

REQUEST FOR PROPOSALS

Texas Board of Nursing
Nursing Special Projects Service
507-16-002
NIGP: 924-05, 16, 19

SECTION ONE GENERAL INFORMATION

- 1.1 **Purpose of the Request for Proposals.** The purpose of this Request for Proposals (RFP) is to engage a Proposer to provide the following Services to Texas Board of Nursing (herein referred to as "BON"). The BON, by means of this RFP, invites all qualified Proposers to submit Proposals in accordance with the requirements outlined in this RFP. The BON anticipates that, based on its review and evaluation of the Proposals received pursuant to this RFP, it will select a Proposer and execute a contract whereby the Proposer renders Services to and for the BON, in accordance with terms and conditions set forth in the contract.
- 1.2 **Information about Texas Board of Nursing.** Texas Board of Nursing is a State of Texas Agency, whose physical location is 333 Guadalupe Street, Austin, TX has been in existence since 1909. The BOARD OF NURSING fiscal year is from September 1 through August 31 of each year.
- 1.3 **Historically Underutilized Business (HUB) Firms.** The BOARD OF NURSING endeavors to promote full and equal opportunity for businesses to supply the BOARD OF NURSING with goods and/or Services that are necessary to support the BOARD OF NURSING's educational mission. In this regard, the BOARD OF NURSING commits to select Proposers in accordance with (i) BOARD OF NURSING needs, (ii) BOARD OF NURSING resources, (iii) HUB goals and guidelines established by the Texas Legislature and the Texas Procurement and Support Services, and (iv) BOARD OF NURSING policies and procedures for contracting with Historically Underutilized Businesses. See attachment A.
- 1.4 **BOARD OF NURSING's Right to Reject.** This RFP does not commit the BOARD OF NURSING to select a Proposer or to award a Contract to any Proposer. The BOARD OF NURSING reserves the right to accept or reject, in whole or in part, any Proposal it receives pursuant to this RFP.
- 1.5.1 **Schedule of Events.** The BOARD OF NURSING will make a good faith effort to follow the timeline below for evaluating, negotiating and issuing an award, although they are tentative and subject to change:

<u>Event</u>	<u>Date</u>
RFP Distribution to Public	7/27/15
Deadline for Questions	8/7/15
Delivery Deadline of Proposals	8/14/15
Award and Issuance of Contract	8/28/15

SECTION TWO RFP REQUIREMENTS

- 2.1 **Right to Modify, Rescind, or Revoke RFP.** The BOARD OF NURSING reserves the rights to modify, rescind, or revoke this RFP, in whole or in part, at any time prior to the date on which the authorized representative of the BOARD OF NURSING executes a Contract with the Selected Proposer.
- 2.2 **Compliance with RFP Requirements.** By submission of a Proposal, a Proposer agrees to be bound by the requirements set forth in this RFP. The BOARD OF NURSING, at its sole discretion, may disqualify a Proposal from consideration, if the BOARD OF NURSING determines a Proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

- 2.3 **Binding Effect of Proposal.** Unless otherwise agreed in writing signed by the Executive Director or Designee each Proposer agrees to and shall be bound by the information and documentation provided with the Proposal, including prices quoted for Survey Services.
- 2.4 **Signature, Certification of Proposer.** The Proposal must be signed and dated by the Proposer who is authorized to bind the Proposer to the terms and conditions contained in this RFP and to 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 Proposer to the terms and conditions set forth in this RFP. Proposals submitted without the required signature shall be disqualified.
- 2.5 **Requirements for Submission.** Each Proposer shall submit one (1) original -- which must be clearly defined as the ORIGINAL -- and two 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 Proposer. The binder cover shall also reflect the subject matter of the Proposal as follows: RFP FOR NURSING SPECIAL PROJECTS SERVICE. The original and two copies of the Proposal shall be submitted in a sealed box, clearly labeled as follows:

RFP FOR NURSING SPECIAL PROJECTS SERVICE, REQUISITION #507-16-002

TEXAS BOARD OF NURSING

Attn: Patricia Vianes-Cabrera
333 Guadalupe Street, 3-460
Austin, TX 78701

- 2.6 **Deadline for Proposals.** Proposals must be received in the BOARD OF NURSING Purchasing and office, at the address specified in Section 2.5 of this RFP, no later than 4:00 p.m., Central Standard Time, on 8/14/15.

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

- 2.7 **Risk of Loss, Damage, Delay.** Proposer acknowledges and agrees to release and hold harmless the BOARD OF NURSING'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 BOARD OF NURSING, as designated in Sections 2.5 and 2.6 of this RFP. The BOARD OF NURSING will not be liable for late delivery of proposals by the carrier.
- 2.8 **Ownership of Proposals.** All Proposals become the physical property of the BOARD OF NURSING upon receipt.
- 2.9 **Use, Disclosure of Information.** Proposers acknowledge that the BOARD OF NURSING is an agency of the State of Texas and is, therefore, required to comply with the Texas Public Information Act. Tex. Gov't Code Ch. 552. If a Proposal includes proprietary data, trade secrets, or information the Proposer wishes to except from public disclosure, then the Proposer 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 Proposer as proprietary will be used by the BOARD OF NURSING only for purposes related to or arising out of the (a) evaluation of Proposals, (b) selection of a Proposer pursuant to the RFP process, and (c) negotiation and execution of a Contract, if any, with the Proposer selected.

- 2.10 **Costs of Participation.** The BOARD OF NURSING specifically disclaims responsibility and/or liability for any and all costs, expenses, or claims related to or arising out of the Proposers participation in this RFP process, including but not limited to costs incurred as a result of preparing, copying, shipping, presenting, and/or clarifying the Proposal and the information relevant to the Proposal.
- 2.11 **Compliance with Applicable Laws, Regulations, Ordinances, and Policies, BOARD OF NURSING Policies and Procedures.** By submitting a Proposal, the Proposer 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 BOARD OF NURSING System. BOARD OF NURSING policies and procedures may be accessed at the following Internet address: <http://www.bon.texas.gov>

SECTION THREE **RFP PROCEDURES**

- 3.1 **Rescission of Proposal.** A Proposal can be withdrawn from consideration at any time prior to expiration of the Deadline for Proposals, as stated in Section 2.6 of this RFP, pursuant to a written request sent to the Board of Nursing.
- 3.2 **Request for Electronic Copy.** A Proposer may request an electronic copy of the RFP from the Board of Nursing. Electronic copies request will be guided through email addresses only to the link on the Electronic State Business daily (ESBD).
- 3.3 **Request for Clarification.** The BOARD OF NURSING reserves the right to request clarification of any information contained in a Proposal.
- 3.4 **Questions by Proposers.** The deadline for questions submitted by Proposers is 8/7/15. The BOARD OF NURSING will accept no questions after this date. **Questions must be submitted in writing; the question, written BOARD OF NURSING response, and addenda, if any, related to the RFP will be distributed to all Proposers via the link of the States ESBD (<http://esbd.epa.state.tx.us/>).** If the BOARD OF NURSING determines a question has been sufficiently answered in the RFP, the inquiring Proposer will be referred to the relevant section of the RFP. Questions may be emailed to: (patricia.vianes-cabrera@bon.texas.gov).
- 3.5 **Addenda to the RFP.** Each Proposer will be provided with the html link for the approved addenda, including amendments to the RFP via the ESBD. If and as necessary, as determined by the BOARD OF NURSING, Proposers will, in turn, be allowed time to revise or supply additional information in response to such addenda.
- 3.6 **Communications with BOARD OF NURSING Personnel.** Except as provided in this RFP and as is otherwise necessary for the conduct of ongoing BOARD OF NURSING business operations, Proposers are expressly and absolutely prohibited from engaging in communications with BOARD OF NURSING personnel who are involved in any manner in the review and/or evaluation of the Proposals; selection of an Proposer; and/or negotiations or formalization of a Contract. If any Proposer engages in conduct or communications that the BOARD OF NURSING determines are contrary to the prohibitions set forth in this Section 3.7, the BOARD OF NURSING may, at its sole discretion, disqualify the Proposer and withdraw the Proposer's Proposal from consideration.

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

Patricia Vianes-Cabrera
BOARD OF NURSING
333 Guadalupe Street, 3-460
Austin, TX 78701
Telephone: (512) 305-6888

- 3.7 **Office Visits.** The BOARD OF NURSING understands and supports office visits by prospective Proposers. Before arriving you are required to request visitation with the BOARD OF NURSING a minimum of 24 hours in advance. Every effort will be made to accommodate your request. Please exercise every professional courtesy to our staff and employees.
- 3.8 **Evaluation of Proposals.** The Selection Committee will review Proposals in accordance with the procedure and criteria set forth in this RFP. Proposals that are (i) incomplete, (ii) not properly certified and signed, (iii) not in the required format, or (iv) otherwise non-compliant, in whole or in part, with any of the requirements set forth in this RFP may be disqualified by the BOARD OF NURSING.
- 3.9 **Proposer Presentations.** Proposers may be invited to present their program/service to the Selection Committee. The Selection Committee will establish the format, time, date and location for presentations.

SECTION FOUR
PROPOSAL CONTENTS

- 4.1 **Provision of Information.** Each Proposer must provide current, accurate, complete information about all of the following in support of its Proposal (please coordinate numbers with responses):
- A. Business and or Personal, Financial Information.**
1. Name, address, telephone number, and title of the person(s) whom the BOARD OF NURSING can contact about the Proposal
 2. Currently licensed as Registered Nurse in Texas
 3. Possesses a Doctoral Degree in Nursing or related field
 4. Experienced with Nursing Regulation, Project Management and Research
 5. FEIN tax identification number
 6. Name(s) of owner(s) or partners or directors, if applicable
 7. Name, title, and summary experience of Proposer who will serve as primary contact
 8. Length of time and years during which the Proposer has provided the Services contemplated by this RFP
 9. Total number of staff employed by the Proposer, if applicable
 10. List of three (3) references, preferably local, for whom the Proposer has currently provided Services
 11. The Proposers plan for utilizing goods or Services provided by subcontractors certified by the Texas Procurement and Support Services as Historically-Underutilized Businesses.
- B. Services, Plans, Reports, Billing.**
1. Description of Services the Proposer is able to provide
 2. Sample or prototypical reports that would be furnished to the BOARD OF NURSING
 3. Example of a Nursing regulation or research project in which the Proposer handled private or confidential information
 4. Example of a Nursing regulation or research project in which the Proposer was responsible for
 5. Historically Underutilized Business (HUB) status, if any, of the Proposer
 6. Methods, procedures, and processes to ensure quality control of confidential information.
- 4.2 **Proposer Response to BOARD OF NURSING Expectations.** In this section, the Proposer that is selected will be expected to assume responsibilities specified by the BOARD OF NURSING, and must list each and every items noted below, followed by a detailed narrative response.
1. Management of specific time limited projects
 2. Reviewing and analyzing data reports
 3. Development of Educational materials and media

- 4. Designing pilot projects and other research projects
- 5. Preparing professional reports
- 6. Evaluating project based research findings and making policy recommendations

4.3 **Rates for Services.** Each Proposer must provide specific information about fees for all of the Services, as specified in Section 4.2.

4.4 **Proposer Affirmation Clauses:** Each Proposer must affirm and incorporate in its Proposal all of the Affirmations set forth in this Section 4.4. If the BOARD OF NURSING determines a Proposer has submitted a false Statement, in whole or in part, in regard to any of these affirmations, then the BOARD OF NURSING will disqualify the Proposer from consideration and report the false statement as such to the Texas Procurement and Support Services. In turn, the TPSS can remove the Proposer from the Centralized Master Bidders List (CMBL) if applicable. Accordingly, the Proposer affirms all of the following, without limitation

- A. The Proposer has not conferred or offered to confer, either directly or indirectly, any benefit whatsoever on a public servant in connection with the submitted Proposal or the subject matter of the Proposal;
- B. Bidder/proposer affirms that no affiliation exist between officers, administrators and employees of the bidder/proposer and The BOARD OF NURSING which could be construed as a conflict of interest.
- C. The Proposer either is not subject to the payment of franchise taxes to the State of Texas or is not currently delinquent in regard to the payment of franchise tax owed to the State of Texas;
- D. The Proposer, individually or acting by and through its officers, principals, employees, contractors, subcontractors, agents, or personnel, has neither (i) violated state or federal antitrust laws nor (ii) communicated any of the contents of the Proposal to its competitors or any other person or entity engaged in such line of business;
- E. The Proposer did not participate in or receive compensation for preparation of the RFP;
- F. As required by section 231.006 of the Texas Family Code (relating to payment of child support), the Proposer certifies that the individual or business entity named in this Proposal is not ineligible to receive payments from the ensuing contract, if any, and acknowledges that the ensuing contract can be terminated and/or payment can be withheld if this Child Support certification is inaccurate;
- G. The Proposal must include the name and Social Security Number of each person maintaining an ownership interest of 25 percent or more of the business entity submitting the Proposal. Proposers that have pre-registered this information on the Texas Procurement and Support Services Master Bidders' List CMBL will be deemed to have satisfied this requirement;

Name	SSN
_____	_____
_____	_____
_____	_____
_____	_____

- H. Pursuant to section 2155.004 of the Texas Government Code (relating to the collection of state and local sales and use taxes), the Proposer certifies that the individual or business entity named in the Proposal is not ineligible to enter into a resulting contract, if any. If this certification is inaccurate, then the resulting contract can be terminated and/or payment can be withheld;

- I. Proposer understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Proposer further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Bidder/Proposer will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Bidder/Proposer and the requirement to cooperate is included in any subcontract awards;
- J. The Proposer shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of the Proposer or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of the resulting contract;
- K. By signing the Proposal, the Proposer certifies that if a Texas address is shown as the address of the proposer, the proposer qualifies as a Texas Resident Bidder, as defined in TPSS Rule 1 Texas Administrative Code, section 111.2.;
- L. The Proposer acknowledges and agrees that the dispute resolution process provided in chapter 2260 of the Texas Government Code must be utilized by the BOARD OF NURSING and the Proposer to attempt to resolve all disputes arising under the Contract;
- (a) A Contractor's claim for breach of this contract that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Government Code, Chapter 2260, Subchapter B. To initiate the process, the Contractor shall submit written notice, as required by Subchapter B, to the BOARD OF NURSING. Said notice specifically states that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the BOARD OF NURSING and the Contractors that are otherwise entitled to notice under this Agreement. Compliance by the Contractor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code, Chapter 2260, Subchapter C.
- (b) The contested case process provided in Government Code Chapter 2260, Subchapter C, shall be the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by the BOARD OF NURSING if the Parties are unable to resolve their disputes in the ordinary course of business or under Chapter 2260, Subchapter B, UNLESS, after considering the recommendation of the Administrative Law Judge, the Legislature grants the Contractor consent to sue under Chapter 107 of the civil Practices and Remedies Code.
- (c) NEITHER THE EXECUTION OF THIS CONTRACT BY THE BOARD OF NURSING NOR ANY OTHER CONDUCT OF ANY REPRESENTATIVE OF THE BOARD OF NURSING RELATING TO THE CONTRACT SHALL BE CONSIDERED A WAIVER OF THE BOARD OF NURSING'S SOVEREIGN IMMUNITY TO SUIT.
- (d) The dispute resolution process provided for in Government Code Chapter 2260 will not, any time, affect the BOARD OF NURSING's right of ability to bring suit against the Contractor for disputes arising under this Agreement, nor will it affect the BOARD OF NURSING's ability to assert all claims and defenses in a lawsuit.
- (e) Pursuant to Chapter 2260, the submission, processing and resolution of the Contractor's claim is governed by the published rules adopted by the Texas Attorney General's Office, as currently effective, hereafter enacted or subsequently amended.
- (f) An event or claim for breach of contract is not grounds for the Contractor to suspend performance under this agreement.

SUBMITTED:

Firm/Individual: _____

(SEAL: If Proposal is by a Corporation)

By: _____

Title: _____

SECTION FIVE
EVALUATION, SELECTION, AWARD

- 5.1 **Discussions with Proposers.** The BOARD OF NURSING may conduct discussions and/or negotiations with any Proposer that appears to be eligible for award ("Eligible Proposer") pursuant to the selection criteria set forth in this RFP. In conducting discussions and/or negotiations, the BOARD OF NURSING will not disclose information derived from Proposals submitted by competing Proposers, except as and if law requires disclosure.
- 5.2 **Modification of Proposals.** All Eligible Proposers will be afforded the opportunity to submit best and final Proposals if (a) negotiations with any other Proposer result in a material alteration to the RFP and (b) such material alteration has a cost consequence that could alter the Proposers quotations regarding rates for Services.
- 5.3 **Selection of Proposer.** The Proposer selected for award will be the Proposer who's Proposal, as presented in response to this RFP and as determined by the BOARD OF NURSING in accordance with the evaluation criteria set forth in Section 5.5, to be the most advantageous to the BOARD OF NURSING. Proposers acknowledge that the BOARD OF NURSING is not bound to accept the lowest-priced Proposal.
- 5.4 **Evaluation of Proposals.** BOARD OF NURSING personnel, including personnel who serve on the Selection Committee, will evaluate proposals. Submission of a Proposal indicates the Proposers acceptance of the evaluation process set forth in this RFP and the Proposers acknowledgement that subjective judgments must be made by the BOARD OF NURSING in regard to the evaluation process.
- 5.5 **Criteria for Evaluation.** Evaluation of Proposals and award to the Selected Proposer will be based on the following factors listed below:
- | | |
|-----|--|
| 40% | Demonstrated ability to fulfill current and predicted BOARD OF NURSING needs |
| 20% | Stability and success of the Proposer's profile |
| 20% | Quality Control measures to be implemented and maintained by the Proposer |
| 10% | Rates for Services quoted |
| 5% | HUB Participation and Plan (If Applicable) |
| 5% | Warranties and/or guarantees regarding Services |
- 5.6 **Consideration of Additional Information.** The BOARD OF NURSING reserves the right to ask for and consider any additional information deemed beneficial to the BOARD OF NURSING in evaluation of the Proposals.

SECTION SIX
INSURANCE

- 6.1 **Required Coverage.** For the duration of the agreement, for all renewal terms, and for purposes of indemnification obligations that are specified to survive termination or expiration of the agreement, Proposer shall obtain, at its sole expense and at no cost to the BOARD OF NURSING, the following coverage and shall maintain such coverage in full force and effect:
- A. **Workers' Compensation.** Workers' Compensation covering all individuals who provide Services pursuant to the agreement at the request of the Proposer, 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;
- C. **Automobile Liability.** Comprehensive Automobile Liability Insurance must be maintained while performing the duties prescribed per this RFP 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.

- 6.2 **Effect of Indemnification Obligations.** No provision, term, or condition in the Contract regarding indemnification obligations shall be construed to limit the application of insurance procured by the Proposer in accordance with requirements set forth in the Contract.
- 6.3 **Additional Named Insured, Subrogation.** With the exception of the Workers' Compensation policy, the BOARD OF NURSING shall be an additional-named insured on all policies, and subrogation against the BOARD OF NURSING must be waived.
- 6.4 **Certificates of Coverage.** At least thirty (30) days prior to the Effective Date of the Contract and at least thirty (30) days prior to the commencement of any renewal Term of the Contract, the Proposer shall furnish the BOARD OF NURSING with certificates of insurance in a form acceptable to the BOARD OF NURSING certifying that the Proposer carries the required insurance policies and coverage. The certificates shall be sent to the BOARD OF NURSING, at the address listed previously in the RFP.
- 6.5 **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 BOARD OF NURSING. In the event the Proposer receives notice of modification or cancellation of any of the policies required under the Contract; then, prior to the effective date of modification or cancellation of the policy, the Proposer shall obtain a policy of insurance affording the required coverage from an insurance carrier acceptable to the BOARD OF NURSING. If the Proposer fails to obtain such an insurance policy, the BOARD OF NURSING may immediately terminate the Contract without further notice to the Proposer.

SECTION SEVEN

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

1. BIDDING REQUIREMENTS:

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

1.13. Inquiries pertaining to this RFP must include the requisition number, class/item codes, and opening date.

2. SPECIFICATION:

2.01. Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality will be considered unless advertised under §2155.067, Texas Government Code (Gov't Code). If bidding on other than references, bid should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require bidder to furnish specified brand names, numbers, etc.

2.02. Unless otherwise specified, items shall be new and unused and of current production.

2.03. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.

2.04. Samples, when requested, must be furnished free of expense to the BON. If not destroyed in examination, they will be returned to the bidder, on request, at bidder's expense. Each sample should be marked with bidder's name and address, and requisition number. Do not enclose in or attach bid to sample.

2.05. The BON will not be bound by any oral statement or representation contrary to the written specifications of this Request for Proposal (RFP).

2.06. Manufacturer's standard warranty shall apply unless otherwise stated in the RFP.

3. TIE BIDS:

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

4. DELIVERY:

4.01. Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates bidder to deliver in 14 calendar days. Unrealistic delivery promises may cause bid to be disregarded.

4.02. If delay is foreseen, bidder shall give written notice to the BON. Bidder must keep the BON advised at all times of status of order.

4.03. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the BON to purchase the goods or services of this RFP elsewhere and charge any increased costs for the goods or services, including the cost of rebidding, to the bidder.

4.04. No substitutions permitted without written approval of BON.

4.05. Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency.

5. INSPECTION AND TESTS:

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

6. AWARD OF CONTRACT:

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

7. PAYMENT:

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

8. PATENTS, TRADEMARKS, OR COPYRIGHTS:

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

9. BIDDER ASSIGNMENTS:

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

10. BIDDER AFFIRMATIONS:

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

- 10.01. The bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid.
- 10.02. Pursuant to 15 U.S.C. §1, *et seq.* and Tex. Bus. & Comm. Code §15.01, *et seq.* neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- 10.03. Pursuant to §2155.004, Gov't Code, neither the bidder nor any person or entity which will participate financially in any contract resulting from this RFP has received compensation for participation in the preparation of the specifications for this RFP.
- 10.04. Pursuant to §2 31.006(d), Texas Family Code, regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to §231.006, Gov't Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

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

- 10.05. Under §2155.004, Gov't Code, the bidder certifies that the individual or business entity named in this bid or any contract resulting from this RFP is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.
- 10.06. As required by §2252.903, Gov't Code, bidder agrees that any payments due under a contract resulting from this RFP shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. Bidder shall comply with rules adopted by BON under §§403.055, 403.0551, 2252.903, Gov't Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- 10.07. Pursuant to §669.003, Gov't Code, BON may not enter into a contract with a person who employs a current or former executive head of the BON until four years has passed since that person was the executive head of the BON. By submitting a bid, the bidder certifies that it does not employ any person who was the executive head of the BON in the past four years. If bidder does employ a person who was the executive head of the BON, provide the following information:

Name of Former Executive:
 Name of State Agency:
 Date of Separation from State Agency
 Position with Bidder:
 Date of Employment with Bidder:

- 10.08. In accordance with §2155.4441, Gov't Code, bidder agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- 10.09. Bidder certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that bidder is in compliance with the State of Texas statutes and rules relating to procurement and that bidder is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at [://www.sam.gov/portal/SAM/](http://www.sam.gov/portal/SAM/)

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

11. Bidder represents and warrants that payment to the bidder and the bidder's receipt of appropriated or other funds under any contract resulting from this RFP are not prohibited by §556.005 or §556.008, Gov't Code, relating to the prohibition of using state funds for lobbying activities.

11.01. Bidder represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to BON under the RFP and any resulting contract, if any, and that bidder's provision of the requested items under the RFP and any resulting contract, if any, would not reasonably create an appearance of impropriety.

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

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

Having purchase orders that have been cancelled in the previous 12 non-performance (i.e. late delivery, etc.). Contractor performance information is located on the CPA web site at:

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

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

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

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

Workers Compensation: Statutory Limits

Employers Liability: Each Accident \$1,000,000

Disease- Each Employee \$1,000,000

Disease-Policy Limit \$1,000,000

Commercial General Liability:

Occurrence based:

Bodily Injury and Property Damage

Each occurrence limit: \$1,000,000

Aggregate limit: \$2,000,000

Medical Expense each person: \$5,000

Personal Injury and Advertising Liability: \$1,000,000

Products /Completed Operations Aggregate Limit: \$2,000,000

Damage to Premises Rented to You: \$50,000

12. NOTE TO BIDDER:

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

13. PROTEST PROCEDURES:

Any actual or prospective bidder who is aggrieved in connection with this RFP, evaluation, or award of any contract

resulting from this RFP may formally protest as provided in CPA's rules at 34 TAC Rule 20.384.

14. DISPUTE RESOLUTION:

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

15. **NON-APPROPRIATION OF FUNDS:**

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

16. **TEXAS PUBLIC INFORMATION ACT:**

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

17. **CONFLICT OF INTEREST:**

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

18. **FORCE MAJEURE:**

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

19. **INDEPENDENT CONTRACTOR:**

Bidder is and shall remain an independent contractor in relationship to the BON. The BON shall not be responsible for withholding taxes from payments made under any contract resulting from this RFP. Bidder shall have no claim against the BON for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

20. **INDEMNIFICATION:**

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

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

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

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

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

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

22. RIGHT TO AUDIT:

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

C. **Fiscal Year.** A fiscal year begins on September 1 and ends on August 31.

Attachment A

**HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PARTICIPATION
(If applicable)**



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 all of the subcontracting work you have to offer under the contract to only 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 have a continuous contract in place for five (5) years or less meets or exceeds 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 have a continuous contract in place for five (5) years or less does not meet or exceed 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 indicated 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, 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

***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.



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) §20.13 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 §20.14(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 contracts that have been in place for five years or less 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 INFORM

- 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: SUBCONTRACTING INTENTIONS RESPONDENT

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 goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "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. (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 have a <u>continuous contract*</u> in place for <u>five (5) years or less</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	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 <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>).

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 have a continuous contract* in place with for five (5) years or less 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: SUBCONTRACTING INTENTIONS RESPONDENT (CONTINUATION SHEET)

a. 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 have a <u>continuous contract*</u> in place for <u>five (5) years or less.</u>	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years.</u>	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)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- Yes (If Yes, in the space provided below list the specific page(s)/section(s) of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No (If No, in the space provided below explain how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

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 <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.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 <small>(mm/dd/yyyy)</small>
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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 B (Attachment B)

Rev. 10/14

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

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 your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://mycpa.cpa.state.tx.us/passcmlsearch/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 Vendor ID (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	VID Number	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?	
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>

- 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 <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.
- 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?	
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>

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

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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 VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas certified HUB	VID Number (Required if Texas certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - 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.



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, §20.14 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, §20.11(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 Select on
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.14, 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, §20.11(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