



**Amendment No. 1
of
Contract No. NC160000014
for
Postage Mailing System
between
Neopost USA, Inc.
The City of Austin**

1.0 The Contract is hereby amended as follows: Change name to Quadient, Inc. as requested and documented by the vendor:

	From	To
Vendor Name	Neopost USA Inc. Dba, Neopost Inc or Neopost Texas	Quadient, Inc.
Vendor Code (for City use only)	USP7160190	USP7160190
Vendor Federal Tax ID (FEIN)	<div style="background-color: black; width: 100px; height: 1.2em;"></div>	<div style="background-color: black; width: 100px; height: 1.2em;"></div>

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, this Amendment No. 1 is hereby incorporated into and made a part of the Contract.

Cindy Reyes

Digitally signed by Cindy
Reyes
Date: 2020.04.28
09:31:51 -05'00'

Cindy Reyes
Contract Management Specialist III
City of Austin, Purchasing Office

Date

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
NEOPOST USA, INC. ("Contractor")
FOR
LEASE OF MAIL FOLDER INSERTER AND METER EQUIPMENT
MA 7500 NC160000014**

This Contract is between Neopost USA, Inc. having offices at 478 Wheelers Farm Rd., Milford, CT 06461 and the City, a home-rule municipality incorporated by the State of Texas, and is effective on the date executed by the City (Effective Date). Solicitation requirements are met by using Contractor's Texas Procurement and Support Services (TPASS) Contract No. 985-L1.

1.1 This Contract is composed of the following documents:

- 1.1.1 Texas Procurement and Support Services (TPASS) contract number 985-L1
- 1.1.2 This Document
- 1.1.3 Exhibit A, Supplemental Terms
- 1.1.4 Exhibit B, Neopost USA, Inc. Offer, dated February 12, 2016, including subsequent clarifications
- 1.1.5 Exhibit C, Non-Discrimination Certification

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 Texas Procurement and Support Services (TPASS) contract number 985-L1 as referenced in Section 1.1.1
- 1.2.2 This Contract
- 1.2.3 Supplemental Terms as referenced in Section 1.1.3
- 1.2.4 The Contractor's Offer as referenced in Section 1.1.4, including subsequent clarifications

1.3 Quantity. Quantity of goods or services as described in Exhibit B.

1.4 Term of Contract.

The Contract shall be in effect for an initial term of sixty (60) months, subject to the extension of the cooperative contract (as referenced in Section 1.1.1 above), approval of the Contractor and the City Purchasing Officer or his designee. Under *Lease Provisions Section B. - Terms of the Lease, Item 1.* of the TPASS Contract 985-L1 this contract including all associated terms and conditions shall survive the expiration of 985-L1. The City reserves the right to transfer this Contract by amendment to future TPASS contracts that supersede TPASS Contract No. 985-L1, if the terms and conditions are favorable to the City.

1.5 Compensation.

The Contractor shall be paid a total Not-to-Exceed amount of \$81,165.60 for the initial Contract term.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

NEOPOST USA, INC.

Kirk Shankle

Printed Name of Authorized Person

Signature

Vice President and General Counsel

Title:

2/25/2016

Date:

CITY OF AUSTIN

JONATHAN DALCHAU

Printed Name of Authorized Person

Signature

SENIOR BUYER SPECIALIST

Title:

2/25/2016

Date:

Exhibit A - Supplemental Terms

Exhibit B - Neopost USA, Inc. Offer dated February 12, 2016

Exhibit C - Non-Discrimination Certification

**EXHIBIT A
SUPPLEMENTAL TERMS**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Caleb Ashby, Phone: (512) 697-2492, Email Address: C.Ashby@neopost.com. The City's Contract Manager for the engagement shall be Taylor Youngblood, Phone: (512) 974-3519, Email Address: taylor.youngblood@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.
2. **End of Lease Purchase of Equipment.** Upon termination of the lease, the City shall have the option, but is under no obligation, to purchase the equipment at fair market value.
3. **INSURANCE:** Insurance is required for this solicitation.
 - A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.
 - i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
 - ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
 - iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
 - iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767
 - B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.
 - i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
 - ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.

**EXHIBIT A
SUPPLEMENTAL TERMS**

(2) The policy shall also include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
- (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
- (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

(1) The policy shall include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
- (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
- (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

4. INVOICES and PAYMENT:

A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

Invoices shall be emailed to: BSDAPInvoices@austintexas.gov. The Billing address is below address:

	City of Austin
Department	Building Services
Attn:	Accounts Payable
Address	P.O. Box 1088
City, State Zip Code	Austin, TX 78767

B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

EXHIBIT C

City of Austin, Texas
Section 0800
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Bid and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin
Minimum Standard Non-Discrimination in Employment Policy:**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

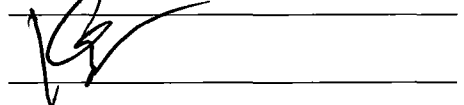
Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 25 day of February, 2016

CONTRACTOR
Authorized
Signature

Neopost USA Inc.



Title

Kirk Shankle, Vice President
and General Counsel

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B.1 INTRODUCTION

B.1.1 Authority to Contract

Pursuant to the authority and responsibility provided in §§2155.061, 2156.061, and 2156.121, Government Code, the Comptroller's office is authorized to procure statewide contracts using the sealed proposal method.

Pursuant to §§ 2155.202 – 2155.204, Government Code, statewide contracts procured by the Comptroller's office may additionally be used by community mental health and mental retardation centers, the Texas Legislature and related legislative agencies, and local government entities pursuant to Subchapter D, Chapter 271, Local Government Code. Local government is defined by §271.081 of the Local Government Code to include a county, municipality, special district, school district, junior college district, a local workforce development board created under Section 2308.253, Government Code, or other legally constituted political subdivision of the state.

B.1.2 Definitions

When capitalized, the following terms and acronyms have the meaning set forth below. All other terms have the meaning set forth in Webster's II New College Dictionary.

TERM	DEFINITION
Contract	Any contract(s) resulting from this solicitation. <i>Note: There is no guarantee that any contract will result from this solicitation.</i>
Contractor	The Respondent(s) awarded a Contract as a result of the RFP.
CPA	The Comptroller of Public Accounts, the state agency issuing this solicitation.
Customer	Those state and local entities that are required and permitted by law to purchase goods and services under contracts established by the CPA.
ESBD	The Electronic State Business Daily, which is available online at http://esbd.cpa.state.tx.us/ .
Gov't Code	The Texas Government Code.
Party / Parties	Either the CPA and Respondent separately or collectively.
Proposal	The response submitted by a vendor to the CPA as a result of this solicitation.
Respondent	Any person or vendor who submits a Proposal in response to this solicitation.
RFP	Request for Proposals, which is the type of solicitation embodied in this document.
TAC	The Texas Administrative Code, which is the publication for administrative rules.

B.1.3 Conflicts of Interest

B.1.3.1 Actual and Perceived Conflicts

By submitting a Proposal, the Respondent represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in entering a Contract with the CPA. The Respondent also represents and warrants that entering a Contract with the CPA will not create the appearance of impropriety. In its Proposal, the Respondent shall disclose any existing or potential conflict of interest that it might have in contracting with the CPA. The CPA will decide, in its sole discretion, whether an actual or perceived conflict should result in Proposal disqualification or Contract termination.

B.1.3.2 Current and Former CPA Employees

In addition to the disclosures required above, the Respondent shall also disclose any of its personnel who are current or former officers or employees of the CPA or who are related, within the third degree by consanguinity (as defined by §573.023, Gov't Code) or within the second degree by affinity (as defined by §573.025, Gov't Code), to any current or former officers or employees of the CPA.

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

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

B.1.4 Construction of this RFP and the Contract

B.1.4.1 Global Drafting Conventions

The terms “include,” “includes,” and “including” are terms of inclusion and, where used in this Contract, are deemed to be followed by the words “without limitation.”

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

B.1.4.2 Headings

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

B.2 THE RFP PROCESS

B.2.1 Submitting Questions about the RFP

The Respondent will have until the Deadline for Submitting Questions, identified in Part A, to submit in writing all questions regarding this RFP. Questions may only be sent to the Point of Contact. All questions shall, to the highest degree possible, cite the specific RFP section to which the question refers. The CPA will, at its discretion, answer the questions in a Question and Answer Document posted on the ESBD.

Only answers provided in writing by the CPA shall be considered official. Information in any form other than the materials constituting this RFP, the Question and Answer Document, and any RFP addendum shall not be binding on the CPA.

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

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

B.2.2 Addenda to the RFP

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

B.2.3 Testing and Inspection

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

Authorized CPA personnel shall have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, the CPA inspections will not disrupt the Respondent's daily operations. Tests shall be performed on samples submitted with the Proposal or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Respondent. In the event the goods tested fail to meet or exceed all conditions and requirements of the RFP and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Respondent or held for disposition at the Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state.

If material fails to meet specifications, the Respondent will be notified by fax / mail or e-mail. The Respondent will have ten (10) working days after receipt of the notification to remove the rejected material from state property. Material will be removed at the Respondent's expense. Material not removed in the allotted time period will be disposed by the Customer. The Respondent will be charged for all disposable expenses conducted by the Customers.

B.2.4 Accuracy of the Proposal

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

B.2.5 HUB Subcontracting Plan Requirements

It is the policy of the CPA to promote and encourage contracting and subcontracting opportunities for State of Texas certified Historically Underutilized Businesses (HUBs) in all contracts in compliance with Chapter 2161, Gov't Code. Eligible Respondents are encouraged to become HUB certified. State of Texas HUB applications may be found at:

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

Definitions for State of Texas HUB certifiable businesses can be found in 34 TAC Chapter 20, Subchapter B, which is available at:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=B&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=B&rl=Y)

A HUB Subcontracting Plan Form must be filled out and returned with the Proposal to be considered responsive. If the Proposal does not include a HUB Subcontracting Plan, it shall be rejected as a material failure to comply with advertised specifications.

Any probable subcontracting opportunities are identified in Part A. This list should not be considered a mandatory or an exhaustive list. Other areas of subcontracting may be more appropriate given the Respondent's business structure and internal resources. Please see the attached HUB Subcontracting Plan for further instructions which require vendors to identify the specific areas intended for subcontracting.

Search the State of Texas HUB Database for HUB vendors by the NIGP class and item at:

<http://www2.cpa.state.tx.us/cmbl/hubonly.html>

Additional minority and women owned business association resources are available for subcontracting notices at: <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>

Questions about the HUB Subcontracting Form, finding HUB vendors, or the State of Texas HUB Program, should be directed to the HUB Coordinator identified in Part A.

Additional information and training regarding how to complete a HUB Sub-Contracting Plan can be found on the CPA Website at the following link:

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

B.2.6 Cost of Submitting the Proposal

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

B.2.7 Public Information Act Disclosures

The CPA is a government agency subject to the Texas Public Information Act (PIA), Chapter 552, Gov't Code. The Proposal and other information submitted to the CPA by the Respondent are subject to release as public information. The Proposal and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the specific exception to disclosure in the PIA. Merely making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable, and shall make the entire Proposal subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA.

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

1. Two CDs containing complete copies of all of Respondent's submissions pursuant to this RFO. These shall be marked "Complete Offer Documents, [Offeror's Name], CPA RFO _____. CONTAINS CONFIDENTIAL INFORMATION."
2. Two CDs, each containing copies of all of Respondent's submissions with all information claimed as confidential excised, blacked out or otherwise redacted. Each of these CDs shall also contain an Appendix which contains clear references to all redacted information including a general description of the redacted information. These CDs shall be marked "For Public Release: Redacted Version of [Offeror's Name], CPA RFO _____. "

The Respondent, by submitting a Proposal, shall thereby be irrevocably deemed to have fully indemnified and agreed to defend the CPA from any claim of infringement in the intellectual rights of Respondent or any third party for any materials appearing in the Proposal.

B.2.8 Irrevocability of the Proposal

The Proposal is irrevocable for one hundred twenty (120) calendar days following the Proposal Opening Date and Time identified in Part A. This period may be extended at the CPA's request with the Respondent's written agreement.

B.3 CONTRACT INFORMATION

B.3.1 Amending the Contract

Any alterations, additions, or deletions in the terms and conditions of the Contract shall be by written amendment executed by both Parties and put into effect with a Contract Amendment issued by the CPA. The Respondent shall not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

B.3.2 Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed Contract (or Notice of Award), Attachments to the Contract (or Notice of Award), Request for Proposals, and Respondent's Response to Request for Proposals.

B.3.3 Terminating the Contract

B.3.3.1 Convenience of the State of Texas

The CPA reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if the CPA determines that such termination is in the best interest of the state. In the event of such a termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Customers shall be liable for payments for any goods or services ordered from the Respondent before the termination date.

B.3.3.2 Cause/Default

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

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

B.3.3.3 Change in Federal or State Requirements

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

B.3.3.4 TCPDP Purchasing Preference

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

use of the awarded contract immediately upon the availability of such product or service, and may terminate the contract for some or all of such products or services awarded.

B.3.3.5 Rights upon Termination or Expiration of Contract

In the event that the Contract is terminated for any reason, or upon its expiration, the CPA and the Customers shall retain ownership of all associated work products and documentation obtained from the Respondent under the Contract.

B.3.3.6 Survival of Terms

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

B.3.4 Contract Documentation

The Contract will consist of the Notice of Award, Listing of Awarded Items, and any Contract Amendments thereto issued by the CPA; this RFP, together with any modifications made through Addenda thereto; and the successful Proposal, together with any clarifications thereto that are submitted at the request of the CPA. In the event of any conflict or contradiction between or among these documents, the Notice of Award, as modified by any Contract Amendments, shall control over the RFP and the Proposal. The RFP, as modified by any Addenda, shall control over the Proposal.

B.4 CONTRACT MANAGEMENT

B.4.1 Contract Managers

B.4.1.1 The CPA Contract Manager

The CPA Contract Manager has the authority to:

- sign Controlled Correspondence
- serve as the day-to-day point of contact
- coordinate quality control reviews
- approve invoices
- coordinate meetings with the Respondent
- investigate complaints
- receive requests for substitutions or changes in goods or services awarded under the Contract
- initiate contract amendments
- accept, deny or negotiate pricing changes

B.4.1.2 The Respondent's Contract Manager

The Respondent shall identify its Contract Manager to the CPA in writing within 10 days of the issuance of the Purchase Order. Changes to the Respondent's Contract Manager shall hereafter be documented by the Respondent through Controlled Correspondence. The Respondent's Contract Manager has the authority to:

- make decisions regarding the deliverables required by the Contract
- sign Controlled Correspondence

- serve as the day-to-day point of contact
- coordinate quality control reviews
- coordinate meetings with the CPA
- investigate complaints

B.4.2 Controlled Correspondence

In order to track and document requests for decisions and/or information pertaining to the Contract, and the subsequent response to those requests, the CPA and the Respondent shall use Controlled Correspondence. The CPA shall manage the Controlled Correspondence for the Contract. For each Controlled Correspondence document, the CPA shall assign a tracking number and the document shall be signed by the appropriate Party's Contract Manager.

Controlled Correspondence shall not be used to change pricing or alter the terms of the Contract. Controlled Correspondence shall not 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 CPA-approved changes to the Respondent's HUB subcontracting plan.

Controlled Correspondence documents shall be maintained by both Parties in on-going logs and shall become part of the normal status reporting process. Any communication not generated in accordance with such process shall not be binding upon the Parties and shall be of no effect.

B.4.3 Notices and Liaisons

B.4.3.1 Delivery of Written Notices

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

B.4.3.2 Notice to the Respondent

Within 10 days of the issuance of the Purchase Order, the Respondent shall identify in writing to the CPA the address and contact person for all notices. If there is any change to this information during the term of the contract, the Respondent shall notify the CPA by Controlled Correspondence.

B.4.3.3 Notice to the CPA

The CPA's address for all purposes under this Contract and for all notices hereunder shall be:

Director, TPASS Division
 Comptroller of Public Accounts
 P. O. Box 13186 (physical address: 1711 San Jacinto Blvd)
 Austin, Texas 78711-3186 (physical: 78701)

With copies to (registered or certified mail with return receipt is not required for copies):

Deputy General Counsel for TPASS
Comptroller of Public Accounts
P. O. Box 13186 (physical address: 1711 San Jacinto Blvd)
Austin, Texas 78711-3186 (physical: 78701)

B.4.4 Subcontracting Approval

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

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

B.4.5 No Implied Authority

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

B.4.6 Cooperation with the CPA

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

B.4.7 Dispute Resolution

Chapter 2260 of the Texas Government Code prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, the CPA has adopted rules, codified at 34 TAC §§1.360-1.387. The Respondent shall comply with such rules, as revised from time to time.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve any claim for breach of contract asserted by the Respondent under the Contract. If the Respondent's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Respondent shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Respondent 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 Respondent's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the CPA if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by the CPA nor any other conduct of any representative of the CPA relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the Contract, the CPA and the Respondent shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the CPA and the Respondent within fifteen (15) days after written notice by one of them demanding mediation under this Section. The Respondent shall pay all costs of the mediation unless the CPA, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the CPA and the Respondent may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the CPA and the Respondent shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The CPA's participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the CPA of (1) any rights, privileges, defenses, remedies or immunities available to the CPA as an agency of the State of Texas or otherwise available to the CPA; (2) the CPA's termination rights; or (3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the CPA, the Respondent shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Respondent may suspend performance during the pendency of such claim or dispute if the Respondent has complied with all provisions of §2251.051, Gov't Code, and such suspension of performance is expressly applicable and authorized under that law.

B.4.8 Fraud, Waste, and Abuse

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

B.4.9 Renegotiation of Price

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

B.4.10 Name Changes and Sales

If the Respondent changes its name or is sold to another entity, it must notify the CPA through Controlled Correspondence. The Respondent, in its notice, shall describe the circumstances of the name change or sale, 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 the Respondent, the Respondent shall identify the new personnel and provide resumes to the CPA, if resumes were originally required by the RFP. The CPA may request other information about the change and its impact on the Contract and the Respondent shall supply the requested information within five (5) working days of receipt of the request.

The CPA may terminate the Contract due to a sale of or change to the Respondent that materially alters the Respondent's ability to perform under the Contract. The CPA has the sole discretion to determine if termination is appropriate.

B.4.11 News Releases

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

B.5 FINANCIAL INFORMATION

B.5.1 Appropriations

All obligations of the CPA and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to the Contract. The Respondent acknowledges that the ability of the CPA and the Customers to make payments under the Contract is contingent upon the continued availability of funds. The Respondent further acknowledges that funds may not be specifically appropriated for the Contract and the CPA's or Customers' continual ability to make payments under the Contract is contingent upon the funding levels appropriated for each particular appropriation period. The CPA and the Customers will use all reasonable efforts to ensure that such funds are available. The Respondent agrees that if future levels of funding for the CPA or a Customer are not sufficient to continue operations without any operational

reductions, the CPA or the Customer, 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 CPA or the Customer 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 CPA and the Customer shall make best efforts to provide reasonable written advance notice to the Respondent of any such Contract or order termination. In the event of such a termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on that particular order if an order is being terminated, or the Contract, if the Contract is being terminated. The CPA or the Customer shall be liable for payments limited only to the portion of work the CPA or the Customer authorized in writing and which the Respondent has completed, delivered to the CPA or Customer, and which has been accepted by the CPA or Customer. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

B.5.2 Audit Requirements

Pursuant to §2262.003, Gov't Code, the State Auditor's Office, or successor agency, may conduct an audit or investigation of the Respondent or any other entity or person receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds by the Respondent or any other entity or person directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. The Contract may be amended unilaterally by the CPA to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of §2262.003. **The Respondent shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Respondent and the requirement to cooperate is included in any subcontract it awards.**

Customers who order under the Contract using federal or grant funds may have additional audit requirements that are required by law or regulation. Those additional requirements will be included on the purchase order for that particular order.

B.5.3 Invoicing and Payment Requirements

In order to receive payment under the Contract, the Respondent must submit an original invoice to the Customer placing the order, which will be designated in the purchase order as the "Bill To" address. To be a proper invoice that may be accepted and paid, the invoice must include the following information and/or attachments:

- (1) Name and address of the Respondent.
- (2) The Respondent's Texas Identification Number (TIN).
- (3) The Respondent's invoice remittance address.
- (4) The purchase order number authorizing the delivery of products or services.

- (5) A description of what the Respondent delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Respondent must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Respondent's information.

If an invoice does not meet this Section's requirements, the state will send the Respondent written notice with the improper invoice within 21 calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information the Respondent needs to correct the invoice.

NOTE: For purposes of this Section and Sections B.5.4 and B.5.5, the CPA shall only be receiving and paying invoices when the CPA has placed an order with the Respondent for CPA needs. Otherwise, the orders will be for the Customers, as defined in Section B.1.2.

B.5.4 Disputed Invoices

As stated above, the Respondent will receive notice of an error in an invoice submitted for payment by not later than the 21st day after the date the invoice was received by the state. If an invoice dispute is resolved in favor of the Respondent, the Respondent is entitled to receive interest on the unpaid balance of the invoice, beginning on the date the invoice became overdue, pursuant to §2251.021, Gov't Code. If a dispute is resolved in favor of the CPA or a Customer, the Respondent shall submit a corrected invoice that must be paid in accordance with §2251.021. The unpaid balance accrues interest if the corrected invoice is not paid by the appropriate date.

B.5.5 Time and Manner of Payment

Pursuant to Texas Government Code Chapter 2251, Payment by the CPA or a state entity Customer is overdue on the 31st day after the later of: (1) the date the CPA or Customer receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the CPA or Customer receives the invoice for the goods or service.

Payment by a political subdivision Customer whose governing body meets only once a month or less frequently is overdue on the 46th day after the later event of: (1) the date the Customer receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Customer receives the invoice for the goods or service.

B.5.6 Antitrust and Assignment of Claims

Pursuant to Texas Government Code §2155.005, the Respondent affirms that the Respondent and any person, firm, corporation, partnership, or institution represented by the Respondent, and any person or entity representing the Respondent (1) have not violated the antitrust laws of Texas (Tex.Bus. & Com.Code §15.01, *et seq.*) or the United States (15 U.S.C. §1 *et seq.*); and (2) have not, directly or indirectly, communicated Respondent's Proposal for the Contract, or any pertinent portion thereof, to any competitor or any other person engaged in such line of business.

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

B.5.7 Debts and Delinquencies

As required by §2252.903, Gov't Code, the Respondent agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

B.5.8 Liability for and Payment of Taxes

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

B.5.9 Method of Purchase and Vesting Ownership

All goods or services purchased pursuant to the Contract shall be purchased using an outright purchase. Upon installation, acceptance, and payment, the Customer shall receive title to any personal property delivered pursuant to the purchase, except as otherwise agreed to in the Contract.

B.5.10 No Debt Against the State

The Contract shall not be construed as creating any debt by or on behalf of the State of Texas.

B.5.11 Refunds

If the CPA determines that it or a Customer has overpaid the Respondent under the Contract, the Respondent shall refund that amount to the CPA or Customer, depending on the entity that overpaid. The CPA or Customer may offset and deduct the amount of the overpayment from any amount owing, as a reimbursement, but unpaid to the Respondent. The Respondent shall refund any overpayment within 30 calendar days of receipt of the notice of the overpayment.

If any reimbursement, or a portion of a reimbursement, is disallowed as a result of an audit finding that the Respondent failed to follow the requirements for the Contract, then the Respondent agrees that the CPA or Customer may recoup the disallowed amount from funds payable under the Contract, to the extent the disallowed amount was incurred by the CPA or Customer. If an audit identifies a disallowed amount after the expiration date of the Contract, the CPA or Customer shall send the Respondent notice of the audit results and specifically identify the amount that must be refunded by the Respondent. The Respondent shall refund the disallowed amount within 30 calendar days of receipt of the notice.

B.5.12 Travel

Any travel or per diem required by the Respondent to perform its obligations under the Contract will be at the Respondent's expense. All travel and per diem that the state requests in addition to what the Contract requires the Respondent to provide at the Respondent's expense will be paid in accordance with State of Texas Travel Allowance Guide.

B.5.13 Direct Deposit

The Texas Comptroller of Public Accounts encourages vendors to receive payment by direct deposit. To receive future payments by direct deposit, vendors should download and fill out the New Setup Direct Deposit/Advance Payment Notification, Form 74-207 available at www.txdirectdeposit.org.

Vendors may request Advance Payment Notification by fax or e-mail. This feature includes notification one business day before the deposit posts to the vendor's bank account. It also provides the amount of the deposit and which agency it came from. Vendors may also receive remittance information with the notification.

B.6 CONFIDENTIALITY AND SECURITY

The Respondent should not receive any sensitive or confidential information under the Contract. Any information the Respondent compiles or creates as a result of the Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. The Respondent shall establish a method to secure the confidentiality of records and other information relating to clients in accordance with applicable federal and state laws, rules, and regulations.

The obligations of the Contractor under this Security and Confidentiality Article shall survive this Contract and shall be included in all subcontracts.

B.7 TERMS AND CONDITIONS

B.7.1 Affirmations

Submitting a Proposal with a false statement is a material breach of contract and shall void the Proposal or the Contract, and the Respondent shall be removed from all bid lists. By signature thereon affixed, the Respondent thereby certifies that:

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

B.7.1.2 The CPA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to the CPA under this Contract constituting a record under the Act is received by the CPA, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. The Respondent authorizes the CPA to submit any information contained in the Contract, provided under the

Contract, or otherwise requested to be disclosed, including information Respondent has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be excepted from public disclosure under the Act. If the CPA does not have a good faith belief that information may be subject to an exception to disclosure, the CPA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of the Respondent to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. The Respondent waives any claim against and releases from liability the CPA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Respondent and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

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

B.7.2 Civil Rights

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

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

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

Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

B.7.4 Records Retention

The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

B.7.5 Environmental Protection

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

B.7.6 Prohibition on Lobbying

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

B.7.7 Copyrights and Publications

The Respondent understands and agrees that, where activities supported by the Contract produce original books, manuals, films, or other original material (hereinafter referred to as “the works”), the Respondent may copyright the works subject to the reservation by the CPA and affected Customers of a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state and/or political subdivision purposes:

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

The Respondent may publish, at its expense, the results of Contract performance with prior CPA review and approval of that publication. Any publication (written, visual, or sound) shall include acknowledgment of the support received from the CPA and Customers. One (1) copy of any such publication must be provided to the CPA. The CPA reserves the right to require additional copies before or after the initial review. All copies shall be provided free of charge to the CPA.

B.7.8 Certifications

B.7.8.1 Child Support Obligations

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

B.7.8.2 Texas Corporate Franchise Tax Certification

The Respondent, by submitting its Proposal, certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

B.7.8.3 Certification Concerning Dealings with Public Servants

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

B.7.8.4 Certification Concerning Financial Participation

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

B.7.8.5 Certification Concerning Hurricane Relief

Sections 2155.006 and 2261.053, Government Code, prohibit the CPA from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005. Under §2155.006, Gov't Code, the Respondent certifies that the individual or business entity named in its Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

B.7.9 Independent Contractor

The Contract shall not render the Respondent an employee, officer, or agent of the CPA for any purpose. The Respondent is and shall remain an independent contractor in relationship to the CPA. The CPA shall not be responsible for withholding taxes from payments made under the Contract. The Respondent shall have no claim against the CPA 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.

B.7.10 No Assignment by Contractor

The Respondent shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the CPA.

B.7.11 Indemnification and Liability

The Respondent shall defend, indemnify, and hold harmless the State of Texas, its officers, and employees, and the CPA, its officers, and employees and contractors, from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, including without limitation attorneys' fees and court costs, arising out of, connected with, or resulting from any acts or omissions of the Respondent or any agent, employee, subcontractor, or supplier of the Respondent in the execution or performance of the Contract. The Respondent shall coordinate its defense with the Texas Attorney General as requested by the CPA.

This section is not intended to and shall not be construed to require the Respondent to indemnify or hold harmless the State of Texas or the CPA for any claims or liabilities resulting from the negligent acts or omissions of the CPA or its employees.

B.7.12 Respondent Liability for Damage to Government Property

The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the CPA Contract Manager in writing of any such damage within one (1) calendar day.

B.7.13 Force Majeure

The CPA, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the CPA.

In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the CPA Contract Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

B.7.14 Buy Texas

In accordance with §2155.4441, Gov't Code, the Respondent shall, in performing any services under the Contract, purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside Texas.

B.7.15 Miscellaneous Terms and Conditions

B.7.15.1 Permits

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

B.7.15.2 Electrical Items

All electrical items provided by the Respondent to the CPA or a Customer under the Contract must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.

B.7.15.3 Executive Head

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

B.7.15.4 Terminated Contracts

By submitting a Proposal, the Respondent certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If the Respondent does have such a terminated contract, the Respondent shall identify each and provide an explanation for the termination.

B.7.16 Non-Waiver of Rights

Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

B.7.17 No Waiver of Sovereign Immunity

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

B.7.18 Severability

If any provision of the Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

B.7.19 Applicable Law and Venue

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

B.7.20 Compliance with Laws; Dealing with Public Servants

The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; (iii) §2155.003, Gov't Code, which prohibits the chief clerk or any other employee of the CPA from having an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state or accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

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

B.7.21 Insurance and Other Security

The Respondent represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder. The Respondent shall insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same. Such insurance shall comply with Texas statutory requirements and also cover any cargo being delivered to Customers.

The Respondent represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from Best, and are authorized to provide the coverage. The Respondent shall furnish proof of insurance upon request of a Customer or the CPA.

B.7.22 Deceptive Trade Practices; Unfair Business Practices

The Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that the Respondent has not been found to be liable for such practices in such proceedings. The 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.

B.7.23 Immigration

The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") enacted on September 30, 1996.

B.7.24 Change Management

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

B.7.25 Federal, State, and Local Requirements

Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Respondent shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

B.7.26 No Liability Upon Termination

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

B.7.27 Felony Criminal Convictions

Respondent represents and warrants that Respondent has not and Respondent's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised CPA as to the facts and circumstances surrounding the conviction. If awarded the contract, Respondent has a continuing duty to amend, supplement or correct this representation and warranty not later than ten (10) days after discovering additional information relating to felony criminal convictions of Respondent or any of its employees. Respondent shall not allow any employee convicted of a felony criminal offense to perform tasks related to the contract without such disclosure and express permission from CPA.

B.7.28 Drug Free Workplace

The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

B.7.29 Vendor Performance

In accordance with Texas Government Code, 2155.074 and 2155.75, vendor performance may be used as a factor in the award.

B.7.30 Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institutions of Higher Education Purchases Only)

(1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(2) Respondent shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Respondents not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.