondent represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

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

EE. Legal and Regulatory Actions. Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Respondent's Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to the Board's consideration of the Response.

If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to the Board's consideration of the Response. In addition, Respondent represents and warrants that it shall notify the Board in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update the Board shall constitute breach of contract and may result in immediate termination of the contract.

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

GG. No Felony Criminal Convictions. Respondent represents that neither Respondent nor any of its employees, agents, or representatives, including any sub Respondent s and employees, agents, or representative of such subcontractors, has been convicted of a felony criminal offense or that if such a conviction has occurred Respondent has fully advised the Board of the facts and circumstances surrounding the convictions.

HH. Permits, Certifications, and Licenses. Respondent represents and warrants that it has determined what licenses, certifications and permits are required under the Contract and has acquired all applicable licenses, certifications, and permits.

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

JJ. Unfair Business Practices. Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any

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

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

RESPONDENT (COMPANY): _____

SIGNATURE (BLUE INK): _____

NAME (TYPED/PRINTED) _____

TITLE: _____DATE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE AND FACSIMILE NUMBERS: _____

TEXAS IDENTIFICATION NUMBER (TIN): _____

ATTACHMENT B

ATTACHMENT B

DRUG TESTING PANELS AND PRICING

RFP NO. 507-23-001

In presenting the pricing for the below panels and individual drugs, the submission of Responses in Microsoft Word or Excel formats is encouraged, but not required.

Panel A	**Panel B**
Amphetamines:	**Amphetamines:**
Amphetamine	Amphetamine
Methamphetamine	Methamphetamine
MDMA (Ecstasy)	MDMA (Ecstasy)
MDA (Adam)	MDA (Adam)
Benzodiazepines:	**Benzodiazepines:**
Alprazolam (Xanax)	Alprazolam (Xanax)
Alpha-Oh-Alprazolam	Alpha-Oh-Alprazolam
Alpha-Hydroxytriazolam	Alpha-Hydroxytriazolam
Clonazepam (Klonopin)	Clonazepam (Klonopin)
Diazepam (Valium)	Diazepam (Valium)
Desmethyldiazepam	Desmethyldiazepam
Desalkyflurazepam	Desalkyflurazepam
Lorazepam (Ativan)	Lorazepam (Ativan)
Midazolam (Versed)	Midazolam (Versed)
Oxazepam (Serax)	Oxazepam (Serax)
Prazepam (Centrax)	Prazepam (Centrax)
Temazepam (restoril)	Temazepam (restoril)
Barbiturates:	**Barbiturates:**
Amobarbital (Amytal)	Amobarbital (Amytal)
Butabarbital (Butisol)	Butabarbital (Butisol)
Butalbital (Fiorinal)	Butalbital (Fiorinal)
Pentobarbital (Nembutal)	Pentobarbital (Nembutal)
Phenobarbital (Luminal)	Phenobarbital (Luminal)
Secobarbital (Seconal)	Secobarbital (Seconal)
Opioids/Narcotic Analgesics:	**Opioids/Narcotic Analgesics:**
Codeine	Codeine

Hydrocodone (Lortab) Hydromorphone (Dilaudid) Methadone (Dolophine) Morphine Opiates Oxycodone (Percodan) Oxymorphone (Numorphan) Propoxyphene (Darvon) **<u>Drugs of Abuse (Schedule I)</u>:** Cannabinoids (Marijuana) Cocaine (metabolites) Phencyclidine (PCP) **<u>Alcohol</u>:** Ethanol (Ethyl Alcohol) Ethly Glucuronide (ETG)(metabolite) Ethly Sulfate (ETS)(metabolite)	Hydrocodone (Lortab) Hydromorphone (Dilaudid) Methadone (Dolophine) Morphine Opiates Oxycodone (Percodan) Oxymorphone (Numorphan) Propoxyphene (Darvon) Heroin (6-MAM) Fentynal (Sublimaze) Tramadol Hydrochloride (Ultram) Meperidine (Demerol) **<u>Drugs of Abuse (Schedule I)</u>:** Cannabinoids (Marijuana) Cocaine (metabolites) Phencyclidine (PCP) **<u>Alcohol</u>:** Ethanol (Ethyl Alcohol) Ethyl Glucuronide (ETG)(metabolite) Ethyl Sulfate (ETS)(metabolite) **<u>Muscle Relaxants</u>:** Meprobamate/Carisoprodol (Soma)

Panel C	**Panel D**
<u>Amphetamines</u>: Amphetamine Methamphetamine MDMA (Ecstasy) MDA (Adam) **<u>Benzodiazepines</u>:** Alprazolam (Xanax) Alpha-Oh-Alprazolam Alpha-Hydroxytriazolam Clonazepam (Klonopin) Diazepam (Valium) Desmethyldiazepam	**<u>Amphetamines</u>:** Amphetamine Methamphetamine MDMA (Ecstasy) MDA (Adam) **<u>Benzodiazepines</u>:** Alprazolam (Xanax) Alpha-Oh-Alprazolam Desmethyldiazepam Lorazepam (Ativan) Oxazepam (Serax) Temazepam (restoril)

Desalkyflurazepam Lorazepam (Ativan) Midazolam (Versed) Oxazepam (Serax) Prazepam (Centrax) Temazepam (restoril)	**Barbiturates:** Amobarbital (Amytal) Butabarbital (Butisol) Butalbital (Fiorinal) Pentobarbital (Nembutal) Phenobarbital (Luminal) Secobarbital (Seconal)
Barbiturates: Amobarbital (Amytal) Butabarbital (Butisol) Butalbital (Fiorinal) Pentobarbital (Nembutal) Phenobarbital (Luminal) Secobarbital (Seconal)	**Opioids/Narcotic Analgesics:** Codeine Hydrocodone (Lortab) Hydromorphone (Dilaudid) Methadone (Dolophine) Morphine Opiates Propoxyphene (Darvon) Heroin (6-MAM)
Opioids/Narcotic Analgesics: Codeine Hydrocodone (Lortab) Hydromorphone (Dilaudid) Methadone (Dolophine) Morphine Opiates Oxycodone (Percodan) Oxymorphone (Numorphan) Propoxyphene (Darvon) Butorphanol (Stadol) Nalbuphine (Nubain)	**Drugs of Abuse (Schedule I):** Cannabinoids (Marijuana) Cocaine (metabolites) Phencyclidine (PCP)
Drugs of Abuse (Schedule I): Cannabinoids (Marijuana) Cocaine (metabolites) Phencyclidine (PCP)	**Alcohol:** Ethanol (Ethyl Alcohol) Ethyl Glucuronide (ETG)(metabolite) Ethyl Sulfate (ETS)(metabolite)
Alcohol: Ethanol (Ethyl Alcohol) Ethly Glucuronide (ETG)(metabolite) Ethly Sulfate (ETS)(metabolite)	
Sedatives/Hypnotics: Ambien (Zolpidem) Ketamine (Ketalar) Propofol	

Panel E

<u>Alcohol</u>:
Ethanol (Ethyl Alcohol)
Ethyl Glucuronide (ETG)(metabolite)
Ethyl Sulfate (ETS)(metabolite)

NOTE: If all drugs in each panel cannot be tested by a method, please explain what drugs can be tested and the cost of the test. <u>Please indicate whether cost listed includes the collection cost</u>. If unable to provide such information, please attach an explanation.

Panel A Urine Screen $_____

Panel B Urine Screen $_____

Panel C Urine Screen $_____

Panel D Urine Screen $_____

Panel E Urine Screen $_____

Panel A Blood Screen $_____

Panel B Blood Screen $_____

Panel C Blood Screen $_____

Panel D Blood Screen $_____

Panel E Blood Screen $_____

Panel A Hair Screen $_____

Panel B Hair Screen $_____

Panel C Hair Screen $_____

Panel D Hair Screen $_____

Panel E Hair Screen $_____

Panel A Oral Fluids Screen $_____

Panel B Oral Fluids Screen $_____

Panel C Oral Fluids Screen $_____

Panel D Oral Fluids Screen $_____

Panel E Oral Fluids Screen $_____

Panel A Nail Screen $_____

Panel B Nail Screen $_____

Panel C Nail Screen $_____

Panel D Nail Screen $_____

Panel E Nail Screen $_____

Costs of adding the following individual drugs to Panels A and D:

	Panel A:	Panel D:
1. Ambien (Zolpidem)	$_____	$_____
2. Ketamine (Ketalar)	$_____	$_____
3. Propofol	$_____	$_____
4. Heroin (6-MAM)	$_____	$_____
5. Oxycodone (Percodan)	$__N/A_____	$_____
6. Oxymorphone (Numorphan)	$__N/A_____	$_____
7. Butorphanol (Stadol)	$_____	$_____
8. Nalbuphine (Nubain)	$_____	$_____
9. Clonazepam (Klonopin)	$__N/A_____	$_____
10. Diazepam (Valium)	$__N/A_____	$_____
11. Meprobamate/Carisoprodol (Soma)	$_____	$_____

12. Fentynal (Sublimaze) $_____ $_____

13. Tramadol Hydrochloride (Ultram) $_____ $_____

Additional Costs (include any available expediting methods of testing):

(Please Itemize)

1. _____ $_____

2. _____ $_____

3. _____ $_____

4. _____ $_____

5. _____ $_____

_____ _____

Signature of Authorized Representative Title

_____

Date

ATTACHMENT C

ATTACHMENT C

RESPONDENT INFORMATION AND BEST VALUE QUESTIONNAIRE

RFP NO. 507-23-001

A. Respondent's Contact Information. Please list the name, title, business e-mail address, business phone number, fax number, and e-mail address of the individual who will be the contact person for the term of any Contract resulting from this RFP.

Name: _____

Title: _____

Business E-mail Address: _____

Telephone: _____

Fax: _____

Contact Person's E-mail Address: _____

B. References. Respondent must provide a list of four (4) state agencies, corporations, or other entities, other than the Texas Board of Nursing, for which Respondent has provided the requested services in the RFP during the past five (5) years. Respondent must include dates of service, names, telephone numbers, and e-mail addresses of the 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 Contract resulting from this RFP.

(1) State Agency or Other Entity: _____

Date Services Provided: _____

Name of Contact Person:_____

Telephone Number of Contact: _____

Email Address of Contact: _____

(2) State Agency or Other Entity: _____

Date Services Provided: _____

Name of Contact: _____

Telephone Number of Contact:_____

Email Address of Contact:_____

(3) State Agency or Other Entity:_____

Date Services Provided:_____

Name of Contact: _____

Telephone Number of Contact:_____

Email Address of Contact:_____

(4) State Agency or Other Entity:_____

Date Services 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. Entity Information. Respondent must provide the following information:

(a) Describe the general nature of previous similar work your entity has performed, particularly work in the last three (3) years.

_____

_____

_____

(b) Describe the size and scope of all operations, including the number of employees and years in business.

_____

_____

_____

(c) Describe your entity's prior contracting experience with state agencies and similar entities; and

_____

_____

_____

(d) Provide any other information you believe is pertinent to the RFP.

_____

_____

_____

E. Personnel. Provide the qualifications, education, training, experience and certifications of all Respondent's employees who will or may provide the items under the Contract. Respondent must provide this information for each 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. Submit a detailed narrative explanation of how the offered services will meet the requirements of Section 3 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

ATTACHMENT D

ATTACHMENT D

RFP NO. 507-23-001

DRUG TESTING LOCATIONS

In addition to the below requested information, **you must also attach a list of all current testing sites you have currently available in Texas.**

Total available testing sites in the United States: _____

Is testing available in all states? If not, please list which states **do not** have available testing:

_____

_____

_____

_____

_____

_____

_____

_____

Do you maintain any international testing sites? If so, where are they located?

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____

Signature of Authorized Representative Title

_____

Date

Addendum A – Texas Board of Nursing Terms and Conditions

Fiscal Year 2023

1 General

1.1 Contracting Information Responsibilities.

In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the Board for the duration of the Contract, (2) promptly provide to the Board any contracting information related to the Contract that is in the custody or possession of the Contractor on request of the Board, and (3) on termination or expiration of the Contract, either provide at no cost to the Board all contracting information related to the Contract that is in the custody or possession of the Contractor or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the Board. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

1.2 Cybersecurity Training.

If Contractor has access to any state computer system or database, Contractor shall complete cybersecurity training and verify completion of the training program to the Board pursuant to and in accordance with Section 2054.5192 of the Government Code.

1.3 Disaster Recovery Plan.

In accordance with 13 Texas Administrative Code § 6.94(a)(9), relating to third-party custodians of records, the Contractor shall provide to the Board the descriptions of its business continuity and disaster recovery plans in regards to the Board's vital state records.

1.4 Dispute Resolution.

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under this Contract. If the Contractor's claim for breach of contract cannot be resolved informally with the Board, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice to the Board, as required by Chapter 2260. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under Section 2260.051 of the Texas Government Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by the OAG if the parties are unable to resolve their disputes as described above.

Notwithstanding any other provision of this Contract to the contrary, unless otherwise requested or approved in writing by the Board, the Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or while the dispute is pending. However, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has

complied with all provisions of Section 2251.051 of the Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

1.5 Excess Obligations Prohibited; Non-Appropriation of Funds; Legislative Action.

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

1.6 Governing Law and Venue.

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

1.7 Indemnification.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND THE BOARD, 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 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 TEXAS 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 TEXAS ATTORNEY GENERAL. CONTRACTOR AND THE BOARD AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

1.8 Texas Public Information Act.

Contractor understands that the Board will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

1.9 State Auditor's Right to Audit.

Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds directly under this Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. The Contractor will ensure that this Section concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards, should subcontracting be authorized. The Contractor further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of the Contractor relating to this Contract.

1.10 Technology Access Clause.

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

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

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

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

1.11 Terms and Conditions Attached to Response.
Any terms and conditions attached to Contractor's Response will not be considered unless specifically referred to in the Response.

1.12 Agency's Right to Audit.
Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by the Board and the State of Texas.

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

1.14 Binding Effect.
This Contract shall be binding upon and shall inure to the benefit of the Board and Contractor and to their representatives, successors, and assigns.

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

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

1.17 Discounts.
If Contractor at any time during the term of the Contract provides a discount on the final contract costs, Contractor will notify the Board in writing ten (10) calendar days prior to the effective date of the discount.

The Board will generate a Purchase Order Change Notice and send a revised Purchase Order to the Contractor.

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

1.19 Force Majeure.
Neither Contractor nor the Board shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

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

1.21 License Grant.
Contractor hereby grants to the Board a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to Contractor; and (b) to sublicense any or all such rights to third parties.

1.22 Limitation on Authority.
Contractor shall have no authority to act for or on behalf of the Board or the State of Texas except as expressly provided for in this Contract. No other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expenses, or liability of any kind on behalf of the Board or the State of Texas.

1.23 Media Releases.
Contractor shall not use the Board's name, logo, or other likeness in any press release, marketing material, or other announcement without the Board's prior written approval. The Board does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to the Contract or the services to which they relate without the Board's prior written consent, and then only in accordance with explicit written instructions from the Board.

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

1.25 No Quantity Guarantees.
The Board makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the Contract.

1.26 No Third-Party Beneficiaries.
The Contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

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

1.28 Property Rights.
For purposes of the Contract, the term "Work" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the contract. The Board and the Contractor intend this agreement to be a Contract for services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Contractor to be a work made for hire. Contractor and Contractor's employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of the Board.

Contractor acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of the Board. If for any reason the Work would not be considered a work-for-hire under applicable law, Contractor does hereby sell, assign, and transfer to the Board, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights

corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other property rights, as the Board may deem necessary to secure for the Board or its designee the rights herein assigned.

In the event that Contractor has any rights in and to the Work that cannot be assigned to the Board, Contractor hereby grants to the Board an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon the Board's request, Contractor shall deliver to the Board all completed, or partially completed, Work and any and all documentation or other products and results of the services. Failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of the Contract. Contractor will not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of the Board.

1.29 Records Retention.
Contractor shall maintain and retain all records relating to the performance of this Contract, including supporting fiscal documents adequate to ensure that claims for Contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Contractor for a period of seven (7) years after the Contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

1.30 Refund.
Contractor will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by the Board which are not expressly authorized under the Contract.

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

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

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

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

1.35 Survival.
Expiration or 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 expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

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

1.37 Termination for Convenience.
The Board reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if the Board 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 Board shall be liable for payments limited only to the portion of work the Board authorized in writing and which the Contractor has completed, delivered to the Board, and which has been accepted by the Board. All such work shall have been completed, in accordance with Contract requirements, prior to the effective date of termination. The Board shall have no other liability, including no liability for any costs associated with the termination.

1.38 Use of State Property.
Contractor is prohibited from using State Property for any purpose other than performing the services authorized under the Contract. State Property includes, but is not limited to, the Board's office space, identification badges, Board information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Board-issued software, and the Board's Virtual Private Network (VPN client)), and any other resources of the Board. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access the Board's network or e-mail while outside of the continental United States. Contractor shall not perform any maintenance services on State Property unless the Contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for (i) all repair and replacement charges incurred by the Board that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to

Contractor's use of State Property that exceeds the Contract scope. Contractor shall fully reimburse such charges to the Board within ten (10) calendar days of Contractor's receipt of the Board's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to the Board under the Contract, at law, or in equity.

1.39 Waiver of Consequential Damages.

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

1.40 Vendor Performance Tracking System.

Contractor understands that the Board is required to report vendor performance through the Vendor Performance Tracking System ("VPTS") on every purchase over $25,000 in the manner prescribed by the Comptroller. The Board, at its discretion, may also report vendor performance on purchases under $25,000.

1.41 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. Contractor will not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

1.42 Headings.

The headings contained in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of the Contract.

2 Certifications

2.1 Antitrust Affirmation.

Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of its Response to any competitor or any other person engaged in the same line of business as Contractor.

2.2 Buy Texas Affirmation.

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

2.3 Child Support Obligation Affirmation.

Under Section 231.006 of the Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

2.4 Computer Equipment Recycling Program.

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

2.5 COVID-19 Vaccine Passport Prohibition.

Under Section 161.0085 of the Texas Health and Safety Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract.

2.6 Critical Infrastructure Affirmation.

Pursuant to Government Code Section 2274.0102, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

2.7 Data Management and Security Controls.

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

2.8 Dealings with Public Servants Affirmation.

Pursuant to Section 2155.003 of the Texas Government Code, Contractor represents and warrants that it 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 Contract.

2.9 Debts and Delinquencies Affirmation.

Contractor agrees that any payments due under the Contract shall be applied towards any debt or delinquency that is owed to the State of Texas. In accordance with Section 403.0551 Texas Government Code, the Contractor acknowledges that any payments due to the Contractor under this Contract will be first applied toward any debt and/or back taxes the Contractor owes the State of Texas. Payments will be so applied until such debts and taxes are paid in full. This Section does not apply if federal law requires payment to be made to the Contractor for the services and may not apply if federal law conditions the receipt of the money for this service to the State or the basis of payment being made to the Contractor.

2.10 Disclosure of Prior State Employment.

In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by the Board or another agency at any time during the two years preceding this Contract or, in the alternative, Contractor has disclosed to the Board the following: (i) the nature of the previous employment with the Board or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

2.11 Energy Company Boycotts.

Contractor represents and warrants that: (1) it does not, and will not for the duration of the Contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does

not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, the Contractor shall promptly notify the Board.

2.12 Entities that Boycott Israel.
Contractor represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify the Board.

2.13 E-Verify Program.
Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:

- All persons employed by Contractor to perform duties within Texas; and
- All persons, including subcontractors, assigned by Contractor to perform work pursuant to the Contract within the United States of America.

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

2.15 Executive Head of a State Agency Affirmation.
In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of the Board, (2) a person who at any time during the four years before the date of the Contract was the executive head of the Board, or (3) a person who employs a current or former executive head of the Board.

2.16 False Statements.
Contractor represents and warrants that all statements and information prepared and submitted in connection with this Contract are current, complete, true, and accurate. Submitting a false statement or making material misrepresentations to the Board during the performance of this Contract constitute a material breach of the Contract and may void the Contract.

2.17 Financial Participation Prohibited Affirmation.
Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

2.18 Firearm Entities and Trade Associations Discrimination.
Contractor verifies that: (1) it does not, and will not for the duration of the Contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify the Board.

2.19 Foreign Terrorist Organizations.
Section 2252.152 of the Texas Government Code prohibits the Board from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Contractor certifies that it not ineligible to receive the Contract.

2.20 Former Agency Employees.
Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under this Contract, were former employees of the Board during the twelve (12) month period immediately prior to the date of execution of the Contract.

2.21 Human Trafficking Prohibition.
Under Section 2155.0061 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

2.22 No Conflicts of Interest.
Contractor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

2.23 Prior Disaster Relief Contract Violation.
Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

2.24 Signature Authority.
The undersigned certifies that he or she is authorized to execute a contract as an authorized representative of the Contractor.

2.25 Suspension and Debarment.
Contractor certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.

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

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

2.28 Abortion Provider and Affiliate Transactions Prohibited.
Contractor represents and warrants that the Contract is not a taxpayer resource transaction prohibited by Section 2272.003 of the Texas Government Code and that payments made by the Board to Contractor and Contractor's receipt of appropriated funds under the Contract are not prohibited by Article IX, Section 6.25 of the General Appropriations Act.

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

2.30 Disclosure of Interested Parties.
Contractor represents and warrants that if selected for award of a Contract as a result of the solicitation, Contractor will submit to the Board a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.

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

2.32 Equal Employment Opportunity.
Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

2.33 Federal Occupational Safety and Health Law.
Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

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

2.35 Legal and Regulatory Actions.
Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in the Contractor's Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to the Board's consideration of the Response.

If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to the Board's consideration of the Response. In addition, Contractor represents and warrants that it shall notify the Board in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update the Board shall constitute breach of contract and may result in immediate termination of the contract.

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

2.37 No Felony Criminal Convictions.

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

2.38 Permits, Certifications, and Licenses.

Contractor represents and warrants that it has determined what licenses, certifications and permits are required under the Contract and has acquired all applicable licenses, certifications, and permits.

2.39 Restricted Employment for Certain State Personnel.

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

2.40 Unfair Business Practices.

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

Rev. 2/17

HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

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

➤ **If you will be awarding <u>all</u> of the subcontracting work you have to offer under the contract to <u>only</u> Texas certified HUB vendors, complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
- ☐ Section 2 c. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you <u>do not</u> have a *<u>continuous contract</u>** in place for more than five (5) years *<u>meets or exceeds</u>* the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you <u>do not</u> have a *<u>continuous contract</u>** in place for more than five (5) years *<u>does not meet or exceed</u>* the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - No
- ☐ Section 4 - Affirmation
- ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
- ☐ Section 3 - Self Performing Justification
- ☐ Section 4 - Affirmation

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

HUB Subcontracting Plan (HSP)

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

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

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

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

- - Agency Special Instructions/Additional Requirements - -

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

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: _____ State of Texas VID #: _____

Point of Contact: _____ Phone #: _____

E-mail Address: _____ Fax #: _____

b. Is your company a State of Texas certified HUB? ☐ **- Yes** ☐ **- No**

c. Requisition #: _____ Bid Open Date: _____ (mm/dd/yyyy)

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

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

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

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

☐ - *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)

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

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

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

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

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

☐ - *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

☐ - *No* (If *No*, continue to Item d, of this SECTION.)

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

☐ - *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

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

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

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

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

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

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

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

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

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

SECTION 4: AFFIRMATION

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

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

Signature	Printed Name	Title	Date (mm/dd/yyyy)

Reminder:

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

HSP Good Faith Effort - Method A (Attachment A)

Rev. 2/17

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

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

SECTION A-1: SUBCONTRACTING OPPORTUNITY

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

Item Number: _____ Description: _____

SECTION A-2: SUBCONTRACTOR SELECTION

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

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%

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

HSP Good Faith Effort - Method B (Attachment B)

Rev. 2/17

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

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

SECTION B-1: SUBCONTRACTING OPPORTUNITY

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

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

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

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

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

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

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

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

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

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

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

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No

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

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

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		☐ - Yes ☐ - No
		☐ - Yes ☐ - No

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

Rev. 2/17

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

SECTION B-4: SUBCONTRACTOR SELECTION

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

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

Item Number: _____ Description: _____

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

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%

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

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

Rev. 2/17

HUB Subcontracting Opportunity Notification Form

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

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

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

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____ State of Texas VID #: _____

Point-of-Contact: _____ Phone #: _____

E-mail Address: _____ Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____ Phone #: _____

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

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

1. Potential Subcontractor's Bid Response Due Date:

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

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

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

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

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: ☐ - Not Applicable

4. Bonding/Insurance Requirements: ☐ - Not Applicable

5. Location to review plans/specifications: ☐ - Not Applicable

HSP Good Faith Effort - Method A (Attachment A)

Rev. 10/16

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

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

SECTION A-1: SUBCONTRACTING OPPORTUNITY

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

Item Number: _____ Description: _____

SECTION A-2: SUBCONTRACTOR SELECTION

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

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%

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

HSP Good Faith Effort - Method B (Attachment B)

Rev. 10/16

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

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

SECTION B-1: SUBCONTRACTING OPPORTUNITY

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

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

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

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

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

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

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

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

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

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

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

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No

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

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

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		☐ - Yes ☐ - No
		☐ - Yes ☐ - No

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

Rev.10/16

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

SECTION B-4: SUBCONTRACTOR SELECTION

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

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

Item Number: _____ Description: _____

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

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%

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

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