

**PUBLIC UTILITY COMMISSION OF TEXAS  
REQUEST FOR PROPOSALS  
TO PROVIDE MANAGEMENT AUDIT**



**Public Utility Commission of Texas  
William B. Travis Building  
1701 North Congress Avenue  
Austin, Texas 78711**

**Closing Time and Date: December 18, 2024  
10:00 a.m., Central Time**

**RFP Number: 473-25-00003  
Project Number: 57314**

**NIGP Class Item:  
906-27, 918-00, 918-04, 946-31, 958-00, 958-95**

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## **SECTION 1 – INTRODUCTION**

The Public Utility Commission of Texas (PUCT) issues this Request for Proposals (RFP) to engage a Contractor to perform a management audit of CenterPoint Energy Houston Electric, LLC's (CenterPoint) procurement activities, emergency planning, customer need analysis, and policies, procedures, and management activities associated with the lease and operation of mobile generation facilities. The Contractor must prepare a report of its findings, along with recommendations for management action and process changes, as further specified in Section 3, Statement of Work.

## **SECTION 2 – DEFINITIONS**

As used in this RFP, the following terms have the meanings specified:

- 1) **“Business day”** means a day other than: (i) a Saturday or Sunday; (ii) a national holiday under Texas Government Code § 662.003(a); or (iii) a state holiday under Texas Government Code § 662.003(b).
- 2) **“Commission”** means the governing body of the PUCT.
- 3) **“Contractor”** means the person or entity that contracts with the PUCT for the services contemplated by this RFP.
- 4) **“May”** means is authorized to.
- 5) **“Parties”** means the PUCT and Contractor.
- 6) **“Party”** means the PUCT or Contractor.
- 7) **“Proposer”** means a person, organization, business entity, or other entity that submitted a proposal.
- 8) **“PUCT”** means the Public Utility Commission of Texas, an agency of the state of Texas.
- 9) **“Services”** means any and all services performed and any and all goods and products delivered by Contractor as specified in the Statement of Work (“SOW”).
- 10) **“Statement of Work”** or **“SOW”** means the description of goods and services to be provided as specified in Section 3 of this RFP.
- 11) **“Vendor”** means a person, organization, business entity, or other entity that has been selected for or entered into a contract with a Texas state agency.
- 12) **“Vendor Performance Tracking System”** means the system the Texas Comptroller of Public Accounts is required to provide under Section 2262.055 of the Texas Government Code for evaluating vendor performance. The Vendor Performance Tracking System is located at: <http://txsmartbuy.com/vpts>.

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### **SECTION 3 – STATEMENT OF WORK**

Background. Texas Utilities Code § 14.202 authorizes the PUCT to audit the management of each public utility under the PUCT’s jurisdiction. CenterPoint Energy Houston Electric, LLC (CenterPoint) is a PUCT-regulated transmission and distribution utility operating in Texas.

In July of 2024, CenterPoint was unable to deliver electric service to a substantial number of customers after Hurricane Beryl damaged portions of CenterPoint’s electric delivery system. Since the enactment of Texas Utilities Code § 39.918, CenterPoint has entered into multiple leases to operate temporary emergency electric energy facilities (commonly referred to as mobile generation facilities) designed to restore power to distribution-level customers during significant power outages. In spite of these lease arrangements, CenterPoint was unable to utilize a considerable portion of its leased mobile generation fleet to provide energy to customers during power outages resulting from Hurricane Beryl.

Overview. The Contractor must perform an audit of CenterPoint’s policies, procedures, and management activities associated with the lease and operation of mobile generation facilities. This audit should incorporate a review of CenterPoint’s procurement activities, emergency planning, and customer need analysis. Upon completion of the audit review, the Contractor must prepare a report of findings, along with recommendations for management action and process changes. Without limitation, the tasks, duties, and responsibilities of the Contractor will include the following:

#### 1. Contractor Qualifications

1.1. Minimum Contractor Knowledge and Experience. Proposers must demonstrate knowledge and experience in performing management audits for public companies. Proposers should demonstrate expertise in compliance, risk management, policy and procedure development, and efficient use of company resources. Proposer personnel leads overseeing the work described in this Statement of Work must have at least ten years of experience in conducting management audits.

1.2. Preferred Contractor Expertise. The PUCT will give preference to Proposers who demonstrate knowledge and familiarity with laws governing rate-regulated electric utilities in Texas. Proposers should identify relevant expertise related to utility operations, PUCT rules, obligations of regulated utilities, and prudent utility management.

#### 2. Audit Scope

2.1. Policy and Procedure Review. The Contractor must review CenterPoint policies and procedures relating to transactions with third parties for goods and services, including applicable conflict of interest policies. This work should include an analysis of CenterPoint procurement practices generally, as well as an analysis of the implementation of those practices with respect to instances of mobile generation leasing.

2.2. Emergency Operations and Customer Needs. The Contractor must review CenterPoint’s analysis of, and planning for, customer need for mobile generation during emergency

conditions. This should include an appraisal of mobile generation facility characteristics [e.g., size, mobility, operability (including, without limitation, staffing and maintenance)] given distribution-level customer needs within CenterPoint's service area. The Contractor must also evaluate CenterPoint's planning for mobile generation facility operability in various weather scenarios where mobile generation is likely to be deployed.

### 3. Final Report to PUCT

3.1. Audit Report. The Contractor must prepare and deliver a final report of its findings, analysis, and recommendations from the audit no later than April 11, 2025. The final report must include recommendations for management action and process changes to ensure the transparent, efficient, and reliable operation of CenterPoint. The Contractor must deliver a summary report showing abbreviated contents and recommendations of the final report no later than March 21, 2025.

3.1.1. Oral Presentation at PUCT Open Meeting. The Contractor must be prepared to give an in-person, oral presentation of its final report at a PUCT open meeting to be held in April, May, or June of 2025. The date for the oral report will be determined by the PUCT.

### 4. Communications with the PUCT

Reporting and Routine Advising to PUCT. Upon request, the Contractor must provide status reports to the PUCT that give relevant updates related to its audit review. The Contractor must advise the PUCT of any impediment to the performance of duties in this Statement of Work at the time each impediment arises. The Contractor must advise the PUCT's executive management team as necessary to accomplish the items in this Statement of Work.

### 5. Liquidated Damages.

Contractor's failure to meet the deadlines set forth in Section 3, Statement of Work would result in damages to the PUCT that, by their nature are difficult to ascertain. Therefore, liquidated damages may be assessed, in the PUCT's sole discretion, at the following rates. The liquidated damages are not intended to be a penalty and are solely intended by the Parties as compensation for damages.

If the Contractor fails to provide the summary report to the PUCT administrator by March 21, 2025, the Contractor will owe \$10,000 per week to the PUCT for each week past the deadline. If the Contractor fails to provide the final report to the PUCT administrator by April 11, 2025, the Contractor will owe \$20,000 per week to the PUCT for each week past the deadline.

## **SECTION 4 – ELIGIBILITY AND EVALUATION CRITERIA**

### **4.A. EEO and HUB Statement**

The PUCT is an equal employment opportunity employer and does not discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, veteran status, age, or disability in

employment or in the provision of services. This commitment extends to proposers, vendors, and their employees as well.

The PUCT encourages Historically Underutilized Businesses (HUBs) to compete for this award.

#### **4.B. Minimum Eligibility Requirements**

**4.B.1.** To pass the initial screening criteria, Proposals must demonstrate that the Proposer has a minimum of ten (10) years of experience substantially similar to that described in Section 3, Statement of Work.

An entity or company with fewer than ten (10) years of experience as an entity is eligible to submit a proposal if each key member of the proposal team, including subcontractors, has ten (10) years of required experience.

Additionally, proposals must:

- meet all deadlines set out in this RFP;
- follow the appropriate process for submitting proposals (see Section 6 of this RFP, Required Components and Format);
- include all required components described in this RFP (see Section 6); and
- meet all format requirements set out in this RFP (see Section 6).

**4.B.2.** Under Texas law, vendors may be barred from participating in state contracts that are subject to Texas Government Code Chapter 2155, Subchapter B (General Purchasing Requirements, Procedures, and Programs). TEX. GOV'T. CODE § 2155.077. If a Proposer is barred from participating in state contracts, its proposal will be disqualified and will receive no further consideration.

**4.B.3.** The PUCT is required to purchase goods and services that provide the best value to the state. TEX. GOV'T. CODE § 2155.074. To that end, the PUCT will review information in the statewide Vendor Performance Tracking System regarding Proposers' past performance. Any of the following conditions may result in a Proposer being disqualified from consideration for this RFP:

- having a score of less than a C in the Vendor Performance Tracking System;
- currently being under a corrective action plan through the Texas Comptroller of Public Accounts;
- having repeated negative Vendor Performance Reports for the same or similar reason; or
- having purchase orders that have been cancelled in the previous 12 months for non-performance (for example, late delivery or failing to meet quality standards).

#### **4.C. Evaluation Criteria**

The PUCT will make the selection and award on the basis of the Proposer's demonstrated knowledge, competence, and qualifications to provide the services described in Section 3, Statement of Work. A description of the categories under which each proposal will be judged, and the percentage of weight given to each category are as follows:

- **Proposal Substance – 40%**

- Proposal demonstrates a clear understanding of the objectives, as described in Section 3, Statement of Work.
- Proposed approach is both thorough and practical.
- Proposed approach for meeting objectives is desirable.
- Conditions included in the proposal are acceptable.
- Consideration will be given to executable designs, supported by industry experience.
- **Competence and Knowledge – 40%**
  - Competence and experience are demonstrated by the qualifications described in the proposal.
  - Management structure is well-suited to the objectives described in Section 3, Statement of Work.
  - Assigned staffing for prime and subcontractors is desirable to meet the objectives described in Section 3, Statement of Work.
  - The Proposer has the capacity and financial resources to perform the contract and meet deadlines without delay or interference.
  - The proposal demonstrates the team’s qualifications and experience, drawing on lessons learned and best practices.
  - Assigned staffing for prime and subcontractors is desirable to meet the objectives described in Section 3, Statement of Work.
  - Proposer’s prior experience in providing similar audit services to clients, including reference checks as applicable, indicates competence and ability to deliver work as requested, within budget, and without adverse effects to client/client’s reputation.
- **Proposed Compensation – 20%**

#### **4.D. Texas Vendor Preference**

All other factors being equal, preference will be given to a Proposer who meets one or more of the following criteria:

- Proposer is incorporated in Texas;
- Proposer’s principal place of business is in Texas; or
- Proposer has an established physical presence in Texas.

Proposers who may qualify for the Texas Vendor Preference should provide information establishing the applicable criteria as part of the proposal package.

#### **4.E. References**

The PUCT may check references as part of the evaluation process. This is a pass/fail criteria and may be conducted at any time between receipt of a proposal and acceptance or rejection of a proposal. Information gained through reference checks can be used as grounds for disqualification of a proposal if the information casts doubt upon the ability of the Proposer to successfully meet the objectives of the RFP. However, any information obtained through a reference check that is discriminatory on the basis of race, color, religion, sex, national origin, sexual orientation, veteran status, age, or disability will not be considered.

## **SECTION 5 – SCHEDULE AND PROCESS**

### **5.A. Anticipated Schedule**

**Disclaimer:** Dates are subject to change at the PUCT’s discretion. Changes to Proposer deadlines will be posted on the Electronic State Business Daily (ESBD) website and the PUCT’s Procurement webpage, along with any other RFP modifications and addenda. It is the Proposer’s responsibility to periodically check the websites prior to submitting a proposal. A Proposer’s failure to review additional information posted on the ESBD and PUCT websites will not release the Proposer from requirements described in those postings and could result in disqualification of a proposal or additional costs to meet the requirements of the contract should the Proposer be selected for the contract.

PUCT Procurement Webpage: <http://www.puc.texas.gov/agency/about/procurement/Default.aspx>  
ESBD Website: <https://www.txsmartbuy.com/esbd>

#### **Event**

RFP Release  
Last day to submit written questions regarding the RFP  
Deadline for submission of proposals  
Post-proposal interviews or presentations, if required  
Staff recommendation for selection  
Selection approved  
Contract negotiations  
Contract period begins

#### **Anticipated Date**

November 26, 2024  
November 29, 2024, 12:00 pm CT  
December 18, 2024, 10:00 am CT  
December 23 or 27, 2024  
December 31, 2024  
December 31, 2024  
January 2025  
Upon contract execution

### **5.B. PUCT Contact Person**

Jay Stone, CTCD, CTCM, is the only permitted PUCT point of contact regarding this RFP. Contact or attempted contact with other PUCT employees, including commissioners and their staffs, may result in a Proposer’s immediate disqualification. Proposers will be notified if circumstances require a designated substitute contact for this RFP.

### **5.C. Process for Asking Questions**

The PUCT will only accept written questions and requests for clarification. Requests must be sent by email to [RFPCorrespondence@puc.texas.gov](mailto:RFPCorrespondence@puc.texas.gov), attention: Jay Stone, CTCD, CTCM. Inquiries and comments must reference RFP No. 473-25-00003.

The PUCT aims to answer all questions within two business days after receipt. Answers to all questions will be provided through an addendum posted on the ESBD and agency procurement websites.

### **5.D. Process for Submitting Proposals**

**5.D.1.** Proposers must submit their proposals by email to [RFPCorrespondence@puc.texas.gov](mailto:RFPCorrespondence@puc.texas.gov) before the stated closing date and time. Proposals will not be considered if received in the [RFPCorrespondence@puc.texas.gov](mailto:RFPCorrespondence@puc.texas.gov) email inbox after 10:00 am, Central Time, on December 18, 2024. All required information must be provided at that time. Supplements will only be allowed if information is requested by the PUCT after the closing date of the RFP.



Jay Stone, CTCD, CTCM, or his designated substitute will file the sealed proposals confidentially in Project Number 57314 with the PUCT's Central Records Division.

**5.D.2.** Confidential filing is required because this RFP is conducted using a sealed bid process. Confidential filing does not guarantee confidentiality after the RFP has ended and a contract has been executed. Any portion of the proposal considered to be confidential after the RFP has been cancelled or a contract has been awarded (for example, trade secrets) must be marked with the word, "**CONFIDENTIAL**" in all-caps and bold on each page considered to contain confidential information.

**5.D.3.** Proposers are advised to seek legal counsel regarding the best way to protect any trade secrets or other proprietary information.

**5.D.4.** For more information about how the PUCT will respond to PIA requests relating to this RFP, please see Section 7.C. of this RFP, Public Information Act.

### **5.E. PUCT's Standard Process for Selecting Vendors**

**5.E.1.** The PUCT will assemble an evaluation team that will begin proposal evaluation as soon as practicable after the submission deadline. Evaluation team members will score each proposal individually based on the factors of Proposal Substance and Competence and Knowledge, described under Section 4.C. of this RFP, Evaluation Criteria. Maximum point values will be assigned to each scoring factor according to the percentage of weight given to that factor, and evaluators will assign a point value up to the maximum allowed for each factor. The purchaser will calculate scoring for compensation.

The compensation score will be calculated using the following formula:

Compensation Score = (Lowest Price / Price of Response Being Evaluated) multiplied by the Maximum Number of Available Points for Compensation. Evaluation team members will not have access to compensation information while they are reviewing and scoring the proposals.

**5.E.2.** After individual scoring, the evaluation team will email their scoring sheets to the purchaser. The purchaser will review the individual scoring sheets and compile a summary scoring sheet combining all evaluation team scoring and including the compensation scoring to calculate overall scores.

**5.E.3.** After overall scores are calculated, the evaluation team, with guidance from the purchaser, will then take one of the following actions: recommend selection of a specific Proposer, gather more information before selecting a specific Proposer, or recommend that the RFP be withdrawn or reposted.

**5.E.4.** If the evaluation team needs more information to make a decision, the PUCT may request any of the following from one or more Proposers: additional information or clarification, an interview, an oral presentation, or a best and final offer. Additional information, clarification, interviews, oral presentations, or best and final offers will be used to re-score proposals, based on

the same criteria used to score the initial proposals, unless different criteria is specified by the purchaser when the additional information is requested.

**5.E.5.** The PUCT may require selected Proposers to participate in conference calls, attend meetings in Austin, Texas, give presentations, or participate in all these activities to provide additional information about their proposals. Any cost associated with any such call, meeting, or presentation will be borne solely by the Proposer.

**5.E.6.** If clarification, presentations, or best and final offers are requested, the evaluation team may request the clarification, presentations, or best and final offers from the top-ranked Proposer or Proposers only, or all of the Proposers, at the discretion of the evaluation team.

**5.E.7.** Final recommendations will be presented to the Executive Director of the PUCT. The Executive Director may do one of the following: approve the recommended selection in whole or in part, disapprove the recommendation, or defer action on the selection.

**5.E.8.** The PUCT will begin contract negotiations shortly after the Executive Director approves a recommendation to select a specific Proposer. The PUCT may negotiate any portion of any proposal, including: the proposed fee, a final schedule for performance to be incorporated into the contract, and any terms of the contract.

**5.E.9.** The PUCT will notify each Proposer of the final action taken upon execution of the contract with the selected Proposer.

**5.E.10.** No questions about the status of the proposals will be answered while proposals are under evaluation.

**5.E.11.** The PUCT may reject any and all proposals, amend this RFP, or cancel this RFP at any time. After the proposal due date, the PUCT will only notify Proposers who submitted a proposal prior to the proposal submission deadline of amendments to the RFP.

## **SECTION 6 – REQUIRED COMPONENTS AND FORMAT**

### **6.A. Components**

Proposals must include all required attachments and certifications. The PUCT will not accept attachments or certifications submitted after the proposal deadline. Proposals that do not include all required information will be considered non-responsive and will be disqualified.

Proposals must include the contents described in 6.A.1 through 6.A.10 with each section clearly defined on a table of contents page.

#### **6.A.1. Statement of the Requirements**

In this section, each Proposer must succinctly state its understanding of the RFP's requirements and describe how it would perform the tasks described in Section 3, Statement of Work.

#### **6.A.2. Competence and Knowledge**

Each Proposer must provide a detailed work plan to demonstrate how it intends to fulfill the requirements identified in Section 3, Statement of Work. The proposal must include an organizational chart identifying functions and reporting relationships of the personnel who will be assigned to this work. The Proposer should also describe any prior experience Proposer's organization has in providing similar services.

#### **6.A.3. Qualifications**

For each person a Proposer identifies to perform the work described in this RFP, the Proposer must provide a detailed resume that describes the services they would perform, their qualifications, and their experience.

#### **6.A.4. Compensation**

Each Proposer must propose pricing to provide the services identified in Section 3, Statement of Work. Compensation for the services identified in Section 3, Statement of Work must be proposed as a firm fixed price. Proposers may also include alternative pricing structures, such as hourly rates, for consideration, but the proposal must include detailed information that establishes the basis for each price proposed. If alternative pricing structures are included, the proposal must still include a firm fixed price and detailed information establishing its basis. Unless otherwise approved in writing by the PUCT, payments will be made based upon the invoicing and payment terms of the resulting contract. The PUCT will not reimburse any out-of-pocket expenses or expenses not contemplated at the time of contract execution. Proposer must demonstrate how elements of the price correspond to elements of the proposed work plan.

#### **6.A.5. References**

Each Proposer must provide at least three references. Proposers must include a phone number and email address for each reference. The PUCT prefers references from clients for whom the Proposer has performed similar work, including other state commissions or boards. Proposers must not use the PUCT or any individuals employed by the PUCT as a reference.

#### **6.A.6. Conflicts Statement**

Proposers must be neutral and impartial. No entity that has a direct interest in the PUCT's regulation, other than as a consumer of electric, telecommunication, water, or sewer service in the State of Texas, may submit a proposal. Proposers must not have a direct financial interest in the provision of electric, telephone, water, or sewer service in the state of Texas, nor in the lease, sale, installation, or operation of on-site electric generation or battery storage equipment.

Proposers having a conflict of interest, as determined by the PUCT, will not be eligible for contract award. Proposers may also be disqualified if there are facts that would create an appearance of impropriety, even if no actual conflict exists.

The PUCT will determine whether a conflict of interest or an appearance of impropriety exists from the perspective of a reasonable person uninvolved in the matters covered by the resulting contract. The PUCT is the sole arbiter of whether a conflict or an appearance of impropriety exists. The requirements for the conflicts statement are as follows:

- It must be **signed and notarized** by the highest-ranking officer of Proposer's entity having responsibility for vetting corporate conflicts of interest.
- It must identify any personal or business relationships of Proposers, including all employees and subcontractors of Proposers with any electric, telecommunications, water, or sewer utility, or any utility affiliate operating in Texas; any entity having a pending application at the PUCT to enter the Texas retail electric market, telecommunications market, water utility market, or sewer utility market; and any entity likely to have a direct interest in any of the loan or grant programs administered by the PUCT. It must identify the extent, nature, and time aspects of those relationships.
- If a Proposer does not have any known or potential conflict of interest or appearance of impropriety, the conflicts statement must include a statement that there is no known or potential conflict of interest or appearance of impropriety. Failure to provide either a statement describing potential conflicts of interest or appearances of impropriety or a statement that no potential conflict or appearance of impropriety exists will automatically disqualify the Proposer.
- The conflicts statement must address how the Proposer intends to address any known conflicts of interest or appearance of impropriety.
- The conflicts statement must address how the Proposer intends to ensure that no interest may arise as a result of its activities or those of its parent, affiliate, or other related entity that will conflict with the Proposer's duty should it be selected to provide the services described in Section 3, Statement of Work.
- The conflicts statement must identify a Proposer's lobbyists who are registered or required to register with the Texas Ethics Commission and their compensation. The conflicts statement must also describe any involvement the Proposer's lobbyists will have in connection with this engagement or electric utility, telecommunication utility, water utility, or sewer utility legislation or policy.
- The conflicts statement must identify any owner, executive, board member, employee, or subcontractor of Proposer who has been employed by the PUCT or another state agency in Texas fewer than four years ago. If any individual is identified under this provision, the conflicts statement must disclose: 1) the former PUCT or state agency employee's name and current position with Proposer; 2) the name of the state agency; 3) the nature of the previous employment with the state agency; and 4) the dates the employment ended with the state agency and began with Proposer. The PUCT is restricted in its ability to enter into contracts with individuals and entities that employ these individuals under some circumstances. *See* Texas Government Code § 669.003.
- The conflicts statement must certify either that the Proposer does not employ an individual who has been employed by the PUCT or another agency of the State of Texas at any time during the two years preceding the submission of the proposal or that it has disclosed in its proposal the following: (i) the nature of the previous employment with the PUCT or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination. The PUCT is restricted in its ability to enter into contracts with individuals and entities that employ certain individuals under some circumstances. *See* Texas Government Code §§ 2254.033 and 2252.901.
- If the circumstances described by a Proposer change or additional information is obtained subsequent to the submission of Proposals, the Proposer must supplement its conflicts

statement as soon as reasonably possible upon learning of any change to their statement. If a supplement to the conflicts statement is required after the deadline for submission of proposals, the supplement is exempt from the requirement that all proposal documents must be submitted before the deadline in order for the proposal to be considered.

- The PUCT encourages Proposers to provide complete disclosure of any matters that might be considered a conflict of interest or appearance of impropriety. The PUCT may consider completeness of disclosure in evaluating whether a conflict of interest or an appearance of impropriety exists.

#### **6.A.7. Historically Underutilized Business (HUB) Certification and HUB Subcontracting Plan (HSP)**

Any Proposer that is HUB certified by the Statewide Procurement Division (SPD) of the Comptroller of Public Accounts (CPA) or one of its predecessors must submit a copy of its HUB certificate.

Additionally, the PUCT has determined that subcontracting opportunities may be available under this contract. Therefore, all Proposers, including State of Texas certified HUBs, must complete and submit a State of Texas HSP with their proposal if the total dollar amount of the proposal response is \$100,000 or more.

Proposers can find HSP forms and instructions on the Texas CPA website at: <https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>

Responses that do not include a completed HSP will be rejected as required by Texas Government Code § 2161.252(b).

#### **6.A.8. Certifications**

Each proposal must contain a signed statement with the following certifications:

- The Proposer has made a good faith effort to ensure all statements and information Proposer submitted in response to this RFP are current, complete, and accurate. The Proposer represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a proposal with a false statement or making material misrepresentations during the performance of a contract is a material breach of contract and may void the submitted response and any resulting contract.
- The Proposer has not given nor 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 this proposal.
- The Proposer is not currently delinquent in the payment of any franchise tax owed to the State of Texas.
- The Proposer, the firm, corporation, partnership, institution, or other legal entity represented by the Proposer, and anyone acting for such a firm, corporation, partnership, institution, or other legal entity, have not, in connection with this RFP:
  - Violated the antitrust laws of this state or federal antitrust laws;

- Communicated directly or indirectly the bid made to any competitor or other person engaged in such line of business; or
- Otherwise violated 15 U.S.C. § 1, *et. seq.*, or Texas Business and Commerce Code § 15.01, *et.seq.*
- Under Texas Government Code § 2155.004, the Proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. [A Proposer is ineligible to receive a contract award if the Proposer is a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. *See* Texas Government Code § 2155.004(a)].
- The Proposer is in compliance with Texas Government Code § 669.003, relating to contracting with the current or former executive head of a state agency.
- Under Texas Government Code §§ 2155.006 and 2261.053, the Proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that any contract may be terminated and payment withheld if this certification is inaccurate. (A proposer is ineligible to receive a contract award if the Proposer has violated certain laws or been subject to certain penalties in connection with hurricane relief, recovery, or reconstruction efforts. *See* Texas Government Code §§ 2155.006 and 2261.053.)
- Under Texas Family Code § 231.006, the Proposer certifies that the individual or business entity named in this proposal is not ineligible to receive payment under the proposed contract and acknowledges that any contract resulting from this proposal may be terminated and payment may be withheld if this certification is inaccurate. (A child support obligor who is more than 30 days delinquent in paying child support, or a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent, is not eligible to receive payments from state funds under a contract to provide property, materials, or services. *See* Texas Family Code § 231.006(a).)
- If a Proposer includes a Texas address in its proposal, the Proposer must certify whether or not it qualifies as a Texas Bidder, as defined in Section 2155.444(c) of the Texas Government Code.
- Proposer represents and warrants that it is not aware of any court or government agency actions, proceedings or investigations pending or threatened against Proposer or any of the individuals or entities included in the response within the five calendar years immediately preceding the submission of the proposal that would or could impair Contractor's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to the PUCT's consideration of the proposal. If Proposer is unable to make the preceding representation and warranty, then Proposer instead represents and warrants that it has included as a detailed attachment in its proposal a complete disclosure of any such court or governmental agency actions, proceedings or investigations. In addition, Proposer represents and warrants that it will notify the PUCT in writing within five business days of any changes to the representations or warranties in this clause and understands that failure to timely update the PUCT may result in the Proposer's disqualification at the PUCT's sole discretion, or if during the performance of the contract, will constitute a breach of contract and may result in immediate termination of the contract for cause at the PUCT's sole discretion.

- Pursuant to Government Code § 2275.0102, Proposer certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (i) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code § 2275.0103; or (ii) headquartered in any of those countries.

#### **6.A.9. Evidence of Financial Capability**

Proposer must provide evidence of financial capability. The preferred evidence of financial capability is an audited financial statement if Proposer has a current audited financial statement available or if it is practicable to obtain one for the proposal. If no audited financial statement is available, Proposer must demonstrate its financial capability in whatever manner it deems appropriate. Evidence of financial capability will be considered in evaluating the competence of the Proposer.

#### **6.A.10. Other Required Items**

- Any Proposer incorporated in Texas must include a copy of its current franchise tax Certificate of Good Standing, issued by the Texas State Comptroller's Office, and the corporation's charter number, issued by the Texas Secretary of State's Office.
- Each Proposer must provide its 9-digit Federal Employer's Identification Number (EIN) or its 5-digit State of Texas Vendor's Identification Number (VIN).
- Each Proposer must provide the name and social security number of each of the following, as applicable: an individual or sole proprietor; or each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the proposal. Proposers may decline to provide social security numbers at the time of submission but will be required to provide the information before the contract is executed.

**FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of each applicable SSN is required under Texas Family Code §§ 231.006(c) and 231.302(c)(2). The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Texas Family Code § 231.302(e).**

#### **6.B. Format Requirements**

**6.B.1. Information Sheet** – The first page of the proposal submission must be an information sheet that clearly states: the name of the Proposer, the name, address, telephone number, and email address of the Proposer's point of contact; the project number; and the RFP title and number. The information sheet will be the only portion of the proposal that is not filed under seal. Information sheets must be filed publicly in Project No. 57314.

**6.B.2 Copies and Price Information** – Proposers must submit four versions of their proposals: one PDF and one Word version with the compensation component, and one PDF and one Word version without the compensation component. The PDF copy with the compensation component must be clearly marked "Original" and include all required signatures and notarized statements.

Price information must be excluded from one PDF and one Word version. This requirement is to allow the evaluation team to review proposals for the evaluation factors of Proposal Substance and

Competence and Knowledge only. Each proposal will separately be given a score for pricing and that score will be applied to the scoring matrix to ensure that price does not inadvertently influence the evaluation of the other factors.

The copies of the proposal must be identical to the original except for the omission or redaction of the price information and the Word rather than PDF file format.

**6.B.3.** Proposers are prohibited from using the Texas State Seal or the PUCT Seal in or on the proposal.

**6.B.4.** Proposals must not contain any extrinsic items, such as promotional items or other things not contemplated in this RFP.

**6.B.5.** Page Limit – Proposals must be limited to 50 pages, including all attachments and certifications, but excluding financial capability submittal, writing sample (if required), or resumes. The PUCT may reject any proposals longer than 50 pages without review. In any case, evaluation team members will not be provided any pages past the 50<sup>th</sup> page.

## **SECTION 7 – CONDITIONS**

### **7.A. Irrevocable Offer**

Proposals may be withdrawn in writing before the deadline for receipt of proposals. After the deadline, a proposal becomes an irrevocable offer to provide the services described in Section 3, Statement of Work, with the terms and conditions specified in Attachment A at the price proposed, for the shorter of: a period of 90 days from the RFP closing date or until a contract resulting from this RFP is signed. The PUCT will not return withdrawn proposals.

### **7.B. Proposals are the Property of the PUCT**

All proposals and copies of proposals, as well as any best and final offer, and any records provided to the PUCT by the Proposer associated with the evaluation of the proposal, will become the property of the PUCT after receipt and will be retained in accordance with the PUCT's records retention schedule.

### **7.C. Public Information Act Notice**

Following the award of a contract, all proposals are public information and subject to release. If the PUCT receives a request for any information submitted to the PUCT in connection with this RFP, the PUCT will follow the requirements of the Texas Public Information Act (Texas Government Code Chapter 552). This includes notifying Proposers and the Office of the Attorney General if information that the PUCT knows Proposer considers to be confidential is requested under the Texas Public Information Act. The PUCT assumes no obligation to assert legal arguments on behalf of a Proposer. The PUCT may release portions of proposals and other information provided by a Proposer without notifying the Proposer if the information is not conspicuously marked "confidential" on each page.

A copy of the contract resulting from this RFP will be posted on the PUCT's public website. Information in PUCT contracts is public information unless it is made confidential by law. *See* Texas Government Code § 552.022(a)(3).



#### **7.D. Publicity**

Proposers are prohibited from making any public disclosures or news releases pertaining to this RFP, any resulting contract, or any results or findings based on information provided or obtained to fulfill the requirements of this RFP or resulting contract. This prohibition may only be waived by prior written approval of the PUCT for the specific disclosure or news release.

#### **7.E. No Proposal Costs Reimbursed**

Neither the PUCT nor the State of Texas will reimburse any Proposer for any costs related to: preparing a response to this RFP, preparing a best and final offer, providing additional information requested as part of the evaluation of proposals, or making any presentation requested as part of the evaluation of proposals.

#### **7.F. Contract Terms and Conditions**

Any contract resulting from this RFP will use the standard general terms and conditions found in Attachment A to this RFP unless changes are negotiated in advance. Many of the terms and conditions are required by law, and the PUCT will not negotiate when a term or condition is required by law. **Proposers must include any requested changes to the terms and conditions in their proposals.**

#### **7.G. Vendor Performance Tracking System**

At the end of any contract resulting from this RFP, the PUCT will input required information into the Vendor Performance Tracking System regarding the contractor's performance and whether the contractor satisfied the best value standard for this contract. This information is public and other state agencies seeking goods or services are required, under most circumstances, to use the information in the Vendor Performance Tracking System to determine whether or not a particular vendor will meet the best value standard for the purchase of the goods or services.

Attachment A is incorporated into this RFP by reference for all purposes.

## **ATTACHMENT A – PUCT’s Standard General Terms and Conditions**

### **Article 1. DEFINITIONS**

When used in this contract, the following terms have the following meanings:

- 1) **“Business day”** means a day other than: (i) a Saturday or Sunday; (ii) a national holiday under Texas Government Code § 662.003(a); or (iii) a state holiday under Texas Government Code § 662.003(b).
- 2) **“Commission”** means the governing body of the PUCT.
- 3) **“Contractor”** means the person or entity that contracts with the PUCT for the services contemplated by this RFP.
- 4) **“May”** means is authorized to.
- 5) **“Parties”** means the PUCT and Contractor.
- 6) **“Party”** means the PUCT or Contractor.
- 7) **“Proposer”** means a person, organization, business entity, or other entity that submitted a proposal.
- 8) **“PUCT”** means the Public Utility Commission of Texas, an agency of the state of Texas.
- 9) **“Services”** means any and all services performed and any and all goods and products delivered by Contractor as specified in the Statement of Work (“SOW”).
- 10) **“Statement of Work”** or **“SOW”** means the description of goods and services to be provided as specified in Section 3 of this RFP.
- 11) **“Vendor”** means a person, organization, business entity, or other entity that has been selected for or entered into a contract with a Texas state agency.
- 12) **“Vendor Performance Tracking System”** means the system the Texas Comptroller of Public Accounts is required to provide under § 2262.055, Texas Government Code, for evaluating vendor performance. The Vendor Performance Tracking System is located at: <http://txsmartbuy.com/vpts>.

### **Article 2. COMPENSATION**

**2.1 Compensation.** Contractor agrees to provide all Services (including labor, expenses, and any other services) described in the Statement of Work, as follows: [PUCT will insert summary of payment terms in final contract]. Contractor understands that the PUCT is not responsible for payment of any costs or expenses exceeding this amount.

If Contractor believes that changes in the scope of Services to be performed will require Contractor to increase its fee, it must request the PUCT’s written authorization to increase its fee. Contractor must document the changes in the scope of Services and why they will require additional effort. The PUCT must approve the increase in fee by written amendment to this contract before Contractor performs any Services or may invoice the increased fee.

**2.2 Payment Process.** Contractor must submit an invoice to the PUCT contract administrator no later than the final day of the month after the month that all the Services have been performed and completed. The invoice must contain the name of the person performing Services and a brief description of work performed, including a description of any applicable deadlines for deliverables during the period invoiced the date those deliverables were provided to the PUCT. No payment will be made for administrative overhead, overtime, or other charges not directly attributable to the performance of this contract.

On the statement or invoice, Contractor must include a statement that the invoice accurately describes the Services performed and the Services were performed in compliance with the contract. The statement or invoice must include the vendor identification number issued by the Texas Comptroller or Contractor's federal taxpayer identification number, a description of the Services provided, and the name and division of the PUCT contract administrator.

Contractor must submit the invoice to the PUCT as follows:

By email to: Payables@puc.texas.gov

Or by mail to: Accounts Payable

Public Utility Commission of Texas

P.O. Box 13326

Austin, TX 78711-3326

The PUCT will review the invoice and any other relevant documentation to ensure the Services were performed in compliance with the contract. If Services were not performed in compliance with the contract, PUCT will notify contractor of any deductions from the payment approved. Upon approval of the invoice, the PUCT will instruct the Trust Company to pay the invoice.

**2.3 Release of Claims.** Contractor's acceptance of payment releases the PUCT of all claims for compensation owed in connection with this contract.

**2.4 Refund.** Contractor will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by the PUCT which are not expressly authorized under the contract.

**2.5 Payments Made to Subcontractors.** Contractor must pay any subcontractor hereunder the appropriate share of payments received not later than the 10th day after the date Contractor receives the payment. The subcontractor's payment is overdue on the 11th day after the date Contractor receives the payment. The PUCT must approve Contractor's use of any subcontractor before Contractor engages the subcontractor (see Section 5.1 of this contract).

**2.6 Records.** Contractor and its subcontractors, if any, must maintain records and books of account relating to Services provided under this contract. Contractor must, for a period of seven (7) years following the expiration or termination of this contract, maintain its records (electronic and paper) of the work performed under this contract. Records include, but are not limited to, correspondence concerning the subject of this contract between Contractor and the PUCT; Contractor's internal correspondence; and correspondence between Contractor and any third party. Contractor must make all records that support the performance of Services and payment available to PUCT, its designees, or the State Auditor during normal business hours with reasonable notice, upon the request of the PUCT contract administrator.

**2.7 Sole Compensation.** Payments under this Article are Contractor's sole compensation under this contract. Contractor must not incur expenses not contemplated under the Statement of Work, with the expectation that the PUCT or any other agency of the state of Texas will pay the expense.

### **Article 3. CONTRACT ADMINISTRATION**

**3.1 PUCT Contract Administration.** The PUCT designates Hayley Hall to serve as its primary point of contact and contract administrator throughout the term of this contract. Contractor acknowledges that the PUCT contract administrator does not have any authority to amend, terminate, or extend this contract on behalf of the PUCT, except as expressly provided herein. Contractor further acknowledges that such authority is exclusively held by the Commission exercising its authority through a vote in an open meeting, or the Executive Director of the PUCT as the Commission's authorized designee.

**3.2 Contractor Contract Administration.** Contractor designates its contract administrator as follows: [Insert Designee(s) Here]

**3.3 Reporting.** Contractor must report directly to the PUCT contract administrator and must perform all activities in accordance with the reasonable instructions, directions, and requests conveyed to Contractor by the PUCT contract administrator.

**3.4 Cooperation.** The Parties' contract administrators must handle all communications between them in a timely and cooperative manner. The Parties must timely notify each other by email or other written communication of any change in designee or contact information.

**3.5 Media Releases.** Contractor shall not use the PUCT's name, logo, or other likeness in any press release, marketing material, or other announcement without the PUCT's prior written approval. The PUCT does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the response, or the services to which they relate without the PUCT's prior written consent, and then only in accordance with explicit written instructions from the PUCT. Contractor will promptly refer all inquiries regarding this contract received from state legislators, other public officials, the media, or anyone else not a Party to this contract to the PUCT contract administrator.

### **Article 4. REPORTS AND RECORDS**

**4.1 Written Reports.** Contractor will provide written reports to the PUCT in the form and with the frequency specified in Section 3, Statement of Work, or as otherwise agreed in writing between the Parties.

**4.2 Distribution of Reports.** Contractor agrees the PUCT has the right to distribute any report associated with this contract, or to allow another Texas state agency or the Texas legislature to distribute it. The PUCT will also have the right to post any report associated with this contract to the PUCT's website or to the website of a standing committee of the legislature. This provision does not waive any right to confidentiality that the PUCT may assert for the report or any portion thereof.

### **Article 5. SUBCONTRACTING PARTIES**

**5.1 Use of Subcontractors.** The Parties acknowledge and agree that, at the time of execution of this contract, Contractor intends to perform the Services required under this Contract using its own employees [or - intends to perform the Services required under this Contract using the following subcontractors:].

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

Contractor will notify the PUCT contract administrator of any other proposed subcontract and will work with the PUCT HUB Coordinator to procure such other subcontractor and to submit appropriate subcontractor selection documentation for approval prior to engaging any other subcontractor, such approval not to be unreasonably withheld. Any subcontract not contemplated at the initiation of this contract and any subsequent substitution of a subcontractor must be approved by an amendment according to the terms of Article 7.

**5.2 Sole Responsibility.** Contractor is solely responsible for the quality and timeliness of the work produced by all subcontractors that Contractor may engage to provide Services hereunder and for the timely payment for all work produced by all subcontractors that the PUCT accepts and pays for in accordance with the terms of this contract.

**5.3 Prime Vendor Contract.** The Parties expressly agree that this Contract is intended to constitute a prime vendor contract, with Contractor serving as the prime vendor for delivery of the Services made the subject hereof. Contractor acknowledges and agrees that it is fully liable and responsible for timely, complete delivery of the Services described in this Contract, notwithstanding the engagement of any subcontractor to perform an obligation under this Contract.

## **Article 6. TERM AND TERMINATION**

**6.1 Term.** The term of this Contract will begin on the date signed by the last signatory to sign and will continue in effect for one year unless extended or sooner terminated under Sections 6.2 or 6.3 of this Contract.

**6.2 Termination for Cause by the PUCT.** If Contractor fails to provide the goods or services contracted for according to the provisions of the contract or fails to comply with any terms or conditions of the Contract, the PUCT may serve upon Contractor written notice requiring Contractor to cure such default. Unless within thirty (30) days after receipt of said notice by Contractor, said default is corrected or arrangements satisfactory to the PUCT, as applicable, for correcting the default have been made by Contractor, the PUCT may terminate this contract for default and will have all rights and remedies provided by law and under this contract. If the PUCT terminates Contractor for a violation of Article 29 of this contract, the PUCT need not provide any notice or opportunity for curing the default. The PUCT will not be liable for any damages or loss to Contractor as a result of said termination.

**6.3 Termination for the Convenience of the PUCT.** The PUCT reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if the PUCT determines that such termination is in the best

interest of the state. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The PUCT shall be liable for payments limited only to the portion of work the PUCT authorized in writing and which Contractor has completed, delivered to the PUCT, and which has been accepted by the PUCT. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. The PUCT shall have no other liability, including no liability for any costs associated with the termination.

**6.4 Transfer of Duties.** In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the contract to another entity without disruption to the provision of Services.

**6.5 Remedies for Breach.** All remedies available to the PUCT for breach or anticipatory breach of this contract by Contractor are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies. Actual damages, liquidated damages, cost projections, letter of credit proceeds, and injunctive relief may also be invoked either separately or combined with any other remedy in accordance with applicable law.

**6.6 Survival.** Expiration or termination of the contract for any reason does not release Contractor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

## **Article 7. ASSIGNMENT, AMENDMENTS, AND MODIFICATIONS**

**7.1 Material Change Requests.** The PUCT may propose changes to the Statement of Work. Upon receipt of a written request from the PUCT for a change to the Statement of Work, Contractor must, within a reasonable time thereafter, submit to the PUCT a detailed written estimate of any proposed price and schedule adjustment(s) to this contract. No changes to the Statement of Work, will occur without the Parties' written consent as provided in accordance with the terms stated in this contract.

**7.2 Changes in Law, Rules, or Rulings.** Changes in federal or state legislation, rules and regulations or rulings by the PUCT after the effective date of this contract may require modification of the terms of this contract, including an increase or decrease in Contractor's duties or compensation. In the event of changes to statutes, rules, or regulations affecting the terms of this contract, the PUCT and Contractor must negotiate the terms of a contract modification in good faith and incorporate the modification into this Contract by written amendment.

**7.3 No Assignment.** Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from the PUCT. Any attempted assignment in violation of this provision is void and without effect.

**7.4 Amendments and Modifications.** This contract may not be amended or modified in any manner except by written instrument executed by authorized representatives of the Parties in accordance with the terms of this contract.

**7.5 Binding Effect.** The contract shall be binding upon and shall inure to the benefit of the Parties and to their representatives, successors, and assigns.

## **Article 8. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**8.1 Warranty of Performance.** Contractor represents, warrants, and covenants that it will perform the Services outlined in Section 3, Statement of Work in a professional and workmanlike manner, consistent with professional standards of practice in the professional industry.

**8.2 Permits, Certifications, and Licenses.** Contractor represents and warrants that it has determined what licenses, certifications, and permits are required under the contract and has acquired all applicable licenses, certifications, and permits.

## **Article 9. RISK OF LOSS AND PROPERTY RIGHTS**

**9.1 Risk of Loss.** The risk of loss for all items to be furnished hereunder will remain with Contractor until the items are delivered to and accepted by the PUCT, at which time the risk of loss will pass to the PUCT.

**9.2 Ownership.** For purposes of the contract, the term “Work” is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the contract. The Parties intend this agreement to be a contract for the services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Contractor to be a work made for hire. Contractor and Contractor’s employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of the PUCT. Contractor acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of the PUCT. If for any reason the Work would not be considered a work-for-hire under applicable law, Contractor does hereby sell, assign, and transfer to the PUCT, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other property rights, as the PUCT may deem necessary to secure for the PUCT or its designee the rights herein assigned. In the event that Contractor has any rights in and to the Work that cannot be assigned to the PUCT, Contractor hereby grants to the PUCT an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later

than the first calendar day after the termination or expiration of the contract or upon Contractor's request, Contractor shall deliver to the PUCT all completed, or partially completed, Work and any and all documentation or other products and results of the services. Failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of the contract. Contractor will not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of the PUCT.

**9.3 Licensed Software.** With PUCT's advanced written consent, Contractor may obtain software licenses as an agent of the PUCT for software that is used by Contractor solely for the purpose of providing Services under this contract. Contractor must provide the PUCT with a copy of any software license obtained by Contractor as an agent for the PUCT for the purpose of providing Services under this contract.

**9.4 Prior Works.** Except as provided herein, all previously owned materials, conceptions, or products remain the property of Contractor and nothing contained in this contract will be construed to require Contractor to transfer ownership of such materials to the PUCT.

**9.5 Trademark Ownership.** Contractor hereby acknowledges and agrees that the trademarks remain the exclusive property of the PUCT, that all right, title and interest in and to the trademarks is exclusively held by the PUCT, and all goodwill associated with such trademarks inures solely to the PUCT.

**9.6 Program Information.** Program information, data, and details relating to Contractor's Services under this contract must be maintained separately from Contractor's other activities. Contractor must undertake all reasonable care and precaution in the handling and storing of this information.

**9.7 Provision to be Inserted in Subcontracts.** Contractor must insert a provision containing Sections 9.2 and 9.5 of this contract in all subcontracts hereunder except altered as necessary for proper identification of the contracting Parties and the PUCT under this contract.

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

## **Article 10. PUBLIC INFORMATION**

**10.1 Texas Public Information Act (Texas Government Code Chapter 552).** Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the Public Information Act).



**10.2 Agreement Not Confidential.** The Parties acknowledge that not all terms of this contract may be confidential under the PIA, regardless of whether those terms are marked "Proprietary," "Trade Secret," or "Confidential." Contractor further acknowledges that in the event of a dispute over the release of a proposal or part of a proposal the PUCT is bound by the decision made by the Office of the Attorney General of Texas.

**10.3 Contractor's Duty to Provide Public Information.** Contractor is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. For the purpose of Section 10.3 of this contract, paper documents, Adobe Portable Document Format files (.pdf), Microsoft Excel spreadsheets (.xls), Microsoft Word documents (.docx), and Hypertext Markup Language (.html) files will be considered "accessible by the public," unless another format is specified by the PUCT, at the PUCT's sole discretion. If information created or exchanged with the state pursuant to this contract is excepted from disclosure under the PIA, Contractor will not be required to make the information available to the public but may be required to facilitate the PUCT's provision of the information to the Texas Attorney General for a decision on the information's confidentiality. The PUCT has no duty or responsibility to argue a defense of confidentiality to Contractor's information or data; it will be Contractor's sole responsibility to do so. Additionally, the requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

## **Article 11. CONFLICTS OF INTEREST AND EMPLOYMENT RESTRICTION**

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

**11.2 Prohibition on Transactions with Parties Adverse to the PUCT.** Contractor agrees that during the term of this contract and any extensions or renewals thereof, it will neither provide contractual services nor enter into any agreement, oral or written, to provide services to a person or organization that is regulated or funded by the PUCT or that has interests that are directly or indirectly adverse to those of the PUCT. The PUCT may waive this provision in writing if, in the PUCT's sole judgment, such activities of the Contractor will not be adverse to the interests of the PUCT. The PUCT may waive the other's right to prohibit a transaction between Contractor and any person or organization that is regulated or funded by the PUCT or that has interests that are directly or indirectly adverse to those of the PUCT.

**11.3 Notice of Conflict.** Contractor agrees to promptly notify the PUCT of any circumstance that may create a real or perceived conflict of interest, whether arising prior to or during the term of the contract. Contractor agrees to use its best efforts to resolve any real or perceived conflict of interest to the satisfaction of the PUCT. If Contractor fails to do so, it will be grounds for termination of this contract for cause, pursuant to Section 6.2 of this contract.

**11.4 Prohibited Employment.** Contractor agrees that it will not hire any person whose employment with Contractor would violate any of the employment restrictions in Texas Government Code Chapter 572 or Texas Utilities Code Chapter 12.

Further, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the PUCT during the twelve (12) month period immediately prior to the date of execution of the contract.

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

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

#### **Article 12. INDEMNIFICATION**

**CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. THE PARTIES AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

#### **Article 13. INSURANCE**

**13.1 Contractor Responsibility.** Contractor agrees to comply with all state and federal laws applicable to the liability and payment of Contractor and Contractor's employees, including laws regarding wages, taxes, insurances, and workers' compensation. Neither the PUCT nor the State

of Texas will be liable to the Contractor, its employees, agents, or others for the provision of unemployment insurance or workers' compensation or any benefit available to a state employee.

**13.2 Minimum Insurance.** Contractor must, at its sole cost and expense, secure and maintain as a minimum, from the effective date of this contract and thereafter during the term of this contract and any renewals or extensions thereof, for its own protection and the protection of the PUCT and the State of Texas:

- a) commercial liability insurance, covering, at a minimum, the following categories of liability within the following limits: (i) bodily injury and property damage - \$1,000,000 limit per occurrence, \$2,000,000 aggregate, (ii) medical expense - \$5,000 limit per person, (iii) personal injury and advertising liability - \$1,000,000 limit, (iv) products/completed operations – \$2,000,000 aggregate, (v) damage to premises rented - \$50,000 limit;
- b) automobile liability coverage for vehicles driven by Contractor's employees (\$500,000 per occurrence); and
- c) workers' compensation insurance in accordance with the statutory limits, as follows: (i) employer's liability - \$1,000,000 each incident, (ii) disease - \$1,000,000 each employee and \$1,000,000 policy limit.
- d) cyber incident coverage to include: privacy breach related legal expenses to review and determine responsibilities under privacy breach laws; expenses related to compliance with privacy law notification requirements; credit and identification monitoring for up to 12 months after a cyber incident; expenses related to forensic investigations to investigate a system intrusion into the Contractor's computer system; and expenses to hire a public relations firm for public communications response.

The PUCT and the State of Texas must be named an additional insured on the commercial liability and automobile policies.

Insurance coverage must be from companies licensed by the State of Texas to provide insurance with an "A" rating from A.M. Best and authorized to provide the corresponding coverage.

**13.3 Certificates of Insurance.** Contractor must furnish to the PUCT certificates of insurance and any applicable endorsements, signed by authorized representatives of the surety or insurers, of all such bonds and insurance and confirming the amounts of such coverage within ten (10) days of the effective date of this contract, and upon request thereafter. Contractor must provide the PUCT contract administrator with timely renewal certificates as the coverage renews. Failure to maintain such insurance coverage specified herein, or to provide such certificates or endorsements promptly, will constitute a material breach of this Contract. Contractor must provide thirty (30) days written notice of any notice for renewal or cancellation of insurance.

#### **Article 14. DISPUTE RESOLUTION**

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.

#### **Article 15. SOVEREIGN IMMUNITY**

Nothing in the contract shall be construed as a waiver of the PUCT's or the State's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges,

rights, defenses, remedies, or immunities available to the PUCT or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the PUCT or the State of Texas under the contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. The PUCT does not waive any privileges, rights, defenses, or immunities available to the PUCT by entering into the contract or by its conduct prior to or subsequent to entering into the contract.

#### **Article 16. GOVERNING LAW AND VENUE**

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

#### **Article 17. COMPLIANCE WITH LAW**

**17.1 General.** Contractor must comply with all federal, state, and local laws, executive orders, regulations, and rules applicable at the time of performance. Contractor warrants that all Services sold hereunder will have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations to which they are subject, including, but not limited to, Equal Employment Opportunity laws. All laws and regulations required in agreements of this character are hereby incorporated by this reference.

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

**17.3 Workers' Compensation.** Contractor agrees that it will be in compliance with applicable state workers' compensation laws throughout the term of this contract and any renewals or extensions thereof.

**17.4 Conflicts.** Contractor agrees to abide by the requirements of and policy directions provided by the Texas statutes and the rules and regulations of the PUCT. Contractor agrees to inform and consult with the PUCT when further interpretations or directions are needed in order to fully implement the rules and regulations of the PUCT. In the event that Contractor becomes aware of inconsistencies between this Contract and a Texas statute or PUCT rule, Contractor will so advise the PUCT immediately and will cooperate fully to revise applicable provisions of this contract, as necessary.

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

been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

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

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

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

#### **Article 18. CONTRACTOR'S CERTIFICATION**

By accepting the terms of this Contract, Contractor certifies that, to the extent applicable, it is in compliance with the following requirements and prohibitions. Contractor understands and agrees that a false certification may lead to termination of this contract for cause.

**18.1 Dealings with Public Servants Affirmation.** Contractor 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 this contract.

**18.2 Debts and Delinquencies Affirmation.** Contractor agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

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

Contractor further represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code.

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

**18.5 Family Code.** Contractor has no principal who is ineligible to receive funds under Texas Family Code § 231.006 and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

**18.6 Prohibited Compensation.** Contractor has not received compensation from the PUCT, or any agent, employee, or person acting on the PUCT's behalf for participation in the preparation of this contract.

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

**18.8 Child Support Obligation Affirmation.** Under Section 231.006 of the Family Code, the Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate in addition to other remedies set out in § 231.006(f).

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

**18.10 Buy Texas Affirmation.** Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, relating to use of service contracts and the purchase of products and materials produced in the State of Texas.

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

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

1. all persons employed by Contractor to perform duties within Texas; and
2. all persons, including subcontractors, assigned by Contractor to perform work pursuant to the contract within the United States of America.

The Contractor must provide, upon request of PUCT, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor will also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated contract.

This term should not be construed to require Contractor to utilize E-Verify to determine the eligibility of existing employees, or otherwise use E-Verify in violation of the law.

**18.13 Debarred Vendors List.** Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.

**18.14 COVID-19 Vaccine Passport Prohibition.** Under Section 161.0085 of the Texas Health & Safety Code, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive this contract.

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

**18.16 Entities that Boycott Israel.** If Contractor is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Contractor does not make that certification, Contractor must indicate that in its response and state why the certification is not required.

**18.17 Energy Company Boycotts.** If Contractor is required to make a verification pursuant to Section 2276.002 of the Texas Government Code, Contractor verifies that Contractor does not boycott energy companies and will not boycott energy companies during the term of the contract. If Contractor does not make that verification, Contractor must so indicate in its response and state why the verification is not required.

**18.18 Firearm Entities and Trade Association Discrimination.** If Contractor is required to make a certification pursuant to Section 2274.002 of the Texas Government Code, Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Contractor does not make that verification, Contractor must indicate so and state why the verification is not required.

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

**18.20 Compliance with Executive Order GA 48.** In accordance with Executive Order GA 48, Contractor certifies that it, and if applicable, any of Contractor's holding companies or subsidiaries, is not: (a) Listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or (b) Listed in Section 1260H of the 2021 NDA; or (c) Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or (d) Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.

**18.21. Disaster Recovery Plan.** Upon request of the PUCT, Contractor shall provide the descriptions of its business continuity and disaster recovery plans.

## **Article 19. GENERAL PROVISIONS**

**19.1 Relationship of Parties.** Contractor and Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the contract. Neither Party is an agent of the other and neither may make any commitments on the other party's behalf. Should Contractor subcontract any of the services required in the contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), the PUCT is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Contractor shall have no claim against the PUCT 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. The contract shall not create any joint venture, partnership, agency, or employment relationship between the Parties.

**19.2 No Quantity Guarantees.** The PUCT makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract. Further, the contract is not exclusive to the Contractor. The PUCT may obtain products and related services from other sources during the term of the contract.

**19.3 Taxes and Statutory Withholdings.** Contractor acknowledges that it is not a PUCT employee but is an independent contractor. Accordingly, it is Contractor's sole obligation to report as income all compensation received by Contractor under the terms of this contract. Contractor is solely responsible for all taxes (federal, state, or local), withholdings, social security, unemployment, Medicare, Workers' Compensation insurance, and other similar statutory obligations (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Contractor must defend, indemnify and hold the PUCT harmless to the extent of any obligation imposed by law on the PUCT to pay any tax (federal, state, or local), withholding, social security, unemployment, Medicare, Workers' Compensation insurance, or other similar statutory obligation (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Contractor under this contract. Further, Contractor understands that neither it nor any of its individual employees is eligible for any PUCT employee benefit, including but not limited to holiday, vacation, sick pay, withholding taxes (federal, state, local), social security, Medicare, unemployment or disability insurance, Workers' Compensation, health and welfare benefits, profit sharing, 401(k) or any



employee stock option or stock purchase plans. Contractor hereby waives any and all rights to any such PUCT employment benefit.

**19.4 Notice.** Except as otherwise stated in this contract, all notices provided for in this contract must be (a) in writing, (b) addressed to a Party at the address set forth below (or as expressly designated by such Party in a subsequent effective written notice referring specifically to this contract), (c) sent by FedEx, with proper postage affixed and (d) deemed effective upon the third business day after deposit of the notice in the U.S. Mail.

IF TO THE PUCT:

ATTENTION: Executive Director  
1701 N. Congress Ave., 7th Floor  
Austin, TX 78701

With copies to the PUCT contract administrator, and Jay Stone, CTCD, CTCM, at the same address.

IF TO CONTRACTOR:

ATTENTION:

ADDRESS

CITY, STATE, ZIP CODE

**19.5 Headings.** Titles and headings of articles and sections within this contract are provided merely for convenience and must not be used or relied upon in construing this contract or the Parties' intentions with respect thereto.

**19.6 Export Laws.** Contractor represents, warrants, agrees and certifies that it (a) will comply with the United States Foreign Corrupt Practices Act (regarding, among other things, payments to government officials) and all export laws and rules and regulations of the United States Department of Commerce or other United States or foreign agency or authority and (b) will not knowingly permit any non-party to directly or indirectly, import, export, re-export, or transship any intellectual property or any third party materials accessed by Contractor during the course of this contract in violation of any such laws, rules or regulations.

**19.7 Preprinted Forms.** The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this contract is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. The terms of this contract cannot be amended, modified, or altered by any conflicting terms, provisions, or conditions contained in a proposal or a preprinted form, such as purchase orders or acknowledgements. If any conflict exists between this Contract and any terms and conditions on a proposal, purchase order, acknowledgment, or other preprinted form, the terms and conditions of this Contract will govern.

**19.8 Specific Personnel.** Contractor has identified the personnel for this assignment ("Team"), as follows: [list]

Contractor warrants that it will use its best efforts to avoid any changes to the Team during the course of this Contract. Should personnel changes occur during the term of this Contract or any

extensions or renewals thereof, Contractor will recommend to the PUCT personnel with comparable experience and required qualifications and training. The PUCT must approve any change in personnel on this project in writing. Contractor must provide individuals qualified to perform the tasks assigned to such individual. At the PUCT's request, Contractor must remove from the project any individual whom the PUCT finds unacceptable for any reason in the PUCT's sole discretion. Contractor must replace such individual with another individual satisfactory to the PUCT as soon as practicable.

**19.9 No Felony Criminal Convictions.** Contractor represents that neither Contractor, nor any of its employees, agents, or representatives, including any subcontractors and employees, agents or representatives of such subcontractors, has been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised PUCT of the facts and circumstances surrounding the conviction.

**19.10 Publicity.** Contractor understands and agrees that the PUCT does not endorse any vendor, commodity, or service. Contractor understands and agrees that Contractor, its employees, representatives, other agents, or subcontractors may not issue any public disclosure, media release, advertisement, or publication without prior written approval of the PUCT: which pertains to this contract or any services or project to which this contract relates; or which pertains to any results or findings based on information provided, created, or obtained to fulfill the requirements of this contract; or which mentions the PUCT.

**19.11 No Third-Party Beneficiaries.** Nothing contained in the contract, either express or implied, is intended to confer on any person other than the Parties, or their respective permitted successors, assigns, or transferees any interests, rights, remedies, obligations or liabilities pursuant to, or by reason of, this contract.

**19.12 Prompt Payment.** All payments to Contractor by PUCT, any payments by Contractor to any subcontractor, and any payments by a subcontractor to any other person or entity that provides goods or services under this contract shall be made in compliance with Chapter 2251 of the Texas Government Code and 34 Texas Administrative Code § 20.487.

**Article 20. NO IMPLIED WAIVER**

The failure of a Party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.

**Article 21. ORDER OF PRECEDENCE**

In the event of conflicts or inconsistencies between the provisions of this contract and any attachment(s) and exhibit(s), the following are given preference in the order listed below:

- 1) The terms and conditions of this contract;
- 2) The Statement of Work, including any exhibits;
- 3) The Request for Proposals;
- 4) The Contractor's proposal.

**Article 22. FORCE MAJEURE**

Neither Party shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

**Article 23. 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.

**Article 24. EXCESS OBLIGATIONS PROHIBITED**

The contract is subject to termination or cancellation, without penalty to the PUCT, either in whole or in part, subject to the availability of state funds. The PUCT is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If the PUCT becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either Party'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, the PUCT will not be liable to Contractor for any damages, that are caused or associated with such termination, or cancellation, and the PUCT will not be required to give prior notice.

**Article 25. DRUG FREE WORKPLACE POLICY**

Contractor must maintain a drug-free work environment policy. Contractor must enforce its drug-free work environment policy during the pendency of this contract. Contractor must provide the PUCT a copy of its drug-free work environment policy upon request.

**Article 26. SUBSTITUTIONS**

Substitutions are not permitted without written approval of the PUCT.

**Article 27. RIGHT TO AUDIT**

Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of Contractor 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 Contractor 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, Contractor or any 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. Contractor will ensure that this clause concerning the authority to audit funds received

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

**Article 28. SIGNATORIES**

The undersigned signatories represent and warrant that they have full authority to enter into this contract on behalf of the respective parties.

**Article 29. FALSE STATEMENTS**

If Contractor signs this contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications, or affirmations included in the Contractor's response or this contract, Contractor will be in default under the contract, and the PUCT may terminate or void the contract.

**Article 30. CHANGE IN LAW AND COMPLIANCE WITH LAWS.** Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal or state law or regulations are automatically incorporated into the contract without written amendment hereto and shall become effective on the date designated by such law or by regulation.

**Article 31. ENTIRE AGREEMENT**

This contract, including the Statement of Work, constitutes the entire agreement and understanding between the parties with regard to its subject matter and supersedes and merges all prior discussions, writings, negotiations, understandings, and agreements concerning the provision of these Services. Any terms and conditions attached to a solicitation will not be considered unless incorporated into this contract by specific reference.

In WITNESS WHEREOF both parties by their duly authorized representatives have executed this contract effective as of [DATE].

**The Public Utility Commission of Texas**

By:

\_\_\_\_\_  
Connie Corona  
Executive Director

Date Signed: \_\_\_\_\_

**Contractor**

By:

\_\_\_\_\_  
Name  
Title

Date Signed: \_\_\_\_\_