



# RAILROAD COMMISSION OF TEXAS

## REQUEST FOR PROPOSAL Solicitation No. 455-22-1023

### AML RECLAMATION SERVICES

**Sole Point of Contact:**

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**Solicitation Issued**

June 23, 2022

**Responses Due NO LATER THAN**

2:00PM (CT) July 21, 2022

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### ATTACHMENTS TO THIS SOLICITATION:

- Attachment 1: Statement of Services and Appendix
- Attachment 2: Respondent's Statements and Covenants
- Attachment 3: Respondent's Qualifications Statement Form
- Attachment 4: HUB Subcontracting Form and Appendix
- Attachment 5: Sample RRC Contract
- Attachment 6: Performance Evaluation Standards
- Attachment 7: Federal Forms
- Attachment 8: Progress Payment Affidavit
- Attachment 9: Final Payment Affidavit
- Attachment 10: Mandatory Rate Submission Sheet

## DEFINITIONS AND ACRONYMS

The following definitions and acronyms apply to this RFP and any resulting Contract:

**Addendum/Addenda:** Modification to this RFP, issued by RRC and posted to the Texas Comptroller of Public Accounts ESBD website (<http://www.txsmartbuy.com/esbd>) prior to Response due date.

**Changed Conditions:** Subsurface or latent physical conditions differing materially from those indicated in the Contract or Work Order issued thereunder, or unknown, unusual physical conditions which could not reasonably be anticipated when considering and analyzing all information provided within the Solicitation and Contract documents and information readily accessible to Respondent and available upon Respondent's request prior to Respondent's submission of a Response.

**Contract:** The written agreement, if any, executed by the authorized representative of RRC and the Vendor, that formalizes the terms, provisions, covenants, and obligations, including but not limited to those contained in this RFP, of the respective parties to the agreement.

**Contractor:** The individual or entity qualified to provide the goods and/or services sought by RRC pursuant to this RFP and who is ultimately be selected to carry out the requirements stipulated in this RFP and any resulting contract.

**Days:** The word "days" shall mean calendar days unless otherwise specifically noted. Business days shall mean Monday through Friday except holidays officially listed on the [State of Texas Holiday Schedule](#) and/or on which RRC headquarters office is closed.

**Electronic State Business Daily (ESBD):** The designated website where state agencies, universities, and municipalities post formal solicitations (over \$25K), addenda to posted solicitations, and awards. The link to the ESBD is <http://www.txsmartbuy.com/esbd>

**Fiscal Year (FY):** RRC's FY begins September 1 of one year and concludes August 31 of the following year.

**Historical Underutilized Business (HUB):** As defined within Texas Government Code Chapter 2161.

**Notice to Proceed (NTP):** The formal written authorization issued from RRC to Vendor, which indicates work under the Contract or Work Order issued thereunder is authorized to commence in accordance with the terms and conditions of the Contract and a Work Order issued thereunder and on, but not sooner than, the date specified within the Notice to Proceed.

**Reclamation Services:** The combined process by which adverse environmental effects of surface mining are minimized and mined lands are returned to a beneficial end use.

**Railroad Commission of Texas (RRC):** The state agency responsible for the issuance of this RFP.

**Respondent:** An individual or entity who submits a response to this RFP.

**Response:** An expression of interest submitted by a Respondent to RRC as a result of this RFP solicitation, and that contains Respondent's statement of qualifications and other information evidencing Respondent's qualifications to perform the services and work required under the Contract.

**Request for Proposal (RFP):** The document so titled and all exhibits, attachments, and appendices thereto and/or that are incorporated by reference as though fully set forth within.

**RRC Authorized Representative:** The individual authorized to make decisions on behalf of RRC.

**RRC Statewide Rules:** The official rules of RRC and that are found in 16 TAC Part 1, Chapters 1 through 20. The TAC and RRC Statewide Rules may be found on the Office of the Secretary of State website at <http://texreg.sos.state.tx.us/...RRC Statewide Rules>.

**Solicitation and Contract Documents:** Those documents identified as a component of the RFP, including all exhibits, attachments, and appendices thereto and/or that are incorporated by reference as though fully set forth within, and any Addenda that may be issued following issuance date of the original RFP document set, and those documents identified as a component of the Contract agreement between RRC and the Respondent awarded a contract arising from the RFP.

**Statement of Services (SOS):** A broad description of activities, deliverables and expectations applicable to work to be delivered under the resulting Contract or a Work Order issued thereunder.

**Scope of Work (SOW):** A section within the SOS or within a Work Order issued under the Contract and that provides detailed specifications of the services to be provided.

**TAC:** Texas Administrative Code.

**Vendor:** The individual or entity qualified, in RRC's sole determination, to provide the goods and/or services sought by RRC pursuant to this RFP and who is ultimately selected to carry out the requirements stipulated in this RFP, and any resulting contract and work order issued under such contract.

**Work Order:** A description of a specific job or project arising under the Contract and that includes details applicable to the location(s), goods, services, and incidentals of work to be performed.

## PART I: NOTICE TO RESPONDENTS

### 1. INTRODUCTION.

In accordance with applicable provisions of Texas Government Code Chapters 2155, 2156 and 2254, the Railroad Commission of Texas extends this RFP to qualified entities to submit a Response detailing the entity's qualifications to provide Reclamation Services as further described herein and in accordance with all terms, conditions, and specifications contained within the Solicitation and Contract Documents. Responses to this RFP No. 455-22-1023 shall be received by the Railroad Commission of Texas, Contract Management Section, 1701 N. Congress Avenue, Austin, TX 78701 no later than 2:00PM (CT), Thursday, July 21, 2022 for RFP No. 455-22-1023, Reclamation Services.

**1.1. SERVICES, GENERALLY.** The RRC seeks Reclamation Services to be performed for the RRC throughout the state of Texas, further detailed in **RFP Attachment 1 Statement of Services**.

**1.2. BACKGROUND.** Texas Natural Resources Code Chapter 134 and Texas Administrative Code Title 16 Chapter 12 provide that, in connection with surface coal mining and reclamation, the RRC may perform activities necessary or expedient to protect the public health, safety, or general welfare and to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices (collectively, Reclamation Services).

The Abandoned Mine Land program division of the RRC is tasked with the reclamation of abandoned surface mines which usually consists of the following: earthwork (highwall reduction and spoil recontouring) burial or treatment of unsuitable spoil (usually acidic or naturally occurring radioactive spoil) and installation of erosion and water control structures and revegetation. Dangerous abandoned underground mine openings are usually closed by one of the following methods: backfilling, capping (concrete or metal grating) or metal gating.

The RRC does not have the personnel or the equipment required to perform Reclamation Services. RRC relies on contracting with Reclamation Services companies in the State of Texas to provide and perform all work necessary to complete Reclamation projects required under the Contract and Work Orders issued thereunder.

This RFP describes the requirements that must be met by the selected Respondents. Respondents are cautioned to carefully read the RFP in its entirety. Selection of the most highly qualified Reclamation Services providers will be based on demonstrated competence, evaluation criteria and other requirements as outlined in **Part II: Instructions to Respondent, Section 2.10.2 Weighted Criteria** and **RFP ATTACHMENT 3 Respondent's Qualification Statement**. Failure to provide the mandatory required information will automatically disqualify Respondent from consideration for award in connection with this RFP.

Selected Respondents shall be bound to the terms and conditions of this RFP, and the RRC's Contract as finalized between the RRC and Respondent (see **RFP ATTACHMENT 5 Sample RRC Contract**), any additional, specific terms and conditions applicable to a finalized, negotiated Work Order issued thereunder, and shall comply with all applicable local, state, and federal statutes, rules, regulations, and ordinances, including but not limited to those related to licensing, certification, and permitting requirements.

RRC reserves the right to award more than one Contract from this RFP. A Contract arising from this RFP shall not be exclusive; RRC may obtain Reclamation Services from other sources during the term of the Contract. A Contract shall have no monetary value and no guarantee that any Work Order will be issued thereunder. An award of a Contract arising from this RFP shall not disqualify a Respondent from responding to a future RRC project-specific solicitation for Reclamation Services. Respondent is subject to an Applicant/Violator System ("AVS") report prior to Contract award.

### 1.3. ANNOTATIONS.

**1.3.1. PERFORMANCE PERIOD.** Any Contract resulting from this RFP shall include an original term of one (1) year from date of the last Party's signature to the Contract and shall continue through August 31, 2023 ("Original Term"). At RRC's discretion, original Contract term may be extended for up to three (3) additional one-year optional renewal terms ("Renewal Term"). Renewal Terms to any Contract shall be accomplished through written amendment to the original Contract, fully executed prior to expiration of the Contract, and shall incorporate all

terms and conditions of the original Contract as may be amended by mutual agreement between the RRC and Vendor.

**1.3.2. MINIMUM QUALIFICATIONS.** To be eligible for consideration of contract award, Respondent must meet all minimum qualification requirements as outlined in the Solicitation and Contract Documents, including requirements stated within any part of this RFP and the SOS. A Response must clearly demonstrate Respondent meets the following minimum qualifications:

**1.3.2.1.** An experienced Project Manager (“PM”) with three (3) year’s experience in heavy earthwork reclamation and related services.

**1.3.2.2.** Have stated qualifications as demonstrated on **RFP Attachment 3: Respondent’s Qualifications Statement Form.**

**1.3.3 COSTS OF RESPONSE PREPARATION.** All costs associated with preparation and submission of a Response, including costs associated with submission of all required documents and all copies of all documents and all costs including travel and related activities associated with optional oral presentations, if required, are to be borne solely by the Respondent. Responses that do not meet all requirements or contain all required documentation specified in this RFP shall be rejected as non-responsive.

**1.3.4 PROTEST PROCEDURES.** Any actual or prospective Respondent who is aggrieved in connection with this Solicitation, evaluation, or award of any contract resulting from this Solicitation may formally protest as provided in RRC’s rules set forth in 16 Texas Administrative Code §20.1 (see, [16 TAC §20.1](#)).

## PART II: INSTRUCTIONS TO RESPONDENT

### 2. GENERAL RESPONSE INSTRUCTIONS.

**2.1 STRICT ADHERENCE TO SUBMISSION DEADLINE.** Responses must be received by the Contract Management Section, Railroad Commission of Texas, Austin, Texas **NO LATER THAN** the date and time specified within this RFP, or as revised by Addenda, if any, to this RFP. **RESPONSES RECEIVED AFTER THE DEADLINE DATE AND TIME WILL NOT BE CONSIDERED.** Please see section **2.3 Response Delivery** below.

**2.1.1 SCHEDULE OF EVENTS.** **TABLE 1 Schedule of Events** provides dates applicable to this RFP. At the sole discretion of RRC, **TABLE 1** may be revised through written addendum posted to the [Texas Comptroller's ESBD website](#) no later than the Response due date and time. At sole discretion of RRC, award may occur at any time after due date of Responses and completion of evaluation of Responses received.

**TABLE 1: Schedule of Events**

| Event  | Date           |
|--|----------------|
| Issuance of RFP  | June 23, 2022  |
| Submission of HSP for RRC Courtesy Review                              | June 30, 2022  |
| Deadline for Submission of Written Inquiries (no later than 3:00PM CT) | July 05, 2022  |
| Response to Written Inquiries, if any (Addendum posted to ESBD)        | July 08, 2022  |
| Deadline for Submission of HSP for courtesy review                     | July 14, 2022  |
| Response Due Date (no later than 2:00PM CT)                            | July 21, 2022  |
| Award Date ( <b>estimated only</b> )                                   | Upon Execution |

**2.2 RESPONSE LABELING/PACKAGING.** Responses shall be placed in an envelope/package and labeled in accordance with address labeling requirements set forth in RFP Section 2.3. It is the Respondent’s responsibility to properly label and deliver the Response to RRC by the specified date and time for this RFP.

**2.3 RESPONSE DELIVERY. ANY RESPONSE SUBMITTED BY EMAIL OR BY FACSIMILE WILL BE REJECTED.** It is the sole responsibility of the Respondent to select their preferred method of delivery from the delivery methods permitted herein. Failure to adhere to these requirements will cause the Respondent to be considered non-responsive and disqualified from award. Respondents must use the following address labeling information most applicable to Respondent’s chosen delivery method:

|   |  |
|---|--|
| <p><b><u>US Postal Service:</u></b><br/> <b>RFP No. 455-22-1023</b><br/>         Railroad Commission of Texas<br/>         Contract Management Section<br/>         Matthew Bowman, Contract Manager<br/>         PO Box 12967<br/>         Austin, TX 78711-2967</p> | <p><b><u>Overnight or Hand Delivery:</u></b><br/> <b>RFP No. 455-22-1023</b><br/>         Railroad Commission of Texas<br/>         Contract Management Section<br/>         Matthew Bowman, Contract Manager<br/>         1701 N. Congress Ave.<br/>         Austin, TX 78701</p> |
|---|--|

**2.4 PROHIBITED COMMUNICATIONS; SOLE POINT OF CONTACT**

**2.4.1** Upon issuance of this RFP, RRC, its representative(s), and partners (if any) will not answer questions or otherwise discuss the contents of this RFP with any potential Respondent or their representatives(s), except for the written inquiries submitted in accordance with Section 2.5, below. Attempts to ask questions by phone or in person will not be allowed or recognized as valid. ***FAILURE TO ADHERE TO THIS RESTRICTION MAY DISQUALIFY RESPONDENT AND RESPONDENT’S RESPONSE.***

**Respondents shall rely only on written statements issued through or by RRC’s Contract Management Section. This restriction does not preclude discussions between affected parties for the purposes of conducting business not related in any way to this RFP.**

**2.4.2** For information related to this **RFP No. 455-22-1023**, the project, and administration of any resulting Contract, RRC’s sole Point of Contact shall be Matthew Bowman, Contract Manager, whose contact information is:

| <b>Mailing Address</b>   | <b>Email</b>   |
|--|--|
| Railroad Commission of Texas<br>Contract Management Section<br>Matthew Bowman, Contract Manager<br>PO Box 12967<br>Austin, TX 78711-2967 | <a href="mailto:Matthew.Bowman@RRC.Texas.gov">Matthew.Bowman@RRC.Texas.gov</a> |
|  | <b>Phone</b>   |
|  | 512-463-7087   |

**2.5 INQUIRIES AND ADDENDA**

**2.5.1** Respondent solely is responsible for thoroughly understanding the RFP and all attachments, exhibits, forms, and addenda, if any, issued. Should any Respondent find any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error in the RFP, or should Respondent be in doubt as to the exact meaning of information within the RFP, Respondent should immediately notify in writing via email or email with editable attachment (i.e., MS Word® document) RRC’s sole point of contact for this solicitation (see RFP section 2.4.2). RRC shall not be responsible for oral instructions or for misinterpretation of the Solicitation and Contract Documents.

**2.5.2** Respondents submitting inquiries must reference the relevant RFP page and section and should submit all questions by the inquiry deadline stated within **TABLE 1 Schedule of Events** of this RFP. RRC reserves the right to amend answers prior to the Response submission deadline, and RRC reserves the right to respond to questions received after deadline for submission of written questions. When issuing response to questions submitted, RRC shall issue Addenda posted to the Texas Comptroller’s ESBD website.

**2.5.3** Addenda issued, if any, shall be posted by RRC to the Texas Comptroller’s ESBD website (<http://www.txsmartbuy.com/esbd>). It is solely the responsibility of Respondents to check the Texas Comptroller’s ESBD website for any and all updates to the RFP. A Respondent’s failure to check the Texas Comptroller’s ESBD website for updates shall not release Respondent from the requirements of Addenda or additional information published within any Addenda.

**2.6 HISTORICALLY UNDERUTILIZED BUSINESSES REQUIREMENTS**

Pursuant to Texas Government Code Chapter 2161, state agencies are required to make a good faith effort to increase the contract awards for the purchase of goods or services the state agencies expect to make to HUBs during a fiscal year. Historically Underutilized Businesses are strongly encouraged to respond to this RFP.

**2.6.1 HUB SUBCONTRACTING PLAN.** In accordance with Texas Government Code Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, responses, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. RRC has determined subcontracting opportunities are probable under a contract arising from this RFP, therefore:

**2.6.1.1 ALL RESPONDENTS, INCLUDING TEXAS CERTIFIED HUBS, MUST SUBMIT A COMPLETED HUB SUBCONTRACTING PLAN (“HSP”) FORM (SEE RFP ATTACHMENT 4 HUB Subcontracting Plan and Appendix) WITH THE RESPONSE FOR THE RESPONSE TO BE CONSIDERED RESPONSIVE.** A RESPONDENT’S FAILURE TO INCLUDE A COMPLETED HSP FORM WILL BE DEEMED A MATERIAL FAILURE TO COMPLY WITH RFP REQUIREMENTS AND SHALL RESULT IN RRC’S REJECTION OF THE RESPONSE AND RENDERING THE RESPONSE INELIGIBLE FOR AWARD OF A CONTRACT ARISING FROM THIS RFP.

**2.6.1.2 RESPONDENTS MUST SUBMIT A COMPLETED HSP FORM *ON THE HSP FORM INCLUDED AS RFP ATTACHMENT 4 HUB Subcontracting Plan and Appendix*; NO ALTERNATE FORMS, INCLUDING ALTERNATE OR PRIOR VERSIONS OF HSP FORMS, WILL BE ACCEPTED.**

**2.6.1.3 Preliminary HSP Review.** A Respondent may submit a draft of Respondent’s HSP for a preliminary review by RRC’s HUB team. Respondents wishing to take advantage of the preliminary HSP review must submit the HSP no later than the deadline for submission of HSP for preliminary review stated within **TABLE 1 Schedule of Events** of this RFP. Respondents are strongly encouraged to utilize this opportunity for a preliminary review of the HSP. The preliminary review is not an official review of the HSP for determination of responsiveness or contract award but is a preliminary review for compliance with HSP form instructions and required Good Faith Effort.

**2.6.2 GOOD FAITH EFFORT REQUIRED.** In accordance with 34 Texas Administrative Code §20.285(d), any person submitting a bid, response, offer, or other applicable expression of interest in response to this RFP shall submit a completed HUB Subcontracting Plan form demonstrating evidence of good faith effort in developing that plan. Good faith effort shall be in full conformance with all directions for demonstration and submission specified in the HSP form (see **RFP ATTACHMENT 4 HUB Subcontracting Plan and Appendix**).

**2.6.3 PROBABLE HUB SUBCONTRACTING OPPORTUNITIES.** RRC has identified potential areas of subcontracting opportunities which are listed within **TABLE 2 Potential HUB Subcontracting NIGP Codes** of this RFP. Full commodity and services descriptions may be found on the Texas Comptroller’s website at: <https://comptroller.texas.gov/purchasing/nigp/>. The list is for information purposes only and is not intended as an exhaustive list of subcontracting opportunities related to this RFP. It is the solely the responsibility of a Respondent to determine what, if any, subcontracting opportunities are most applicable to the Respondent’s business in performance of work under a Contract arising from this RFP. Respondent is not required to include within an HSP form any or all the commodities or services listed in **TABLE 2 Potential HUB Subcontracting NIGP Codes** of this RFP. Respondents should review the HSP form (see **RFP ATTACHMENT 4 HUB Subcontracting Plan and Appendix**) for instructions applicable to identification of specific commodities or services intended for subcontracting.

**TABLE 2: POTENTIAL HUB SUBCONTRACTING NIGP CODES**

| <b>NIGP Class</b> | <b>NIGP Item</b> | <b>Description (Commodities and Services)</b>          |
|-------------------|------------------|--|
| 330               | 13               | Fencing, chain link, including fabric, gates and posts |
| 790               | 70               | Topsoil & Fill Dirt                                    |
| 962               | 39               | Hauling Services                                       |
| 962               | 69               | Personnel Services                                     |
| 968               | 88               | Tree & Shrub Removal                                   |
| 988               | 14               | Tree & Shrub Removal                                   |
|                   |                  |  |
|                   |                  |  |
|                   |                  |  |
|                   |                  |  |

**2.6.4 HUB SUBCONTRACTING PLAN (HSP) PRIME CONTRACTOR PROGRESS ASSESSMENT REPORT.** Pursuant to 34 Texas Administrative Code §20.285(f)(1), as a condition of payment, a prime contractor shall



maintain business records documenting compliance with the HUB Subcontracting Plan and shall submit a compliance report to the state contracting agency each month. Therefore, as a condition of payment under the Contract, from start date of Contract through completion date of Contract, a prime contractor (Vendor) awarded a Contract arising from this RFP shall monthly submit a HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (see **RFP ATTACHMENT 4 Appendix A Prime Contractor Progress Assessment Report (PAR)**) prior to RRC's approval of payment under the Contract.

**2.6.5 RRC'S HUB PROGRAM ADMINISTRATION.** For explanation of the RRC's HUB program, for assistance in completing the HSP form, and to obtain HUB lists if web access is not available, Respondents are encouraged to contact RRC's HUB Administration (Phone: 512-936-0806; or email: [hub@rrc.texas.gov](mailto:hub@rrc.texas.gov).)

## **2.7 RESPONSE REQUIREMENTS**

**2.7.1 REQUIRED NUMBER OF RESPONSE ORIGINALS AND COPIES.** Respondent must submit one (1) paper original, plus three (3) identical paper copies of the Response. Response shall be written only on 8 ½" X 11" white paper using double or 1.5 spacing, and 12-point or larger Times New Roman font. Responses shall be free of any extrinsic items and shall be bound in a three-ring binder. The one (1) clearly marked "original" must include an original ink signature on the **Title Page (Tab A)** (electronic signatures will not be accepted), and the name and title of the individual signing who must possess the authority to legally bind the Respondent. RRC reserves the right to require a Respondent to furnish documentary evidence of Respondent's signature authority. Respondent must also submit one (1) electronic copy of the Response on a USB storage device; the Response file must be readable using Adobe Acrobat Reader DC®, and the electronic storage device (USB) shall not be encrypted. USB(s) must be labeled with Respondent's name. Response shall be saved in a zip file and the file folder shall contain individual PDF files for each required tab.

**Response shall include all required attachments and certifications. The RRC will not accept attachments and certifications submitted after the deadline. Failure to provide all required information in the required format shall make the response non-responsive and thus disqualified from consideration. The RRC may reject a proposal that fails to include required contents.**

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

Respondent is required to make any information created or exchanged with a state governmental entity (as defined by Texas Government Code §2252.907(d)) pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in at least one of the following formats that is accessible by the public at no additional charge to the State of Texas and/or RRC: \*.pdf format compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).

If Respondent's Response contains any information which Respondent claims is confidential and not subject to release under the PIA, Respondent must prepare and deliver to RRC two USB storage devices containing the following information:

One USB storage device with PDF document containing complete copies of all of Respondent's submissions pursuant to this RFP. Respondent must label this PDF document "**Complete Response Documents, [Respondent's Name], RRC RFP No. 455-22-1023. CONTAINS CONFIDENTIAL INFORMATION.**"

One USB storage device with PDF document containing copies of all of Respondent's submissions with all information claimed as confidential excised, blacked out, or otherwise redacted. This document must also contain an appendix which contains clear references to all redacted information including a general description of the redacted information. Respondent must label this PDF document "**For Public Release: Redacted version of [Respondent's Name], RRC RFP No. 455-22-1023.**"

## 2.8 EXCEPTION TO PROVISIONS

Respondent is strictly prohibited from taking blanket exception to the entire RFP; a Response that includes blanket exception to the entire RFP or that does not include proposed alternative language to exceptions taken, may be disqualified from Contract award. Any exception may be considered negatively during the evaluation and scoring process or may result in a contract not being awarded to Respondent.

## 2.9 ORGANIZATION OF RESPONSE

All Responses shall have all pages numbered and be organized in a manner that directly corresponds with the identified tabs set forth within this RFP section. Responses shall contain all required information, at a minimum, and be stated in a clear and concise manner. Vague and general responses shall be considered nonresponsive and thereby disqualified from consideration of Contract award. Respondent shall include all information Respondent believes is necessary and/or helpful to RRC determining Respondent's qualifications and ability to deliver all goods and services in accordance with this RFP, including the specifications stated within the SOS, and all terms and conditions of the Contract. Respondent shall submit a Response that includes, at a minimum, the following:

### 2.9.1 TITLE PAGE (TAB A). The Response title page must include:

- a. RRC's RFP number: **RFP No. 455-22-1023**;
- b. Respondent's name and physical address;
- c. Respondent's Vendor Identification Number (11-digit number issued by the Texas CPA);
- d. Respondent's Federal Employer Identification Number (9-digit number issued by the IRS); and
- e. Respondent's authorized agent's signature, printed name, title, and date of signature to Response.

### 2.9.2 EXECUTIVE SUMMARY (TAB B). Respondent's executive summary should include a clear, comprehensive summary of Respondent's qualifications and experience applicable to the requirements of this RFP, Respondent's Executive Summary should include, at a minimum, the following:

- a. Summary of Respondent's qualifications, including licenses and/or certifications if applicable and/or required by this RFP, and a statement of Respondent's ability to meet or exceed required minimum qualifications;
- b. Summary of Respondent's experience in delivery of same or substantially similar services as those required under this RFP, and a statement of Respondent's ability to meet or exceed required minimum experience;
- c. Clear, concise, detailed explanation of Respondent's exceptions taken, if any, to the terms and/or conditions of this RFP.

### 2.9.3 EXPERIENCE AND QUALIFICATIONS (TAB C). Tab C shall include elaboration of, and details related to, the three (3) projects identified within **Attachment 3: Respondent's Qualifications Statement Form**. Submitted projects shall demonstrate the capability of providing expertise in all applicable codes and standards including but not limited to:

- a. Title 16 Texas Administrative Code Chapter 12, Sub Chapter R;
- b. Surface Mining Control and Reclamation Act of 1977 Title IV (SMCRA)
- c. Clean Water Act (CWA)

Respondent may provide details of additional projects in addition to the three (3) identified in **Attachment 3: Respondent's Qualifications Statement Form**. Any additional projects provided shall demonstrate Respondent's ability to meet or exceed the minimum qualifications and experience required to deliver the Reclamation Services described within **RFP ATTACHMENT 1 Statement of Services**.

Respondent is solely responsible for providing sufficient details to ensure RRC's evaluation committee members can determine Respondent's understanding of the RFP, the Statement of Services, and scope of work and specifications applicable to performance of the Reclamation Services.

#### **2.9.4 RESPONDENT'S SUBMITTALS (TAB D).**

**2.9.4.1 REQUIRED RRC RFP ATTACHMENTS.** Response **TAB D** shall include properly completed Required RRC RFP Attachments identified within this section. Failure to include each and all the Required RRC RFP Attachments shall result in the Response being deemed nonresponsive to the RFP and disqualified from consideration of Contract award. The Required RRC RFP Attachments applicable to this solicitation include:

- a. **RFP ATTACHMENT 2:** Respondent's Statements and Covenants
- b. **RFP ATTACHMENT 3:** Respondent's Qualifications Statement Form
- c. **RFP ATTACHMENT 4:** HUB Subcontracting Plan
- d. **RFP ATTACHMENT 10:** Mandatory Rate Submission Sheet

**IN ADDITION TO THE REQUIRED RRC RFP ATTACHMENTS, A RESPONDENT SHALL INCLUDE WITHIN TAB D RESPONDENT'S SUBMITTALS SECTION ANY ADDITIONAL STATEMENTS, INCLUDING ANY STATEMENTS ARISING FROM SECTION 2.9.4.2 THROUGH 2.9.4.5 OF THIS RFP, OR SUCH OTHER INFORMATION RESPONDENT DEEMS NECESSARY, VALUABLE, AND APPROPRIATE TO FULLY INFORM RRC OF RESPONDENT'S QUALIFICATIONS, EXPERTISE, AND SUPERIORITY IN SELECTION AS A VENDOR FOR CONTRACT AWARD.**

#### **2.9.4.2 Disclosures**

Each Response shall include (within **Tab D** Respondent's Submittals) Respondent's statements addressing the following disclosures:

**2.9.4.3 Changes in Ownership Conditions.** Respondent shall include a statement certifying Respondent will notify RRC of:

- a. Any change in ownership during the period prior to Contract award, and
- b. Any change in ownership during the term of the Contract or any extension or renewal period(s) thereof.

Respondent shall notify RRC in writing, immediately on or before the change in ownership occurs or is identified. Failure of Respondent and/or Vendor to notify RRC as required herein shall be grounds for rejection of the Response and/or termination of the Contract.

**2.9.4.4 Legal Actions.** Respondent shall identify any pending or completed legal actions that were brought against Respondent, Respondent's agents, officers, and/or Respondent's subcontractors, within the five-year period immediately preceding the Response due date and that relate to failure to perform contracted services, breach of contract, mismanagement of a contract, and/or assessment of any penalties or liquidated damages under any contract with any governmental entity. Respondent shall provide details related to jurisdiction of legal action or contract dispute, reason for penalties or liquidated damages, and penalties or liquidated damages amount for each incident.

**2.9.4.5 Other.** In addition to the disclosures stated above, Respondent shall include any disclosures necessary to conform with **RFP ATTACHMENT 2 Respondent's Statements and Covenants**. Respondent is strongly encouraged to carefully and thoroughly review each statement and covenant within **RFP ATTACHMENT 2 Respondent's Statements and Covenants** to determine applicability of disclosures and to ensure Respondent's Response includes all mandatory disclosure statements applicable to Respondent including, but not limited to, conflicts or potential conflicts of interest (see **RFP ATTACHMENT 2 Respondent's Statements and Covenants** item 5.)

**2.9.4.6 RRC RFP ATTACHMENTS.** **TABLE 3 RRC RFP Attachments** of this RFP is provided *as a general guide only* so that Respondent may note certain RRC RFP Attachments that may be required to be returned with the Response submitted. **TABLE 3 of this RFP is not intended as a minimum, comprehensive, or exhaustive checklist of required elements of a Response.** Respondent solely is responsible for review and understanding of the entire RFP including all terms, conditions, specifications,

attachments, and addenda, if any, issued and for ensuring a submitted Response contains all required elements and forms to be considered responsive to the RFP.

**TABLE 3. RRC RFP ATTACHMENTS**

| <b>Attachment Number: Name</b>                           | <b>Return with Response?</b> |
|--|------------------------------|
| Attachment 1: Statement of Services                      | No                           |
| Attachment 2: Respondent’s Statements and Covenants      | <b>Yes (TAB D)</b>           |
| Attachment 3: Respondent’s Qualifications Statement form | <b>Yes (TAB D)</b>           |
| Attachment 4: HUB Subcontracting Plan (HSP)              | <b>Yes (TAB D)</b>           |
| Attachment 5: Sample RRC Contract                        | No                           |
| Attachment 6: Performance Evaluation Standards           | No                           |
| Attachment 7: Federal Forms                              | No                           |
| Attachment 8: Progress Payment Affidavit                 | No                           |
| Attachment 9: Final Payment Affidavit                    | No                           |
| Attachment 10: Mandatory Rate Submission Sheet           | <b>Yes (TAB D)</b>           |

**2.10 RESPONSE EVALUATION AND CONTRACT AWARD**

RRC intends to award one or more Contract(s) for Reclamation Services, throughout the state of Texas. To determine highly qualified providers, Responses first shall be evaluated to determine pass/fail of criteria demonstrating responsiveness to this RFP. Responses deemed responsive shall advance to weighted criteria evaluation and scoring. At conclusion of weighted evaluation and scoring RRC shall determine, in its sole discretion, whether to request additional Vendor pricing and/or oral presentations and/or engage in the Best and Final Offer (“BAFO”) process. RRC reserves the right to continue to evaluate Responses until achievement of best value to the State as defined by and in accordance with Texas Government Code §2155.074 and §2155.075.

**2.10.1 RESPONSIVENESS.** Each Response shall be evaluated to determine responsiveness to this RFP.

Determination of responsiveness shall include, but may not limited to, pass/fail determination of a Response in:

- a. Compliance with RFP Part I, Section 3.3 Costs of Response Preparation;
- b. Compliance with RFP Part II, Section 2.6 Historically Underutilized Businesses Requirements (including all subsections);
- c. Compliance with RFP Part II, Section 2.9 Organization of Response (including all subsections); and
- d. Compliance with RFP Part III, Section 3.1 General Terms and Conditions.

A Respondent’s failure to comply with one or more requirements of the RFP may result in the Response being deemed non-responsive and thereby disqualified from further consideration of award of a Contract. The list within this subsection is intended for general guidance only and is not intended as an exhaustive list of responsiveness criteria related to this RFP. It is Respondent’s sole responsibility to thoroughly review the Solicitation and Contract Documents of this RFP, including all attachments and addenda issued, if any, to ensure understanding of requirements for responsiveness. All determinations of responsiveness to this RFP shall be final.

**2.10.2 WEIGHTED CRITERIA.** Responses that are deemed responsive shall undergo evaluation of weighted criteria and scoring to determine highly qualified Respondents based upon demonstrated competence and detailed credentials. Weighted criteria evaluation shall apply the best value standard for purchase of goods or services as set forth in Texas Government Code §2155.074. Factors that may be considered include:

- a. Qualifications of Respondent, Respondent’s personnel, and/or Respondent’s subcontractors;
- b. Respondent’s ability to perform Mining Industry Reclamation Services is preferred. Mining Industry Reclamation Service project experience will be evaluated at a greater weight.
- c. Compliance with RFP Response submission requirements; and
- d. Respondent’s acceptance of terms and conditions.

The criteria and respective weight to be used in determining the best value for the State are indicated in **TABLE 4 Weighted Criteria** of this RFP.

**TABLE 4: WEIGHTED CRITERIA**

| Criteria                                  | Weight      |
|---|-------------|
| Reclamation Qualifications and Experience | 60%         |
| Price/Cost                                | 30%         |
| Overall Clarity and Responsiveness        | 10%         |
| <b>Total Score</b>                        | <b>100%</b> |

**2.10.2.1 EVALUATION AND SCORING:**

- **Reclamation Qualifications and Experience 60%** Evaluation and scoring shall include PM experience listed within **Executive Summary (Tab B)**, relevant information within **Experience and Qualifications (Tab C)**, and **Attachment 3: Respondent’s Qualifications Statement Form**, including elaboration of, and details related to, the projects identified therein.
- **Price/Cost 30%** Evaluation and scoring shall be evaluated based upon the extension totals of the line items, compliance with advertised specifications, terms and conditions, proposal requirements and the qualifications of the respondent and its personnel. The estimated quantities stated in the **RFP Attachment 10 Mandatory Rate Submission Sheet**, are not guaranteed and are solely for response evaluation purposes. Payments under this contract will be based on the unit prices accepted by RRC multiplied by the actual quantities resulting from performance of the services.
- **Overall Clarity and Responsiveness 10%** Evaluation and scoring shall include, but is not limited to, overall organization and presentation of Response, demonstration of understanding of RFP requirements.

**2.10.2.2 PAST PERFORMANCE.** A Respondent’s past performance on a State contract, if any, shall be assessed in compliance with applicable provisions of Texas Government Code Chapters 2155 and 2156. Respondents may fail this selection criterion should one or more of the following conditions apply to Respondent:

- a. A score of less than C or Legacy Unsatisfactory in the [Texas Comptroller's Vendor Performance Tracking System](#);
- b. Currently under a Corrective Action Plan through RRC;
- c. Having repeated negative Vendor Performance Reports for the same reason;
- d. Having a record of repeated non-responsiveness to Vendor Performance issues; and/or
- e. Having one or more Purchase Orders that have been cancelled for non-performance in the previous 12 months.

To evaluate and score Respondent’s past performance, RRC may also make inquiry with other entities including Respondent’s references within **RFP ATTACHMENT 3 Respondent’s Qualification Statement Form** and/or any federal, state, or local government agency. RRC may conduct research and investigation as deemed necessary to fully evaluate Respondent’s past performance and may consider notices of termination, cure notices, assessment of liquidated damages, litigation, audit reports, contract non-renewals, and other performance related facts, reports, actions, or information. Any such investigations shall be at the sole discretion of RRC and any negative findings, as determined by RRC, may result in non-award to the Respondent.

**2.10.3 ORAL PRESENTATIONS.** Opportunity or requirement for Respondent oral presentations is not guaranteed and shall be determined at sole discretion of RRC. Oral presentations, if any, shall provide Respondents an opportunity to highlight the entity’s strengths and unique aspects of Respondent’s approach contained within the Response, as well as to address any questions put forth by RRC’s evaluation committee members.

Following tabulation of weighted criteria scores, RRC may determine it is necessary to invite short-listed Respondents to oral presentations prior to making recommendations for award of contracts. Short-listed Respondents shall be deemed those falling within a competitive range determined by RRC. The competitive range refers to Response(s) determined to be reasonably considered for award selection and is an objective means of narrowing the field of Respondents that will participate in subsequent evaluation activities, if deemed necessary. RRC shall employ the following guidelines when determining the competitive range for invitations, if any, to optional oral presentations:

- a. A “natural break” in scores will determine the competitive range;
- b. The number of Respondents, if any, invited to oral presentations shall depend upon closeness of scores of Responses;
- c. In determining number, if any, of Respondents to be invited for oral presentations, RRC shall consider significant gaps in point separation between the top ranked Respondents;
- d. Only those Respondents that are determined by RRC to be highly qualified to provide the Services may be invited for oral presentations;
- e. Oral presentations, if any, shall be held at RRC headquarters in Austin, Texas or virtually due to COVID-19 or other related public health or safety issues;
- f. All expenses associated with responding to and/or attending an oral presentation shall be borne exclusively by the Respondent accepting and/or attending the oral presentation.

**2.10.4 CONTRACT NEGOTIATIONS.** RRC reserves the option to negotiate with one or more Respondents deemed highly qualified to provide the Reclamation Services sought by RRC. Negotiation elements may include, but shall not be limited to pricing, Reclamation Services included in a Contract award, and terms and conditions. RRC reserves the right to continue negotiations until the best value for RRC and the State has been achieved as determined in RRC’s sole discretion.

**2.10.5 BEST AND FINAL OFFER ( “BAFO” ).** At sole discretion of RRC, after completion of weighted criteria evaluation, scoring, and oral presentations (if any), RRC may award a Contract or may request BAFOs from one or more Respondents whose scores are sufficient to qualify the Respondent(s) for further consideration and negotiation as determined exclusively by RRC. In event RRC issues a request for BAFO, Respondents may be permitted to modify an original Response, and the RRC Contract Management Section shall evaluate the BAFOs received.

**2.10.6 RRC CONTACT(S) FOLLOWING AWARD.** RRC contact(s) for day-to-day administration of the Contract shall be determined following Contract award. These individuals may appoint one or more delegates to assist in the day-to-day administration of the Contract and may provide to Vendor a written list of RRC delegates.

**2.10.7 RESERVATION OF RIGHTS.** In addition to any other rights specified elsewhere in this RFP:

- a. RRC reserves the right to reject a Response that does not fully comply with the instructions and criteria outlined in this RFP;
- b. RRC reserves the right to reject any or all Responses and call for new Responses if deemed by RRC to be in the best interest of RRC and/or the State of Texas;
- c. RRC reserves the right to select none, one, or more than one Response for Contract Award when RRC determines that such action would be in the best interest of RRC and/or the State of Texas.

### **PART III: TERMS AND CONDITIONS**

**3.** The terms and conditions herein shall be fully incorporated into and constitute part of the RFP and any resulting Contract. Respondent/Vendor shall comply, and Respondent/Vendor shall require all subcontractors of all tiers to comply, with the terms and conditions of the Contract. In absence of express exclusion in whole or in part from the Response, all terms and conditions are deemed incorporated therein.

#### **3.1 GENERAL TERMS AND CONDITIONS**

**3.1.1 COMPLIANCE WITH RFP AND CONTRACT.** By submitting a response, acknowledging and accepting the Contract, or delivering any services under the Contract, Respondent/Vendor acknowledges, accepts, and agrees to all terms, conditions, specifications, provisions, statements, and guidelines of the Contract, including, but not limited to, the RFP. All parts of the RFP are fully incorporated into and constitute part of the Contract for all

purposes intended. RRC, in its sole discretion, may disqualify a Response from consideration if RRC determines a Response is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

**3.1.2 MISUNDERSTANDING OR LACK OF INFORMATION.** Respondents must be thoroughly informed concerning all relevant facts, data, site conditions, and estimates required for the purpose of assembling a Response and concerning all difficulties that may be encountered in managing or operating a project under the Contract or a Work Order issued thereunder.

**3.1.2.1** No plea of ignorance of existing site conditions or difficulties that may be encountered during performance of a Work Order issued under the Contract shall be accepted as an excuse for any failure or omission by Vendor to fulfill in every detail all requirements of the Contract or shall be accepted as a basis for any claim whatsoever for additional compensation to a finalized, negotiated Work Order.

**3.1.2.2** By submitting a Response, each Respondent acknowledges and agrees that it fully understands and shall abide by the terms and conditions of the RFP, and that Respondent shall not make any claims for, or has any rights to, cancellation or relief without consequences because of any misunderstanding or lack of information.

**3.1.3 AMBIGUITY, CONFLICT, EXCLUSIONARY SPECIFICATION, OR OMISSION.** If Respondent discovers any ambiguity, conflict, discrepancy, exclusionary specifications, omission, or other error in the RFP, Respondent must immediately notify in writing RRC's point of contact for the RFP. If Respondent fails to notify RRC's point of contact for the RFP of any error, ambiguity, conflict, discrepancy, exclusionary specification, or omission, Respondent's submittal of a Response is done so at Respondent's own risk, and if awarded a Contract, Respondent shall not be entitled to additional compensation, relief, or time by reason of the error or its later correction.

**3.1.4 RIGHT TO AMEND, MODIFY, OR WITHDRAW THE RFP.** RRC reserves the right to alter, amend, or modify any provisions of the RFP or to rescind, revoke, or withdraw the RFP, in whole or in part, at any time prior to Contract award if such action is determined by RRC to be in the best interest of the State of Texas and/or RRC.

**3.1.5 NO ALTERATIONS OR WITHDRAWALS OF RESPONSE AFTER DEADLINE.** Responses may not be altered or amended after the Response due date and time specified in the RFP. Any alterations made before the Response due date and time must be initialed by Respondent or Respondent's authorized agent. Responses submitted may not be withdrawn after submission deadline. However, upon receipt of Respondent's written request to withdraw their Response, RRC may, but not must, in its sole discretion approve the request to withdraw a Response.

**3.1.6 ATTACHMENTS.** Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response. RRC reserves the right, in its sole discretion, to reject any Respondent terms and conditions or other documents or attachments as part of Respondent's Response.

**3.1.7 BINDING EFFECT OF RESPONSE.** Unless otherwise agreed in writing and signed by RRC, Respondent agrees to and is bound by the information and documentation provided with the Response. Upon award of Contract, negotiated prices shall remain fixed and guaranteed for the entire Contract period.

**3.1.8 BINDING EFFECT OF CONTRACT.** An awarded Contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.

**3.1.9 REJECTION OF RESPONSE AND CANCELLATION OF RFP.** Issuance of this RFP does not constitute a commitment on the part of RRC to award a contract. RRC is under no obligation to award any contract as a result of this RFP. RRC maintains sole right and discretion to reject any or all Responses and to cancel the RFP if RRC deems such action as in the best interest of the State of Texas and/or RRC. RRC's waiver of any deviations in any Response will not constitute a modification of the RFP and will not preclude RRC from asserting all rights against Vendor for failure to fully comply with all terms and conditions of the RFP.

**3.1.10 RESPONDENT COSTS.** Respondent shall bear all costs and expenses associated with preparation and submission of a Response, including costs associated with travel to and attendance of pre-Response site visits, and submission of all required documents and all required copies of documents.

**3.1.11 RESPONDENT IDENTIFICATION.** Prior to award of Contract, Vendor must provide Vendor's Texas Identification Number (TIN) issued by the Texas Comptroller of Public Accounts.

**3.1.12 CONTRACT AWARD, COPYRIGHT, REISSUANCE.** A response to the RFP is an offer to contract with the State of Texas through RRC based upon the specifications, terms, and conditions contained in the RFP. The Response shall not become a contract with RRC unless, until, and to the extent RRC issues a fully executed Contract and Notice of Award to a successful Vendor. RRC in its sole discretion reserves the right to reject any or all Responses, all or any part of any Response, waive minor technicalities, negotiate pricing and Contract terms

and conditions with all Vendors or no Vendors, and award a Contract in the best interest of the State of Texas and RRC.

Copyrighted Responses are unacceptable and are subject to disqualification as nonresponsive; in addition, RRC reserves the right to disqualify any Response that asserts any copyright on any RRC forms designated by the RFP as a form required to be submitted with Respondent's Response.

Prior to issuance of a Contract, RRC reserves the right to make any corrections or include additional requirements necessary for RRC's compliance with all federal and state laws, regulations, rules, policies, and best practices. RRC reserves the right to at any time reissue the RFP or issue another RFP for the goods and/or services described in this RFP.

**3.1.13 LIMITATION ON AUTHORITY, NO OTHER OBLIGATIONS.** Respondent/Vendor shall have no authority to act for or on behalf of the State of Texas and/or RRC except as expressly provided in the fully executed Contract. No other authority, power, or use is granted or implied. Vendor may not incur any debt, obligation, expenses, or liability of any kind on behalf of RRC or the State of Texas.

**3.1.14 NO OTHER BENEFITS.** Vendor has no exclusive rights or benefits other than those set forth within the Contract.

**3.1.15 AMENDMENTS TO THE CONTRACT.** The Contract may be amended only upon written agreement between RRC and Vendor; however, the Contract may not be amended in a manner that conflicts with the laws of the United States or of the State of Texas. Vendor agrees to amend the Contract and to cooperate in the execution of any contract amendments necessary to effectuate compliance with laws of the State of Texas when such laws require RRC to include additional language in the Contract. During the term of the Contract and any extensions or renewals thereof, RRC reserves the right to request amendments or modifications to the Contract when RRC determines such action to be in the best interests of the State of Texas and/or RRC and for compliance with all applicable state and federal laws, regulations, requirements, and guidelines. Except as otherwise provided in negotiated terms and conditions expressly identified and formalized in the Contract, the entire agreement between RRC and Vendor shall consist of the following documents: the Contract, amendments to the Contract, Purchase Orders, Work Orders and, Change Notices (if any), the RFP (including addenda, if any), and the Response.

**3.1.16 ORDER OF PRECEDENCE; PROHIBITED EXCEPTIONS**

**3.1.16.1 ORDER OF PRECEDENCE.** In event of conflict between the RFP and the Contract Documents, the following documents, in order of precedence, shall apply in resolving such conflicts:

- The Contract (including expressly identified, negotiated terms and conditions) and Amendments to the Contract, Purchase Orders, Work Orders and Change Notices (if any);
- The RFP and Addenda (if any); and
- Vendor's Response.

**3.1.16.2 PROHIBITED EXCEPTIONS.** Unless expressly accepted in writing by RRC, the following exceptions within any Respondent's Response shall be rejected:

- Incorporation of laws of a state other than Texas;
- Any requirements for prepayment;
- Any limitations on RRC's remedies;
- Any requirements that RRC indemnify the Respondent;
- Any requirements that Respondent's documents control in case of conflicts;
- Any requirements that Respondent's documents control even if Respondent accepts or acknowledges the Contract;
- Any requirements to reduce or eliminate required insurance coverages, types, endorsements and limits; and
- Any disclaimer of warranties.

**3.1.17 STATEMENT OF SERVICES; PERFORMANCE.** Vendor shall provide the requested services in the manner described in this RFP. In event of Vendor's failure to conform to all requirements of this RFP, consequences may include, but not be limited to, RRC's withholding of acceptance and payments under the Contract, RRC's cancellation of all or part of the Contract, RRC's revocation of any prior acceptance and Vendor's refund of amounts paid prior to revocation of acceptance.



**3.1.18 TIME LIMITS ENFORCED.** Time is of the essence in the performance of this Contract. Vendor shall strictly comply with all deadlines, requirements, and standards of performance for this Contract and any Work Order issued thereunder and in execution of the work. Vendor acknowledges and accepts all time limits will be strictly construed and rigidly enforced.

**3.1.19 CHANGES AND CHANGED CONDITIONS.**

- 3.1.19.1** RRC's Authorized Representative may, in writing, order changes in the work within the general scope of the Contract or Work Order issued thereunder.
- 3.1.19.2** In event Vendor identifies Changed Conditions on a project site, Vendor shall not further proceed with work until Vendor has submitted a written notice of Changed Conditions to RRC's Authorized Representative and received from RRC's Authorized Representative an authorization to continue with work.
- 3.1.19.3** If Changed Conditions increase or decrease the cost of, or time required for performing, the work, Vendor shall assert a claim in writing prior to the making of final request for payment under the Contract, and RRC may issue a written equitable adjustment by change order. However, no adjustment shall be made in favor of Vendor unless Vendor has timely submitted written notice of Change Conditions and written assertion of claim in conformance with the terms of the Contract. Notwithstanding the forgoing, in absence of a written notice of Changed Conditions having been timely submitted by Vendor, RRC in its sole discretion may waive the requirement therefore and approve Vendor's claim. In the event RRC and Vendor cannot agree upon an equitable adjustment, the dispute shall be decided pursuant to the dispute resolution process contained within the terms and conditions of the Contract.
- 3.1.19.4** It is recognized and agreed to by RRC and Vendor that information provided within the RFP, including specifications, attachments and addenda, if any, may not be complete or free from errors, omissions and imperfections, or that the information may require changes or supplementation in order for the work to be completed to the satisfaction of RRC. Accordingly, it is the express intention of RRC and Vendor, notwithstanding any other provisions in the Contract, that any errors, omissions or imperfections in such specifications, exhibits to the RFP, and addenda, if any, or any changes in or supplementation to same or to a Work Order issued by RRC and any resulting delays in the work or increases in Vendor's costs and expenses arising out of such errors, omissions or imperfections shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Vendor, whether for breach of Contract or otherwise; provided, however, that RRC shall be liable to Vendor for the sum stated to be due Vendor in any change order approved and signed by both RRC and Vendor, it being agreed hereby that such sum, together with any extension of time contained within the approved change order, shall constitute full compensation to Vendor for all costs, expenses, and damages to Vendor as permitted under Texas Government Code Chapter 2260.

**3.1.20 CONTRACT COMPLETION AND LIQUIDATED DAMAGES.**

- 3.1.20.1 Performance Period.** The performance period for work under a Work Order or Purchase Order arising under the Contract shall commence on the date stated within the NTP issued from RRC to the Vendor, and all work under the Work Order or Purchase Order shall be completed not later than specified within the Work Order or Purchase Order.
- 3.1.20.2 Liquidated Damages Value.** RRC has determined that the completion of the work under a Work Order or Purchase Order arising under the Contract is critical to remove the threat of pollution in Texas. Vendor's failure to complete any work within the required time of a Work Order or Purchase Order will cause damage to RRC and operations related to Reclamation efforts. Since exact damages are difficult to determine or forecast, ***the sum of Two Hundred Dollars (\$200.00) per calendar day per incomplete Work Order*** is hereby established by the Parties as a reasonable estimate of just compensation to RRC for failure of Vendor to complete work specified by the date set forth in writing within the Work Order or Purchase Order or a written, authorized extension thereto. In event RRC deems liquidated damages are necessary and appropriate, the total sum of liquidated damages shall be deducted from the money due or to become due to Vendor, not as a penalty, but as liquidated damages and added expense including administrative and inspection costs for each and every calendar day the work or any portion thereof remains incomplete after the expiration of the performance period set forth within the NTP issued from RRC to Vendor or a written, authorized extension thereto.

**3.1.20.3 Calculation of Liquidated Damages.** Charges for liquidated damages will begin accumulating on the first calendar day following the final completion date set forth within the NTP issued from RRC to Vendor or a written, authorized extension thereto, and continue until the date of actual, final completion as established by RRC. Final completion of the Contract will not be issued until all required work under the Contract has been verified by RRC's Authorized Representative as complete.

**3.1.21 ASSIGNMENTS AND SUBCONTRACTORS.** Respondent/Vendor shall not assign its rights, or delegate the performance of Vendor's duties, under the Contract without prior written approval of RRC. Any attempted assignment in violation of this provision is void and without effect.

**3.1.21.1** Vendor must submit to RRC's Authorized Representative any proposed subcontractor and shall receive from RRC's Authorized Representative, written approval of the subcontractor prior to Vendor authorizing subcontractor's performance of any work under the Contract.

**3.1.21.2** Subcontractors providing service under the Contract shall meet the same requirements and level of experience as required of the Vendor.

**3.1.21.3** No subcontract under the Contract shall relieve the Vendor of responsibility for delivery of work and services required under the Contract. If Vendor uses a subcontractor for any or all work required, the following conditions shall apply under the listed circumstances:

- Respondents planning to subcontract all or a portion of the work to be performed under this Contract shall identify each proposed subcontractor on the HSP form (see ***RFP ATTACHMENT 4 APPENDIX A Prime Contractor Progress Assessment Report (PAR)***);
- Subcontracting shall be at Vendor's expense;
- RRC retains the right to review any subcontractor's background and approve or reject the use of Vendor's proposed subcontractors;
- Vendor shall be the only Vendor for RRC for the Contract. Vendor shall manage Vendor's subcontractors, if any. Vendor shall provide contact information, including mobile phone number and email address, of Vendor's designated point of contact to which RRC and Vendor's subcontractors shall submit any inquiries.

**3.1.22 PAYMENTS TO VENDOR.** Vendor shall submit by email to RRC's designated point of contact all requests for payment. Payment requests shall be submitted upon Respondent's completion of and RRC's acceptance of work. When submitting request by email, Vendor shall include as attachments to the email Vendor's invoice, all additional documents required by Contract, and applicable to the payment request. Each Vendor's invoice shall reflect a single Contract and all and only services related thereto which have been delivered, inspected, tested, evaluated, and accepted by RRC within the Contract performance period concluding on the invoice date.

**3.1.22.1 Compliance with Texas Government Code Chapter 2251 required.** A Vendor awarded a Contract arising from this RFP, and all Vendor's subcontractors, if any, shall comply with all applicable provisions of Texas Government Code Chapter 2251 relating to prompt payment for goods and services under a contract issued by a state agency. Texas Government Code Chapter 2251 requires, in part, that a Vendor that receives payment from a state agency shall pay a subcontractor the appropriate share of the payment not later than the 10th day after the date the Vendor receives the payment; and, the Vendor's subcontractor who receives a payment from the Vendor shall pay a person who supplies goods or a service for which the payment is made, the appropriate share of the payment not later than the 10th day after the date the subcontractor receives the payment. Vendor's compliance with this provision shall be strictly enforced by RRC. RRC reserves the right to request evidence of Vendor's compliance, and evidence of Vendor's subcontractor's compliance with this condition of the Contract.

**3.1.22.2 Progress Payments. Note: A Contract arising from this RFP shall require 0% retainage withheld on all progress payments, unless expressly required by supplemental terms and conditions within a Work Order issued under the Contract.** Payment requests under the Contract shall be based on work completed per site, per month unless otherwise approved in writing by RRC. Upon Respondent's completion of work, and upon RRC's acceptance thereof, Vendor shall submit a properly prepared, itemized invoice accompanied by all additional documents required by Contract, as a Contract progress payment equal to **100%** of the value of the work invoiced as completed by Respondent and accepted by RRC. Subsequent to each invoice and Progress Payment, Vendor shall mail within three (3) business days the original, signed and notarized Vendor's Progress Payment

Affidavit, to the RRC designated Contract Manager (see **RFP ATTACHMENT 8 PROGRESS PAYMENT AFFIDAVIT**).

- 3.1.22.3 Final Payments.** Upon Respondent’s completion of all final, not previously invoiced, work, and upon RRC’s acceptance thereof, Vendor shall submit a properly prepared invoice as Vendor’s request for final payment under the Contract. Upon Vendor’s submittal of a properly prepared, itemized invoice accompanied by all additional documents required by Contract, final payment may be made by RRC in accordance with Texas Government Code Chapter 2251. Vendor’s final payment request shall reflect value for 100% of the value of work performed by Vendor and accepted by RRC, but not previously invoiced by Vendor, and shall include invoicing for all retainage, if any, previously withheld and not released under the Contract. Vendor’s final payment invoice and additional documents required by the Contract shall be accompanied by a completed “Final Payment Affidavit” (see **RFP ATTACHMENT 9 FINAL PAYMENT AFFIDAVIT**).

**3.1.22.4 INVOICE REQUIREMENTS.**

Vendor’s invoice must clearly reflect the following:

- RRC Contract Number, Work Order, and Purchase Order number (as applicable);
- RRC bill to information;
- Vendor name;
- Vendor address;
- Vendor remit payment to information;
- Texas Vendor Identification Number assigned by Texas Comptroller of Public Accounts;
- Invoice date;
- Invoice number (may not be duplicate invoice number from prior invoice submitted);
- Date(s) of delivery of services and/or goods; and
- Description of services, to include (per site):
  - Operator name
  - Lease/site name
  - County
  - Price
  - Invoice total.
- Vendor’s invoices submitted to and received by RRC, but which fail to conform to all invoice requirements stipulated within the Contract Documents will be returned to Vendor unpaid or will be held by RRC until all requirements for submittal of revised invoice and/or additional documents required by the Contract are satisfied.

- 3.1.22.5 AUTHORIZATION OF PAYMENT.** Prior to authorizing payment to Vendor, RRC shall evaluate Vendor’s performance in accordance with Contract requirements.

- 3.1.22.6 NON-REIMBURSABLE ITEMS.** RRC will not reimburse for travel, meals, lodging, or other related expenses unless specifically provided for under the Contract and pre-approved in writing by both the RRC Authorized Representative and RRC Contract Manager assigned to the Contract. In such an event, costs will be invoiced to RRC based on actual expenses, and RRC shall not be liable for reimbursement of expenses that (i) were not preapproved in writing by RRC, or (ii) exceed the current State Travel Regulations. Vendors are required to provide receipts to validate invoicing. State Travel Reimbursement Rates may be found at:

<https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>.

Vendors shall note: RRC shall not reimburse for travel, meals, lodging, or other related expenses that may be reasonably anticipated as part of the Contract or a Work Order issued thereunder. Vendors shall not be reimbursed for travel, meals, lodging, or other related expenses that are reasonable and ordinary in the course of delivery of Reclamation Services.

- 3.1.22.7 NO PREPAYMENTS.** RRC will not prepay for any services provided to RRC by Vendor in performance of services or work under the Contract. RRC shall not make down payments, deposits,

pay advances, advance deposits, or any other payments that are not made specifically for properly documented completed services approved for payment by and satisfactorily provided to RRC.

**3.1.22.8 REFUNDS.** Upon Vendor's discovery of any erroneous payment from RRC to Vendor of any funds, or upon receipt of written notice of erroneous payments issued by RRC, Vendor shall promptly refund or credit within thirty (30) calendar days any funds erroneously paid by RRC or which are not expressly authorized under the Contract.

**3.1.23 RECORDS MAINTENANCE, RETENTION, AND AUDIT.** Respondent 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 shall be maintained and retained by Respondent 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.

Respondent shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Respondent pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Agency and the State of Texas.

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**3.1.24 INDEMNIFICATION.**

**3.1.24.1 ACTS OR OMISSIONS.** RESPONDENT/VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND RRC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, 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 RESPONDENT/VENDOR 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 RESPONDENT/VENDOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT/VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. VENDOR AND RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

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

**3.1.25 INFRINGEMENT: PATENT, TRADEMARK, COPYRIGHT, AND OTHER INTELLECTUAL PROPERTY.**

**3.1.25.1 CLAIMS.** RESPONDENT SHALL DEFEND, INDEMNIFY, SAVE, AND HOLD HARMLESS THE STATE OF TEXAS AND RRC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, SERVICEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL, INTANGIBLE PROPERTY, PUBLICITY, OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF RESPONDENT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) RRC'S AND/OR RESPONDENT'S USE OF OR ACQUISITION OF ANY SERVICES OR OTHER ITEMS PROVIDED TO RRC BY RESPONDENT OR OTHERWISE TO WHICH THE STATE OF TEXAS AND/OR RRC HAS ACCESS AS A RESULT OF RESPONDENT'S PERFORMANCE UNDER THIS CONTRACT. RESPONDENT AND RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, RESPONDENT WILL REIMBURSE AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF RESPONDENT OR IF AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND RESPONDENT WILL PAY ALL REASONABLE COSTS OF AGENCY'S COUNSEL.

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

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

**3.1.26 PERSONAL INJURY, PROPERTY DAMAGE.** Vendor shall be liable for any bodily injury or personal injury to any individual caused by any of Vendor's employees during any assignment under the terms of the Contract. In the event of loss, destruction, or damage to any State of Texas or RRC property by Vendor's employees, Vendor shall indemnify the State of Texas and RRC and pay to the State of Texas and/or RRC the full cost of repair, reconstruction, or replacement at RRC's election. Vendor shall reimburse the State of Texas and/or RRC for such property damage within thirty (30) calendar days after Vendor's receipt of RRC's written notice of amount due. This provision survives the termination or expiration of the Contract.

**3.1.27 INSURANCE REQUIREMENTS. Time is of the essence. Vendor shall submit to RRC a complete, current, certificate of insurance not later than ten (10) calendar days after RRC's issuance of written Notice of Intent to Award of a Contract.** Vendor's certificate of insurance shall be fully compliant with all terms and conditions of the Contract. Vendor shall maintain required insurance coverages in accordance with the terms and conditions of the Contract throughout the entire Contract term (including warranty, if applicable.) Vendor shall not proceed with any work under the Contract without RRC's approval of certificate of insurance.

**3.1.27.1** All required insurance coverage must issue from a company or companies that:

- Have both a Financial Strength Rating of "A" or better from A.M. Best Company, Inc.; and
- Have a Financial Size Category Class of "VII" or better from A. M. Best Company, Inc.

**3.1.27.2** All insurance policies for required coverage must be issued by companies authorized to do business in, and under the laws of, the State of Texas. Certificates of insurance shall be issued on a form approved by the Texas Department of Insurance and be satisfactory to RRC. Certificates of insurance shall specify and/or set forth the following:

- RRC as certificate holder with correct mailing address;
- Insured's name which must match Vendor's legal name on and within this Contract;
- Insurance company(ies) affording each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representative of the insurance company(ies);
- Producer of the certificate of insurance with correct address and phone number listed;
- Additional insured status as required herein;
- Amount of any deductibles and/or retentions;
- A 30-day Notice of Cancellation, non-renewal, or reduction in coverage;
- Contractual liability coverages as required herein;
- Primary and non-contributing endorsement. All insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to RRC, with RRC's insurance being excess, secondary, and non-contributing;
- Waiver of Subrogation endorsement; and
- Listing of all exclusions and limitations added by endorsement to general liability coverage; however, no endorsements shall restrict, limit, or exclude in any manner whatsoever, coverage required.

**3.1.27.3** All certificates of insurance for required coverage other than workers' compensation and professional liability (as applicable) shall name the State of Texas, RRC, and its officers, directors, and employees as additional insured.

**3.1.27.4** Respondent's Response shall include proof of minimum required insurance types and limits of coverage. Proof of insurance may be provided in the form of current certificates of insurance (e.g., an Acord™ form).

**3.1.27.5 Minimum Contractually Required Insurance Types and Coverage:**

| <b>Insurance Type</b>   | <b>Each Occurrence/Aggregate Limits</b>   |
|---|---|
| <u>Workers' Compensation</u>  | Within statutory limits/Texas Workers' Compensation Act.  |
| <u>Employer's Liability</u><br>Bodily Injury by Accident<br>Bodily Injury by Disease  | \$1,000,000 Each Accident<br>\$1,000,000 Each Employee<br>\$1,000,000 Policy Limit  |
| <u>Commercial General Liability</u><br>Includes liability arising out of all locations and operations of Vendor, including but not limited to liability assumed under this Contract (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limits of liability. | <u>Bodily Injury and Property Damage</u><br>\$1,000,000 Each Occurrence/\$2,000,000 General Aggregate<br>\$2,000,000 Product-Completed Operations Aggregate<br>\$1,000,000 Personal Injury and Advertising Liability<br>\$5,000 Medical Expense each person |
| <u>Automobile Liability</u><br>Must include liability arising out of <u>any auto</u> and be on business auto form.  | \$1,000,000 Combined Single Limit (for each accident)   |
| <u>Commercial Umbrella</u><br><u>Excess Liability</u>   | \$1,000,000 Each Occurrence/\$1,000,000 General Aggregate<br>\$1,000,000 Each Occurrence/Person   |

**\*\*At RRC sole discretion, higher limits may be required based on complexity of WO/Project\*\***

**3.1.27.6 Failure to Obtain, Maintain, or Renew Required Insurance.** Failure to obtain, maintain, and/or renew the required insurance shall constitute a material breach of and default under this Contract. If Vendor fails to remedy such breach within five (5) business days after written notice by RRC, Vendor shall be liable for any and all costs, liabilities, damages and penalties resulting to the State of Texas and RRC from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Vendor by RRC. In the event of any failure by Vendor to comply with the provisions of this Contract, RRC may, without in any way compromising or waiving any right or remedy at law or in equity, on written notice to Vendor, purchase such insurance, at Vendor's expense, provided that RRC shall have no obligation to do so and if RRC shall do so, Vendor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

**3.1.28 TERMINATION AND CANCELLATION.** The Contract may be terminated, canceled, or cancellation of services may occur, in whole or in part, in any one or more of the following circumstances:

**3.1.28.1 TERMINATION OR CANCELLATION FOR CONVENIENCE.**

- **Mutual Agreement.** Upon the mutual written agreement of RRC and Vendor, the Contract may be terminated or canceled.
- **RRC Cancellation upon Thirty (30) Days' Notice.** RRC may in its sole discretion terminate, cancel the Contract, or cancel specific services of the Contract with thirty (30) calendar days' written notice to Vendor.

**3.1.28.2 TERMINATION OR CANCELLATION FOR CAUSE.**

- **Breach of Material Term.** Either party may, upon giving thirty (30) calendar days' written notice identifying specifically the basis of such notice, terminate the Contract for breach of a material term or condition of the Contract, provided the breaching party must not have cured such breach within the thirty (30) calendar days' period. In the event of such termination, Vendor will be paid for all services accepted prior to the date of the termination. No additional charges or fees will be assessed to RRC for the termination or cancellation.
- **Vendor Nonperformance.** If Vendor defaults on the Contract after award has been made, RRC reserves the right to cancel the Contract without notice and either reissue the RFP or award the Contract to the next qualified, responsive and responsible Vendor offering the best value to the state as determined by RRC. In such event, the defaulting Vendor will not be considered for

award for any Contract arising under the re-solicitation and may not be considered in future solicitations for the same type of work unless the specifications or scope of work differ substantially from the work and/or services under the Contract on which Vendor defaulted. The length of any period of suspension shall be determined by RRC based on the seriousness of the default. In the event of nonperformance default, Vendor shall remain liable for all covenants and indemnities under the Contract. Vendor shall be liable for all costs and expenses, including any attorneys' fees and court costs, incurred by RRC with respect to the enforcement of any remedies listed herein.

- **Bankruptcy.** Upon the filing of a petition for bankruptcy, or upon the judgment of bankruptcy or insolvency by or against Vendor, RRC may terminate the Contract for cause without notice. Such termination shall be effective upon the date of such filing or upon the date of judgment.
- **Availability of State Funds, Legislative Action, Necessity of Performance.** The Contract is subject to termination or cancellation, without penalty to RRC, either in whole or in part, subject to the availability of state funds.
- **Legal Remedies and Damages from Breach of Contract.** RRC expressly reserves all legal remedies to which it may be entitled to collect and all damages directly or indirectly resulting from breach of contract by Vendor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of Vendor. RRC reserves the right to pursue all applicable rights and remedies if the Contract is terminated for any reason and RRC expressly waives no such rights or remedies.
- **Substitution of Services.** In the event of RRC's termination or cancellation of the Contract for cause, RRC may procure, upon such reasonable terms and in such manner as RRC deems appropriate, substitute services similar to services terminated or canceled. Vendor shall be liable to RRC for any excess or additional costs incurred by RRC in acquiring such services plus court costs and attorneys' fees. RRC's recovery of costs under this section is in addition to any other remedies available to RRC under the Contract and/or under applicable law.

### 3.1.28.3 MISCELLANEOUS TERMINATION PROVISIONS.

- **Recovery of Funds.** RRC reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to RRC under the Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Vendor's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to RRC under the Contract or under applicable law. RRC reserves the right to pursue all applicable rights and remedies if the Contract is terminated for any reason, and RRC expressly waives no such rights or remedies.
- **Notice of Termination or Cancellation Delivery.** Any termination by RRC of the Contract which requires written notice may be accomplished by RRC's delivery to Vendor of a notice of termination or cancellation specifying that the Contract is terminated or canceled.

**3.1.29 FEDERAL, STATE, AND LOCAL REQUIREMENTS.** Vendor shall demonstrate onsite compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Forms W-2 to common law employees. Vendor shall be solely responsible for both federal and state unemployment insurance coverage and standard Worker's Compensation Insurance coverage for Vendor's employees. Vendor shall comply with all federal and state employment tax laws and withholding requirements. The State of Texas shall not be liable to Vendor and Vendor's employees for any unemployment, workers' compensation, or federal or state tax withholding requirements. Vendor shall indemnify the State of Texas and RRC and shall pay all costs, penalties, or losses resulting from Vendor's omission or breach of this section.

**3.1.30 INDEPENDENT VENDOR.** Vendor shall serve as an independent Vendor in providing services under the Contract. Vendor's employees are not and shall not be construed as employees or agents of the State of Texas. Subject only to the terms of this Contract, Vendor shall have the sole right to supervise, manage, operate, control, and direct performance of its duties under this Contract. Nothing contained in the Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for RRC whatsoever with respect to the indebtedness, liabilities, and obligations of Vendor or any other party. Vendor shall be solely responsible for, and RRC shall have no obligation with respect to:

- Withholding of income taxes, FICA, or any other taxes or fees;



- Industrial worker's compensation insurance coverage;
- Participation in any group insurance plans available to employees of the State of Texas;
- Participation or contributions by State of Texas to the State Employees Retirement System;
- Accumulation of vacation or sick leave, or
- Unemployment compensation coverage provided by the state.

**3.1.31 FORCE MAJEURE.** Any delays in or failure of performance by either party, except in respect of the obligation of payments under the RFP or Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure," including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligences to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, RRC may terminate the Contract immediately upon written notification to the Respondent.

**3.1.32 LABOR ACTIVITY.** Notwithstanding the foregoing paragraph, in the event any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against Vendor at RRC's facility and such labor activity results in the curtailment or discontinuation of services performed under the Contract, RRC shall have the right during said period to employ any means legally permissible to have the work performed.

**3.1.33 DISPUTE RESOLUTION.** Disputes arising under the Contract shall be resolved in accordance with the dispute resolution process provided in Texas Government Code Chapter 2260 and in accordance with 16 Texas Administrative Code Chapter 20, Subchapter A, Division 2.

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

**3.1.34 COMPLIANCE WITH OTHER LAWS.** Respondent shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Contract. RRC reserves the right, in its sole discretion, to unilaterally amend the contract prior to award and throughout the term of the Contract to incorporate any modifications necessary for RRC's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

**3.1.35 PERMITS, LICENSES, CERTIFICATIONS.** Vendor shall obtain and maintain all permits, licenses, or other authorizations as may be required for performance of the work under the Contract. Upon request by RRC, Vendor shall furnish to RRC certified copies of required permits, licenses, or other required authorizations. Vendor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Vendor shall be responsible for payment of any such government obligations not paid by Vendor's subcontractors during performance of the Contract.

**3.1.36 LEGAL NOTICES.** Any legal notice required or permitted to be delivered under the RFP and/or Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to RRC or Respondent. Notice given in any other manner shall be deemed effective only when received by the party to be notified. Either party may change its address for notice by providing written notice to the other party in accordance with the terms and conditions herein.

**3.1.37 GOVERNING LAW AND VENUE.** The RFP and Contract shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of law provisions. The venue of any suit brought under the RFP and/or Contract is fixed in any court of competent jurisdiction in Travis County, Texas unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the RRC. Vendor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any

action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this Section shall be construed as a waiver of sovereign immunity by RRC.**

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

**3.1.39 CONFIDENTIAL INFORMATION; PUBLIC INFORMATION ACT DISCLOSURES.** Information, documentation, and other material in connection with this Solicitation or any resulting Contract may be subject to public disclosure pursuant to Texas Government Code Chapter 552 (the "Public Information Act"). In accordance with Texas Government Code §2252.907, Respondent 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. Specific forms acceptable to RRC include MS Word®, MS Excel®, and \*.pdf files.

**3.1.40 DISASTER RECOVERY PLAN.** Upon request of RRC, Respondent shall provide to RRC the descriptions of Respondent's business continuity and disaster recovery plans.

**3.1.41 PUBLIC DISCLOSURE.** Respondent shall not use RRC's name, logo, or other likeness in any press release, marketing material, or other announcement without prior written approval of RRC. RRC does not, and shall not, endorse any Respondent, vendor, commodity, or service. Respondent shall not, and is not authorized to, make or participate in any media releases or public announcements pertaining to the Solicitation, a contract arising from this RFP, the Response, or the services to which they relate with RRC's prior written consent, and then only in accordance with explicit written instructions from RRC.

**3.1.42 ENTIRE CONTRACT AND MODIFICATION.** The Contract and its integrated attachment(s) constitute the entire agreement of the parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements made in connection with the subject matter hereof. Unless an integrated attachment to the RFP and Contract expressly states a mutual intent to amend a specific article, section, item, term, or condition of the RFP and/or Contract, general conflicts in language between any attachment and the RFP and Contract shall be construed in favor of the terms and conditions of the RFP and Contract. Unless expressly authorized by the terms of this Contract, no modification, renewal, extension, or amendment to the RFP and Contract shall be binding upon the parties unless the same is in writing and signed by all Parties through an authorized representative of each Party with authority to bind the Party to the Contract.

**3.1.43 SEVERABILITY.** If any provision contained in this RFP and the Contract is held to be unenforceable by a court of law or equity, the RFP and Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

**3.1.44 COUNTERPARTS.** The Contract issued pursuant to this RFP may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

**3.1.45 RESPONDENT'S STATEMENTS AND COVENANTS REQUIRED.** Respondents must sign and return the *Respondent's Statements and Covenants* form (see *RFP ATTACHMENT 2*) which shall be part of Respondent's Response and shall be fully incorporated by reference and constitute part of the Contract if awarded to Respondent. Failure to include a signed *Respondent's Statements and Covenants* form shall result in a Response being deemed nonresponsive and ineligible for Contract award.

## **3.2 SUPPLEMENTAL TERMS AND CONDITIONS APPLICABLE TO RFP NO. 455-22-1023.**

**3.2.1 Possessory Rights of Material and Equipment.** Pursuant to certain provisions of Texas Natural Resources Code Chapter 91, upon entering into a contract to clean up a site or facility upon which equipment or hydrocarbons are stored, the State of Texas shall have first lien, superior to all preexisting and subsequent liens and security interests, on hydrocarbons stored at a site or facility and in any equipment that is located at the site or facility. A Vendor awarded a Contract under this RFP shall not obtain possessory rights, lien rights, salvage rights, or title to such hydrocarbons or equipment except by formal, written process and agreement in accordance with Texas Natural Resources Code Chapter 89 and any other applicable statute, law, or rule.

**3.2.2 Federal Funds.** Work Orders issued under a Contract arising from this RFP may be funded with federal dollars, including grant dollars. Respondents shall note the following:

- 3.2.1.1 Federal Forms.** A Work Order issued under a Contract arising from this RFP may, but not shall, be funded with federal dollars, including but not limited to grant dollars. A Work Order funded with federal dollars shall require, as applicable, completion of required federal forms and compliance with federal statutes, rules, and regulations.
- 3.2.1.2 Flow down terms and conditions.** Work Orders issued under a contract arising from this RFP may, but not shall, be funded by grant dollars received by RRC from agreements between RRC and the U.S. government. Such agreements shall have certain applicable federally funded contract provisions (“Flow Down Terms and Conditions”) that will be required to be made part of any agreement, Work Order, or Purchase Order issued by RRC for work funded using federal dollars. By submitting a response to this RFP, Respondent acknowledges understanding that in order to receive a Work Order funded by federal dollars, Respondent shall be provided opportunity to review any applicable agreement and any applicable Flow Down Terms and Conditions prior to negotiation of the Work Order and, if accepting of the applicable Flow Down Terms and Conditions, Vendor shall fully comply with the requirements thereof.
- 3.2.2 Electrical Items.** All electrical items (if required under a Work Order) shall meet all applicable OSHA standards and regulations and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers’ Association (NEMA).
- 3.2.3 Prohibited Use of State Property.** Respondent is prohibited from using State Property for any purpose other than performing Reclamation Services authorized under the Contract. State Property includes, but is not limited to, RRC’s office space, identification badges, RRC information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any RRC issued software, and the RRC Virtual Private Network (VPN client)), and any other resources of RRC.
- 3.2.4 Vendor’s Identification of Key Personnel.** Upon request of RRC and prior to start of any work related to such request, Vendor shall provide to the requesting RRC Authorized Representative a list of Vendor’s personnel, including subcontractors, who shall be assigned to a project management, site management, and/or operations management role and/or such other assignments to critical activities (“Key Personnel Roles”). Vendor’s list shall include, at a minimum, identification of Vendor’s senior staff within the following types of roles: Project Manager, Site Manager, Operations Manager.
- 3.2.4.1** Upon receipt of written approval of Vendor’s list under this article, Vendor shall not reassign, transfer, or delegate any Key Personnel Roles, responsibilities, tasks or duties under the Work Order without prior written approval of the RRC Authorized Representative.
- 3.2.4.2** Vendor solely shall be responsible for ensuring, throughout Contract Term, that Vendor’s personnel, including subcontractors, that are assigned to a Key Personnel Role, shall meet all minimum qualifications, certifications, licenses, and experience required by the Solicitation and Contract Documents and federal, state, and local laws, rules, regulations, and ordinances.
- 3.2.4.3** In event Vendor receives written approval from RRC to replace any personnel assigned a Key Personnel Role, Vendor shall ensure replacement of the personnel shall be with a qualified individual with equal or better qualifications of the previously approved Vendor personnel and at no additional cost to RRC.
- 3.2.5 Enhanced Contract Monitoring.** RRC has determined any contract resulting from this RFP may require enhanced monitoring for performance and compliance with the Contract terms and conditions. Vendor receiving a Contract award resulting from this RFP shall be subject to applicable performance evaluation standards described within **RFP ATTACHMENT 6 PERFORMANCE EVALUATION STANDARDS**.

## **ATTACHMENTS**

|               |   |
|---------------|---|
| Attachment 1  | Statement of Services   |
| Attachment 2  | Respondent's Statements and Covenants                                 |
| Attachment 3  | Respondent's Qualifications Statement Form                            |
| Attachment 4  | HUB Subcontracting Plan & Prime Contractor Progress Assessment Report |
| Attachment 5  | Sample RRC Contract   |
| Attachment 6  | Performance Evaluation Standards                                      |
| Attachment 7  | Federal Forms   |
| Attachment 8  | Progress Payment Affidavit  |
| Attachment 9  | Final Payment Affidavit   |
| Attachment 10 | Mandatory Rate Submission Sheet                                       |

## STATEMENT OF SERVICES

### 1. INTRODUCTION

Vendor shall provide all labor, materials, equipment, tools, incidentals, and services necessary to deliver Reclamation Services for the RRC, as directed. All work under the Contract shall be performed in accordance with applicable federal, state, and local statutes, laws, ordinances, regulations, and rules, including RRC Statewide Rules, the specifications within this SOS and any Work Order issued under the Contract, and all terms and conditions of the Contract.

### 2. BACKGROUND

Texas Natural Resources Code Chapter 134 and Texas Administrative Code Title 16 Chapter 12 provide that, in connection with surface coal mining and reclamation, the RRC may perform activities necessary or expedient to protect the public health, safety, or general welfare and to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices (collectively, Reclamation Services).

The Abandoned Mine Land program division of the RRC is tasked with the reclamation of abandoned surface mines which usually consists of the following: earthwork (highwall reduction and spoil recontouring) burial or treatment of unsuitable spoil (usually acidic or naturally occurring radioactive spoil) and installation of erosion and water control structures and revegetation. Dangerous abandoned underground mine openings are usually closed by one of the following methods: backfilling, capping (concrete or metal grating) or metal gating.

The RRC does not have the personnel or the equipment required to perform Reclamation Services and seeks to prequalify Reclamation Firms deemed highly capable of completing all work required under a Contract arising from **RFP No. 455-22-1023** and any Work Order issued thereunder.

### 3. SCOPE OF SERVICES

Vendor shall deliver Reclamation Services including but not limited to services detailed under Section 3.1 Services to be Performed for the RRC. Vendor shall deliver the Services in accordance with the terms and conditions of the Contract while adhering to the highest of applicable professional standards. All Respondents to this Solicitation must submit qualifications for Reclamation Services to be considered for a Contract. Respondent shall submit qualifications for services listed in Section 3.1 Services to be Performed of this solicitation. Respondent must demonstrate proven experience in **Attachment 3: Respondent's Qualifications Statement Form** and with your response in **Tab C Experience and Qualifications**.

**3.1 Services to be Performed.** Under the direction of RRC staff, Vendor shall be solely responsible for performance of all work required under the contract. Vendor's responsibilities shall include, but not be limited to, the following services:

**3.1.1** Determine and provide the necessary personnel, equipment, services, and materials required to reclaim mines included in a Work Order.

**3.1.2** Reclaim abandoned mine lands and contamination through earthwork which includes, but is not limited to:

- a. Remediation of ground subsidence features including but not limited to: underground and surface mine subsidence and depressions
- b. Surface and groundwater remediation, including but not limited to: stream, wetland, and pond remediation in accordance with Clean Water Act 402 and 404 permits; water treatment facilities, dewatering/pumping systems, water control channels
- c. Obtain necessary TPDES permits and implement a stormwater pollution prevention plan
- d. Soil handling including but not limited to: excavation and soil segregation, stockpiling and redistribution, highwall and spoil ridge reduction
- e. Vendor shall locate a source for clean clay and/or fill material and haul to work site, or use borrow area on site for backfilling operations
- f. Revegetation including the use of natives and/or like for like species
- g. Construction of roads, gates, fencing, wildlife exclusion fencing
- h. Burning, clearing, grubbing, and waste removal and disposal
- i. Implement erosion and sediment control measures, and appropriate final grading techniques
- j. Drilling and grouting operations

- k. Acid forming materials remediation
- l. Acid seep remediation per design
- m. Restore land to a habitable condition

**3.1.3** Respondent shall perform reclamation observation and post-reclamation/post-construction monitoring at AML sites

**3.1.4** Compare feasibility and cost-effectiveness of remedial solution

**3.1.5** Other tasks as required

### **3.2 WORK ORDER PROCESS**

Respondents awarded a Contract arising from this RFP shall be subject to RRC's Work Order process for work required under the Contract. RRC's Work Order process shall include RRC first selecting the most suitable Vendor of RRC's pre-qualified Vendors, in terms of ability to provide the particular Reclamation Services required, proximity to the worksite, availability, and any other relevant factors at the sole determination of RRC. It is at RRC sole discretion to negotiate Work Order price with pre-qualified Vendor using the following process:

**3.2.1** RRC shall submit to Vendor a Work Order request which shall include a scope of work to be performed at one or more sites specified within the Work Order.

**3.2.2** Within the number of days specified within a Work Order request, Vendor shall complete and return the information requested by RRC, including applicable pricing for all work required to deliver all Reclamation Services specified within the Work Order request.

**3.2.2.1** Vendor's failure to return to RRC the information requested within the required days specified within the Work Order request may result in RRC retracting the Work Order request from Vendor and submitting to another Vendor some or all Reclamation Services specified within the Work Order request.

**3.2.3** RRC shall review the Vendor's response to the Work Order request to determine whether the response is fair and reasonable, negotiating if necessary any unacceptable terms, conditions, and pricing of the Work Order, until the RRC and Vendor enter into written acceptance of the Work Order or formally end negotiations between RRC and the Vendor for that Work Order.

**3.2.4** Upon RRC's and Vendor's written acceptance of a Work Order, RRC shall issue a written NTP for Reclamation Services to be delivered in accordance with the Work Order.

**3.2.4.1** Vendor shall submit any and all Insurance, Bond, or other specified documents to RRC prior to RRC issuing a written NTP.

**3.2.4.2** Vendor shall not commence work under a Work Order prior to receipt of RRC's written NTP to Vendor for the Work Order.

**3.2.4.3** Upon receipt of RRC's written NTP, Vendor shall promptly commence performance of the Services in accordance with the Work Order and work schedule specified therein.

**3.2.4.4** Vendor shall perform all work with sufficient diligence to ensure timely completion of all Reclamation Services to be delivered under the Work Order.

### **3.3 WORK SCHEDULE**

#### **TIME IS OF THE ESSENCE AND IS AN ESSENTIAL ELEMENT OF THE CONTRACT.**

**3.3.1** Within the time specified within RRC's written NTP, Vendor shall mobilize all necessary equipment, materials, and personnel to one or more sites in accordance with the Work Order specifications. The Vendor shall remain on the job until the RRC Authorized Representative has deemed all Reclamation Services required have been completed on all sites specified in the Work Order.

**3.3.1.1** At least 24 hours prior to scheduled move-in date applicable to a Work Order, Vendor may submit to the RRC Authorized Representative a written request for an extension to the move-in date.

**3.3.1.2** It is the sole discretion of RRC to approve any requested extension to a move-in date.

**3.3.1.3** RRC shall issue approved extensions in writing.

**3.3.1.4** Only extensions authorized by RRC in writing shall be honored by RRC as acceptable delay to the move-in date.

**3.3.1.5** Should Vendor fail to move in by the designated deadline, RRC reserves the right to unilaterally revoke the Work Order and/or terminate the Contract. In the event of Work Order revocation and/or Contract termination under this provision, RRC may award the Work Order

and/or Contract to the next qualified Vendor offering the best value to the state as determined by RRC.

**3.3.2** Vendor shall diligently conduct work during daylight hours, daily, Monday through Friday, weather permitting. Any alterations to the work schedule shall be submitted in writing by Vendor to RRC and must be approved in writing by RRC's Authorized Representative prior to Vendor's change in the work schedule.

**3.3.2.1** At RRC's discretion, Saturdays and Sundays may be approved as workdays.

**3.3.2.2** Vendor shall not perform any work without authorization of RRC's onsite Authorized Representative. Any work performed by Vendor without prior written authorization from the RRC's Authorized Representative or without presence of an RRC onsite Authorized Representative shall be deemed undertaken and performed at Vendor's risk of rejection of work and/or subject to Vendor's sole responsibility for all costs associated with work necessary to repair or improve work rejected by RRC.

**3.3.3** Vendor shall prepare and submit a daily work report to RRC's onsite Authorized Representative at the end of each workday or prior to start of the subsequent workday.

**3.3.3.1** Failure to submit daily reports may result in termination of Contract.

**3.3.3.2** The daily work report shall be in a format designated by RRC's Authorized Representative and shall include, but is not limited to, the following information:

- a. A brief description of the services delivered by Vendor that day;
- b. As applicable, itemized costs attributable to services provided that day and a total cost of all services delivered that day;
- c. A listing of each of Vendor's subcontractors used that day;
- d. The type and volume of all waste removed, if any, from the site that day and a listing of each of Vendor's disposal and/or recycling facilities receiving waste from the project that day; and
- e. A listing of each service provider's names for each of Vendor's waste haulers used that day and each of their respective RRC WHP number(s).

**3.3.3.3** Failure of Vendor to comply with requirements of the RRC Authorized Representative under this section may result in Vendor performance being deemed unsatisfactory and/or insufficient to ensure completion of the work under the Contract or Work Order within the time specified in the Contract or Work Order. In such an event, RRC may terminate Vendor's right to proceed with the work, or any separable part of the work, in accordance with Contract terms and conditions.

#### **3.4 VENDOR RESPONSIBILITIES**

**3.4.1** Vendor shall determine and provide all labor, materials, equipment, tools, incidentals, and services, including coordination and supervision of Vendor's staff and subcontractors and all staff and subcontractor work activities, necessary to access site locations and perform Reclamation Services in accordance with all terms, conditions, and specifications of the Contract and any Work Order issued thereunder.

**3.4.2** Vendor shall conduct and deliver services in accordance with procedures approved by the RRC and in accordance with applicable RRC Statewide Rules.

**3.4.3** Vendor shall obtain written approval of the RRC Authorized Representative prior to making or commencing with any changes to an approved Work Order's work plan or procedure.

**3.4.4** Vendor shall schedule and manage resources to ensure safe and efficient prosecution of all Reclamation Services.

**3.4.5** Vendor shall maintain all appropriate training, licenses, permits, certifications, and registrations applicable to performance of work and delivery of Reclamation Services throughout the lifetime of the Contract.

**3.4.6** Vendor shall conduct daily onsite safety meetings prior to Vendor commencing work, if applicable. Vendor's safety meetings shall include, at a minimum, a review of safety protocols and procedures applicable to the day's work and discussion of Vendor's work plan for the project(s) that day.

**3.4.7** Vendor shall maintain a safe work environment and ensure Vendor's staff and subcontractors comply with all applicable safety laws, rules, policies, and standards including but not limited to those put forth by the U.S. Department of Labor Occupational Safety and Health Administration ("OSHA").

**3.4.7.1** Vendor shall ensure all Vendor's personnel, including Vendor's subcontractors, observe prudent safety practices, including but not limited to the use of gloves, foot protection, eye protection, hearing protection, head protection, safety vests, and other personal protective

equipment appropriate to the work place and hazards of the project and in accordance with OSHA and industry accepted standards.

- 3.4.7.2** Vendor's onsite safety practices shall include, at a minimum, the following:
- a.** When a negotiated Work Order requires excavation, Vendor shall comply with all laws, rules, and ordinances applicable to damage prevention of underground utilities and underground pipelines.
  - b.** In emergencies affecting the safety or protection of persons, work, or property on the site or adjacent thereto, Vendor, without special instructions or authorization from the RRC Authorized Representative, is obligated to act to prevent threatened damage, injury, or loss, and to be fully responsive to directives issued by authorized official emergency personnel, including any emergency response vendor contracted by RRC. Vendor shall give prompt notification to the RRC Authorized Representative in event such emergency occurs.
  - c.** Under no circumstances shall Vendor's employees, subcontractors, or subcontractors' employees enter any excavation, pit, or vessel without applying proper safety precautions and without observing all applicable safety regulations.

**3.4.8** Any health and safety program or manual required under the Contract and such site-specific health and safety plan as may be required by the RRC Authorized Representative or law shall remain and be maintained at the site, readily accessible for review by all Vendor's employees, Vendor's subcontractors, and subcontractors' employees, and by the RRC Authorized Representative.

**3.4.9** Vendor shall invoice RRC in accordance with the terms and conditions of the Contract.



## RESPONDENT'S STATEMENTS AND COVENANTS

By signature hereto, Respondent makes and agrees to the following certifications, covenants, representations, statements, and warranties, as applicable:

1. The provisions in **RFP No. 455-22-1023** apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or who otherwise are interested in the RFP or the Contract arising therefrom.
2. Respondent certifies Respondent's intent to furnish the requested goods and/or services at the prices quoted in its Response, and notwithstanding any disclaimers in Respondent's Response and notwithstanding any other provision of the RFP or the Contract to the contrary, Respondent warrants and guarantees that all goods and services shall meet all specifications of the Contract.
3. Respondent certifies Respondent's prices include all costs of Respondent in providing the requested items that meet all specifications of this RFP, and that its prices will remain firm for acceptance for a minimum of one hundred eighty (180) calendar days from deadline for submission of Response or issuance of Work Order.
4. Each of Respondent's employees, including replacement employees hired in the future, shall possess the qualifications, education, training, experience, and certifications required to perform the services in the manner required by the RFP.
5. Respondent represents and warrants that Respondent's provision of goods and/or services, or other performance under the Contract, will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
6. Pursuant to Texas Government Code Section 2155.003, Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
7. Respondent represents and warrants that RRC's payments to Respondent and Respondent's receipt of appropriated or other funds under the Contract are not prohibited by Texas Government Code §§556.005 or 556.0055.
8. Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed to the State of Texas under Texas Tax Code Chapter 171. In addition, if Respondent is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the following certification applies:

Vendor certifies that it holds a permit issued by the Texas Comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas, or certifies that it does not sell tangible personal property or services that are subject to the state and local sales and use tax.
9. Respondent represents and warrants that Respondent shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales, or excise taxes of Respondent and Respondent's employees. RRC shall not be liable for any taxes resulting from this Contract.
10. Respondent represents and warrants that in accordance with Texas Government Code §2155.005, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, nor anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Texas Business and Commerce Code Chapter 15, or the federal antitrust laws, or (2) communicated

## RESPONDENT'S STATEMENTS AND COVENANTS

11. directly or indirectly the contents of this Response to any competitor or any other person engaged in the same line of business as Respondent.
- Respondent assigns to RRC all of Respondent's rights, title and interest in and to all claims and causes of action Respondent may have under the antitrust laws of Texas or the United States for overcharges associated with this RFP or any resulting contract.
12. By submitting a Response, Respondent represents and warrants that the individual submitting this **Respondent's Statements and Covenants** and the documents made part of the Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of the Response.
13. Respondent certifies that if a Texas address is shown as the address of Respondent within the Response, Respondent qualifies as a Texas Bidder as defined in Texas Government Code §2155.444(c).
14. Under Texas Family Code §231.006, regarding child support, Respondent certifies that the individual or business entity named in the Response and any Contract resulting from the Response to this RFP is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, pursuant to Texas Family Code §231.006(j), in event of Contract award, Respondent agrees to provide, prior to Contract award, the name and Social Security Number for each person with 25% or greater ownership interest in the business entity.
15. Under Texas Government Code §669.003, Respondent certifies that it does not employ, or has disclosed its employment of, any former executive head of RRC. Respondent must provide the following information in the Response.
- Name of Former Executive:** \_\_\_\_\_
- Name of State Agency:** \_\_\_\_\_
- Date of Separation from State Agency:** \_\_\_\_\_
- Position with Respondent:** \_\_\_\_\_
- Date of Employment with Respondent:** \_\_\_\_\_
16. Respondent has not been the subject of allegations of deceptive trade practices violations under Texas Business and Commerce Code Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit, and Respondent has not been found to be liable for such practices in such proceedings.
- Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of deceptive trade practice violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.
17. In accordance with Texas Government Code §2155.4441, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
18. Pursuant to Texas Government Code §2271.002, Respondent certifies that either (i) it meets an exemption criterion under Texas Government Code §2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Contract resulting from this solicitation. **Respondent shall state any facts that make it exempt from the boycott certification in its Proposal.**
19. Pursuant to Texas Government Code §2272.003, Respondent certifies that either (i) it meets an exemption criterion under Texas Government Code §2272.002; or (ii) it is not an abortion provider or an affiliate of an abortion provider during the term of the Contract resulting from this solicitation.

## **RESPONDENT'S STATEMENTS AND COVENANTS**

20. Pursuant to Texas Government Code §2274.002, Respondent certifies that it (i) does not boycott energy companies; and (ii) will not boycott energy companies during the term of the contract.
21. Pursuant to Texas Government Code §2274.002, Respondent certifies that it (i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association.
22. Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code §2252.152.
23. Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order 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.
24. If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies its compliance with Texas Health and Safety Code Chapter 361, Subchapter Y, and Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
25. Respondent shall ensure that any Respondent employee or subcontractor employee who has access to a state computer system or database shall complete a cybersecurity training program certified under Texas Government Code §2054.519. Such training is required to occur during the Contract term and the renewal period. Respondent shall provide RRC with verification of the completion of the requisite training.
26. Respondent represents and warrants that within the five (5) calendar years immediately preceding the submission of the Response, Respondent is not aware of and has received no notice of any court or governmental agency actions, proceedings, or investigations, etc., pending or threatened against Respondent, or any of the individuals or entities included in Respondent's Response, that would or could impair Respondent's performance under any contract resulting from this RFP, relate to the solicited or similar goods or services, or otherwise be relevant to RRC's consideration of the Response. If Respondent is unable to make such representation and warranty, Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under any contract resulting from this RFP, relate to the solicited or similar goods or services, or otherwise be relevant to RRC's consideration of the Response. In addition, Respondent represents and warrants that it shall notify RRC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update RRC shall constitute breach of contract and may result in immediate termination of any agreement resulting from this RFP.
27. Respondent represents and warrants that Respondent and each of Respondent's subcontractors have the requisite resources, qualifications, and independence to conduct the services free from outside direction, control, or influence, and subject only to the accomplishment of RRC's objectives.
28. Respondent represents and warrants that neither Respondent nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, identified in the Response has been convicted of a felony criminal offense, or that if such a conviction has occurred Respondent has fully advised RRC of the facts and circumstances in its Response.
29. Respondent has read and agrees to all terms and conditions of this RFP, unless Respondent specifically takes an exception and proposes an alternative provision in Respondent's Response (see RFP section 2.8 Exception to Provisions.)
30. Pursuant to Texas Government Code §572.069, Respondent warrants and certifies Respondent will not employ any former state officer or employee, including an RRC officer or employee, who in any manner participated in a

## **RESPONDENT'S STATEMENTS AND COVENANTS**

procurement process or contract negotiations for RRC involving Respondent within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers and employees whose state service or employment ceased on or after September 1, 2015.

Respondent shall disclose any current or former employees or subcontractors who are current or former employees of the State of Texas and shall disclose their role or position relative to the provision of services under

the Contract, as well as their hire or contract date. Respondent shall also disclose any proposed personnel who are related by marriage or within the second degree of consanguinity to any current or former employees of the State.

Failure to fully disclose the information required under this paragraph may result in disqualification of Respondent's Response or termination of the Contract.

31. Respondent represents and warrants that if selected for award of a Contract arising from this RFP, prior to submitting the signed Contract to RRC, Vendor shall comply with Texas Government Code §2252.908, relating to Disclosure of Interested Parties, by accessing the Texas Ethics Commission ("TEC") portal ([ethics.state.tx.us/...form1295](https://ethics.state.tx.us/...form1295)), reviewing the instructional video, creating a username and password, and completing and electronically filing with the TEC the "Certificate of Interested Parties".
32. Respondent certifies that for contracts for services Respondent shall utilize the [U.S. Department of Homeland Security's E-Verify system](#) during the term of the Contract to determine the eligibility of:
  - a) All persons employed by Respondent to perform duties within Texas; and
  - b) All persons, including subcontractors, assigned by Respondent to perform work pursuant to the Contract, within the United States of America.

If it is determined that Respondent has violated the certification set forth in this section, the (1) Respondent shall be in breach of the Contract, (2) RRC shall have the option to terminate the Contract for cause without prior notice, and (3) in addition to any other rights or remedies available to RRC under the Contract, Respondent shall be responsible for all costs incurred by RRC to obtain substitute services to replace the terminated Contract.

33. Respondent acknowledges and agrees that, to the extent Respondent owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Respondent is otherwise owed under the Contract may be applied toward any debt Respondent owes the State of Texas until the debt is paid in full. These provisions are effective at any time Respondent owes any such debt or delinquency.
34. In accordance with Texas Government Code §552.372, Respondent agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to RRC for the duration of the Contract, (2) promptly provide to RRC any contracting information related to the Contract that is in the custody or possession of the Respondent on request of RRC, and (3) on termination or expiration of the Contract, either provide at no cost to RRC all contracting information related to the Contract that is in the custody or possession of the Respondent or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to RRC. Except as provided by Texas Government Code §552.374(c), the requirements of Texas Government Code Chapter 552, Subchapter J, may apply to the Contract and the Respondent agrees that the Contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

### **RESPONDENT'S STATEMENTS AND COVENANTS**

35. Pursuant to 34 Texas Administrative Code §20.306, if applicable to the RFP, Respondent claims the preference(s) checked below:

- |  |  |
|--|--|
| <input type="checkbox"/> Supplies, materials, or equipment produced in TX or Offered by TX bidder or TX bidder that is owned by a service-disabled veteran | <input type="checkbox"/> Rubberized asphalt paving material  |
| <input type="checkbox"/> Agricultural products produced or grown in TX   | <input type="checkbox"/> Foods of Higher Nutritional Value   |
| <input type="checkbox"/> Agricultural products and services Offered by TX bidders  | <input type="checkbox"/> Recycled motor oil and lubricants   |
| <input type="checkbox"/> USA produced supplies, materials, or equipment  | <input type="checkbox"/> Products produced at facilities located on formerly contaminated property |
| <input type="checkbox"/> Products of persons with mental or physical disabilities  | <input type="checkbox"/> Products and services from economically depressed or blighted areas       |
| <input type="checkbox"/> Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel                        | <input type="checkbox"/> Contractors that meet or exceed air quality standards                     |
|  | <input type="checkbox"/> Recycled or Reused Computer Equipment of Other                            |

36. Pursuant to Texas Government Code §§2155.004, 2155.006, 2155.0061, and 2261.053, Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the Contract and acknowledges that the Contract may be terminated, and payment withheld if this certification is inaccurate.
37. Respondent represents and warrants Respondent currently is, and for the Contract term duration shall remain, in compliance with the requirements of 42 U.S.C. Ch. 126, §12101, et. seq., the Americans With Disabilities Act, and its implementing regulations, as each may be amended.
38. Respondent represents and warrants Respondent currently is, and for the Contract term duration shall remain, in compliance with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106.) and maintain a drug-free work environment. The final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is fully incorporated by reference and shall constitute part of the Contract, and Vendor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.
39. Respondent agrees Respondent shall comply with all applicable provisions found within 41 CFR §60-1.4, related to Equal Employment Opportunity. Applicable provisions include, but are not limited to, the following: Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or age. Vendor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or age.
40. Respondent represents and warrants that all articles and services provided by Respondent and Respondent's subcontractors under the Contract shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15), state, local, and industry related statutes, rules, regulations, and codes.
41. Respondent represents and warrants that Respondent currently is, and for the Contract term duration shall remain, in compliance with all requirements of the Immigration and Nationality Act (8 U.S.C. §1101 et seq.) and all subsequent immigration laws and amendments; additionally, Respondent shall not place any Respondent's

### **RESPONDENT’S STATEMENTS AND COVENANTS**

employee at a worksite and Respondent shall not permit any Respondent employee, or any employee of Respondent’s subcontractor to perform any work on behalf of or for the benefit of the State of Texas and/or RRC without first ensuring the employee’s authorization to lawfully work in the United States.

- 42. Respondent 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 U. S. General Services Administration.
- 43. Respondent represents and warrants that all statements and information prepared and submitted in this document and the Response are current, complete, true, and accurate. Submitting a Response with a false statement, and/or material misrepresentations made during the performance of a Contract, each are a material breach of the Contract and may void the submitted Response and the resulting Contract.

**Authorized representative on behalf of Respondent must complete and sign the following:**

|  |   |
|--|---|
| <b>Respondent Name</b>                                       | <b>Federal Employer Identification Number</b> |
| <b>Signature of Authorized Representative</b>                | <b>Date signed</b>                            |
| <b>Printed Name &amp; Title of Authorized Representative</b> |   |

## RESPONDENT'S QUALIFICATIONS STATEMENT

**THIS FORM MUST BE FULLY COMPLETED AND INCLUDED WITH RESPONSE SUBMITTALS.** Failure to answer any question or provide the requested information may result in the Response being deemed non-responsive. Complete all blocks; if a question or information request is not applicable to Respondent, complete that item with "not applicable" or "N/A". If additional space is required for a complete response, provide the additional information on 8 x 11 ½ paper with Respondent's letterhead, and include reference to specific page number, item, and section of this Qualifications Statement applicable to the information.

|   |  |            |  |
|---|--|------------|--|
| <b>COMPANY</b>  |  |            |  |
| <b>ADDRESS</b>  |  |            |  |
| <b>PHONE</b>  |  | <b>FAX</b> |  |
| <b>E-MAIL</b>   |  |            |  |
| Company is organized as: Individual      Partnership      Corporation                           |  |            |  |
| If incorporated, under the laws of the State of _____ with principal place of business in _____ |  |            |  |

### PRINCIPALS IN COMPANY AND YEARS EXPERIENCE: RECLAMATION SERVICES

| NAME | TITLE | PHONE | NO. OF YEARS |
|------|-------|-------|--------------|
|      |       |       |              |
|      |       |       |              |
|      |       |       |              |
|      |       |       |              |
|      |       |       |              |
|      |       |       |              |
|      |       |       |              |

### COMPANY HISTORY: List company existence below, including any other business names used.

|      |  |    |  |           |  |
|------|--|----|--|-----------|--|
| From |  | to |  | Firm Name |  |
| From |  | to |  | Firm Name |  |
| From |  | to |  | Firm Name |  |
| From |  | to |  | Firm Name |  |

Has company, under its current or former name(s) ever failed to complete a project, defaulted on a contract, or been engaged in litigation over a contract? \_\_\_ Yes \_\_\_ No. If yes, provide details of most recent occurrence on separate sheet(s) and attach to this form as instructed within the introduction of this form.

### RESPONDENT'S CAPABILITIES:

COMPANY'S AVERAGE ANNUAL GROSS REVENUE \$ \_\_\_\_\_

Percentage of this revenue by categories:

|                           |  |                       |
|---------------------------|--|-----------------------|
| Earthwork Services _____% |  | Other Services _____% |
|---------------------------|--|-----------------------|

**FINANCIAL CAPABILITIES:**

**FINANCIAL INFORMATION SUMMARIZED BELOW WAS PREPARED BY:**

|                                       |  |         |  |
|---------------------------------------|--|---------|--|
| Accounting Firm or Respondent's Staff |  | Address |  |
| City/State/Zip                        |  | E-Mail  |  |
| Prepared by (name, title):            |  | Phone   |  |

**FINANCIAL STATEMENT SUMMARY:**

|                |  |                         |  |
|----------------|--|-------------------------|--|
| Current Assets |  | Current Liabilities     |  |
| Fixed Assets   |  | Net Worth               |  |
| Total Assets   |  | Total Liab. & Net Worth |  |

**BANKING REFERENCE**

|                        |  |         |  |
|------------------------|--|---------|--|
| <b>BANK</b>            |  | Address |  |
| City/State/Zip         |  | E-Mail  |  |
| Bank Contact Name      |  | Phone   |  |
| Checking Acct. Numbers |  | Fax     |  |
| Loan Acct. Numbers     |  |         |  |
| CD/MM Acct. Numbers    |  |         |  |

**RESPONDENT'S EXPERIENCE RECORD:**

PROVIDE THREE (3) SUCCESSFUL **NON-RRC** PROJECTS THAT ARE AT LEAST 50% COMPLETE (*50% COMPLETE PROJECTS WILL BE COUNTED TOWARDS SUCCESSFUL PROJECTS*) OR HAVE BEEN COMPLETED WITHIN THE LAST FIVE (5) YEARS MEASURED BACKWARDS FROM THE ISSUE DATE OF THIS RFP, AND THAT BEST DEMONSTRATE CURRENT QUALIFICATIONS RELATED TO THE WORK DESCRIBED WITHIN **RFP ATTACHMENT 1: STATEMENT OF SERVICES.**

**1.**

|   |  |                                   |              |           |  |
|---|--|-----------------------------------|--------------|-----------|--|
| Project Name  |  |                                   |              |           |  |
| Project Location  |  | Contract Amount                   | Beginning \$ | Ending \$ |  |
| Project Owner Name & Type (Private, Gov't)  |  | Address                           |              |           |  |
| City  |  | State                             |              | Zip       |  |
| Project Owner's Rep familiar with project   |  | Phone                             |              | Email     |  |
| Contract Start Date (Date of Notice to Proceed)   |  | Contract Duration (Calendar Days) |              |           |  |
| If Project is still in progress, provide percentage complete  |  | If completed, date of completion  |              |           |  |
| If time extensions were added to the contract as a result of Respondent's responsibilities, provide a short explanation of each occurrence/extension. |  |                                   |              |           |  |
| Describe Project, Respondent's types of services delivered under the project, and explanation of project comparability to RFP work.                   |  |                                   |              |           |  |

**2.**

|              |  |
|--------------|--|
| Project Name |  |
|--------------|--|



|   |  |                                   |              |           |
|---|--|-----------------------------------|--------------|-----------|
| Project Location  |  | Contract Amount                   | Beginning \$ | Ending \$ |
| Project Owner Name & Type (Private, Gov't)  |  | Address                           |              |           |
| City  |  | State                             | Zip          |           |
| Project Owner's Rep familiar with project   |  | Phone                             | Email        |           |
| Contract Start Date (Date of Notice to Proceed)   |  | Contract Duration (Calendar Days) |              |           |
| If Project is still in progress, provide percentage complete  |  | If completed, date of completion  |              |           |
| If time extensions were added to the contract as a result of Respondent's responsibilities, provide a short explanation of each occurrence/extension. |  |                                   |              |           |
| Describe Project, Respondent's types of services delivered under the project, and explanation of project comparability to RFP work.                   |  |                                   |              |           |

**3.**

|   |  |                                   |              |           |
|---|--|-----------------------------------|--------------|-----------|
| Project Name  |  |                                   |              |           |
| Project Location  |  | Contract Amount                   | Beginning \$ | Ending \$ |
| Project Owner Name & Type (Private, Gov't)  |  | Address                           |              |           |
| City  |  | State                             | Zip          |           |
| Project Owner's Rep familiar with project   |  | Phone                             | Email        |           |
| Contract Start Date (Date of Notice to Proceed)   |  | Contract Duration (Calendar Days) |              |           |
| If Project is still in progress, provide percentage complete  |  | If completed, date of completion  |              |           |
| If time extensions were added to the contract as a result of Respondent's responsibilities, provide a short explanation of each occurrence/extension. |  |                                   |              |           |
| Describe Project, Respondent's types of services delivered under the project, and explanation of project comparability to RFP work.                   |  |                                   |              |           |

**RESPONDENT'S HUB STATUS\*:**

\*HUB status information is not a factor considered for contract award but is collected for purposes of RRC's analysis in determining and achieving agency HUB goals. Please indicate if Respondent is a **Texas Certified** Historically Underutilized Business (HUB):  YES  NO  
 If yes, please indicate:

- Gender:  Male  Female; AND,
- Qualification as member of one or more of the following groups accordance with 34 TAC §20.282(19)(C):  
 *Asian Pacific American*       *Black American*       *Hispanic American*  
 *Native American*       *American Woman*       *Service-Disabled Veteran*

**RESPONDENT'S PREVIOUS RRC WORK EXPERIENCE:**

Has Respondent ever performed prior work under contract or subcontract with RRC?  YES  NO

If yes, list the most recent contract number(s) and name(s): \_\_\_\_\_  
 \_\_\_\_\_

**RESPONDENT'S CERTIFICATION AND CONSENT STATEMENT:**

By signature below, I certify all information provided within this Qualifications Statement and any supplemental or attached documents is true and correct, and I authorize the Railroad Commission of Texas to contact the references provided within this Qualifications Statement and authorize release of information from such references to the Railroad Commission of Texas.

\_\_\_\_\_  
Respondent Name

\_\_\_\_\_  
Signature of Owner or Officer

\_\_\_\_\_  
Title of Person Signing

\_\_\_\_\_  
Date

## **HUB SUBCONTRACTING PLAN FORM**



# HUB Subcontracting Plan (HSP) QUICK CHECKLIST

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

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
  - Section 2 c. - Yes
  - Section 4 - Affirmation
  - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. - No
  - Section 2 d. - Yes
  - Section 4 - Affirmation
  - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - Yes, I will be subcontracting portions of the contract.
  - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. - No
  - Section 2 d. - No
  - Section 4 - Affirmation
  - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
  - Section 3 - Self Performing Justification
  - Section 4 - Affirmation

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



# HUB Subcontracting Plan (HSP)

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

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

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

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

**- - Agency Special Instructions/Additional Requirements - -**

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

**SECTION 1: RESPONDENT AND REQUISITION INFORMATION**

- a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Requisition #: \_\_\_\_\_ Bid Open Date: \_\_\_\_\_

(mm/dd/yyyy)

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

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

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

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

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

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

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

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

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

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

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

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

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

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

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

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

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

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

**SECTION 4: AFFIRMATION**

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

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

|           |              |       |                                     |
|-----------|--------------|-------|-------------------------------------|
| Signature | Printed Name | Title | Date<br><small>(mm/dd/yyyy)</small> |
|-----------|--------------|-------|-------------------------------------|

**Reminder:**

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



# HSP Good Faith Effort - Method A (Attachment A)

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Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

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

## SECTION A-1: SUBCONTRACTING OPPORTUNITY

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

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION A-2: SUBCONTRACTOR SELECTION

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

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

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

# HSP Good Faith Effort - Method B (Attachment B)

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

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

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

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

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

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

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

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

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

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

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

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

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

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

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

| Trade Organizations or Development Centers | Date Notice Sent<br><small>(mm/dd/yyyy)</small> | Was the Notice Accepted? |
|--|---|--------------------------|
|  |   | - Yes    - No            |
|  |   | - Yes    - No            |

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

Rev. 2/17

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**SECTION B-4: SUBCONTRACTOR SELECTION**

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

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

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

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

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

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

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



# HUB Subcontracting Opportunity Notification Form

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

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

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

## SECTION A: PRIME CONTRACTOR'S INFORMATION

|                         |                             |
|-------------------------|-----------------------------|
| Company Name: _____     | State of Texas VID #: _____ |
| Point-of-Contact: _____ | Phone #: _____              |
| E-mail Address: _____   | Fax #: _____                |

## SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

|                         |   |
|-------------------------|---|
| Agency Name: _____      |   |
| Point-of-Contact: _____ | Phone #: _____                                      |
| Requisition #: _____    | Bid Open Date: _____<br><small>(mm/dd/yyyy)</small> |

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

### 1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than \_\_\_\_\_ on \_\_\_\_\_ .  
Central Time Date (mm/dd/yyyy)

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

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

### 2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications: - Not Applicable

4. Bonding/Insurance Requirements: - Not Applicable

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

**APPENDIX A:**  
**HUB SUBCONTRACTING PLAN (HSP)**  
**PRIME CONTRACTOR PROGRESS ASSESSMENT REPORT**



# HUB Subcontracting Plan (HSP)

## Prime Contractor Progress Assessment Report

Rev. 10/16

**This form must be completed and submitted to the contracting agency each month to document compliance with your HSP.**

Contract/Requisition Number: \_\_\_\_\_ Date of Award: \_\_\_\_\_ Object Code: \_\_\_\_\_

Contracting Agency/University Name: \_\_\_\_\_

Contractor (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_

Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_

Reporting (Month) Period: \_\_\_\_\_ Total Amount Paid this Reporting Period to Contractor: \$ \_\_\_\_\_

### Report **HUB** and **Non-HUB** subcontractor information

When verifying subcontractors' HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized (HUB) Directory Search located at: <http://mycpa.cpa.state.tx.us/tpasscmlsearch/index.jsp> HUB status code "A" signifies that the company is a Texas certified HUB.

| Subcontractor's Name | Texas certified HUB<br>(Yes or No) | Texas VID or federal EIN<br><small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small> | Total Contract \$ Amount from HSP with Subcontractor | Total \$ Amount Paid this Reporting Period to Subcontractor | Total Contract \$ Amount Paid to Date to Subcontractor | Object Code<br><small>(Agency Use Only)</small> |
|----------------------|------------------------------------|---|--|---|--|---|
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
|                      |                                    |   | \$ -   | \$ -  | \$ -   |   |
| <b>TOTALS:</b>       |                                    |   | \$ -   | \$ -  | \$ -   |   |

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**RAILROAD COMMISSION OF TEXAS**  
**SAMPLE CONTRACT NO. 455-22-SAMPLE FOR**  
**RECLAMATION SERVICES**

**THIS AGREEMENT** (“Contract”) is made and entered into by the State of Texas, through the **RAILROAD COMMISSION OF TEXAS** (“RRC”), a state agency located at 1701 N. Congress Avenue, Austin, Texas 78701 and **VENDOR LEGAL NAME** (“Vendor”), located at **VENDOR PHYSICAL ADDRESS** (individually “Party”; collectively “Parties”).

**WITNESSETH**

**WHEREAS**, Texas Government Code Chapter 2155 and Texas Natural Resources Code Chapter 134 provide for RRC’s authority to procure goods and services in connection with surface coal mining and reclamation activities, and RRC intends to purchase certain goods and/or have performed certain services, namely Reclamation Services; and

**WHEREAS**, in accordance with applicable provisions of Texas Government Code Chapters 2155 and 2156, RRC has selected Vendor to provide the desired Reclamation Services referenced within RRC’s Request For Qualifications No. 455-22-1023 (“RFP No. 455-22-1023”), and Vendor has agreed to provide the desired Reclamation Services referenced within RFP No. 455-22-1023, subject to the terms and conditions hereinafter set forth

**WHEREAS**, all terms and conditions of RFP No. 455-22-1023, including but not limited to insurance, bonding requirements and specifications within the Statement of Services, constitute part of this Contract No. **455-22-SAMPLE**.

**NOW, THEREFORE**, RRC and Vendor, for and in consideration of the mutual promises, obligations, and benefits hereof, contract as follows:

**I. CONTRACT DOCUMENTS.**

**1.01. SERVICES REQUIRED.** In accordance with the terms and conditions of the Contract, including all Contract Documents incorporated by reference, Vendor shall deliver throughout the term of the Contract including renewal or extension periods (if any), Reclamation Services (“Services”), including all labor, qualified personnel, management, coordination, equipment, materials, insurance, bonding and incidentals to fulfill all requirements and deliver all goods and/or services required under the Contract in accordance with applicable method protocols, industry/trade best practices, and all rules, regulations, and laws related thereto. “Contract Documents” include:

- a. This Contract No. 455-22-SAMPLE;
- b. Exhibit A, RFP No. 455-22-1023, including all associated attachments, appendices, exhibits, and addenda; and
- c. Exhibit B, Vendor’s Response, dated Month dd, yyyy (“Vendor’s Response”).

**1.02. INCORPORATED BY REFERENCE.** All elements listed in 1.01.a. through 1.01.c. are attached hereto and hereby incorporated by reference and constitute part of the Contract as if fully set forth herein.

**1.03. ORDER OF PRECEDENCE.** For purposes of interpretation of the Contract and in the event of conflict within the Contract Documents, this **Contract No. 455-22-SAMPLE** shall take precedence over the other Contract Documents. Any inconsistency among the Contract Documents shall be resolved applying the order of priority as listed below:

- a. This Contract No. **455-22-SAMPLE**; then
- b. Exhibit A, RFP No. 455-22-1023, including all associated attachments, appendices, and addenda; then
- c. Exhibit B, Vendor’s Response.

## **II. TERM.**

### **2.01. CONTRACT AWARD.**

- a. The original term of this Contract shall be from date of the last Party's signature, and shall continue through August 31, 2023 ("Original Term"), unless terminated earlier as provided in **RFP No. 455-22-1023**, section 3.1.28, and/or section 2.02. set forth below.

This Contract is non-renewable and may be extended only through written amendment to the Contract, fully executed prior to expiration of the Contract term in effect prior to execution of the applicable amendment to the Contract. RRC reserves the right to renew the Contract for three (3) additional one -year renewal terms.

- b. Notwithstanding the termination or expiration of this Contract, any provisions regarding indemnification, confidentiality, dispute resolution, intellectual property rights, audit rights, limitation of liability, limitation of distribution, and warranties shall survive the termination or expiration dates of this Contract.

### **2.02. TERMINATION.**

- a. **Termination for Cause.** RRC may terminate this Contract immediately for cause by providing written notice to Vendor of such termination if Vendor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of abandonment or default, Vendor will be responsible for paying damages to RRC, including but not limited to, the cost to re-solicit this Contract and any consequential damages to the State of Texas or RRC resulting from Vendor's non-performance. Notwithstanding the foregoing, Vendor shall not be liable for damages that Vendor could not reasonably foresee on entry into this Contract. In the event of termination for cause, Vendor will not be eligible for consideration in the re-solicitation, if any, and may not be considered in future solicitations for the same type of work unless the scope of work is significantly changed.
- b. **Termination for Convenience.** RRC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice ("Notice of Termination") to Vendor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by RRC under this subsection, Vendor shall be governed by the terms and conditions, and shall perform the acts outlined in section 2.02.c., below.
- c. **Implementation of Termination.** Vendor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary, as determined by RRC to preserve the work in progress. In the event of termination by RRC, RRC shall pay Vendor for all work satisfactorily performed up to the effective date of termination.

**2.03. NO LIABILITY UPON TERMINATION.** If this Contract is terminated for any reason, RRC and the State of Texas shall not be liable to Vendor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code Chapter 2260.

## **III. CONSIDERATION AND SERVICES.**

**3.01. CONTRACT LIMIT, FEES AND EXPENSES.** The total amount of fees to be paid under this Contract through the Original Term and extension terms, if any, (collectively, "Contract Term") shall not exceed **CONTRACT AMOUNT IN WORDS (\$#,###,###.##).**

### **3.02. SERVICES.**

- a. Vendor shall provide the goods and services necessary and reasonably inferable to complete the work required by and described in **RFP No. 455-22-1023**.



- b. Vendor's services shall include all disciplines agreed upon between the Parties and all related usual and customary consultant and other services necessary and reasonably inferable to complete the work in accordance with RRC's specifications and the terms and conditions of this Contract.
- c. Additional goods and services are those services which shall be provided ONLY if authorized or confirmed in writing by RRC, and which are in addition to the goods and services contained within the scope and content of RRC's specifications and Vendor's Response in response to **RFP No. 455-22-1023**. In the event additional goods and services are proposed by Vendor, Vendor shall not proceed therewith except only after Vendor's receipt of RRC's written acceptance of the additional services proposed.
- d. The Statement of Services (**RFP No. 455-22-1023 ATTACHMENT I**) describes the intended scope and character of work. The Parties agree it is Vendor's responsibility to review and understand requirements of the Statement of Services and to provide all goods and services to achieve those objectives.
- e. Vendor agrees and acknowledges that RRC is entering into this Contract in reliance on Vendor's represented professional abilities with respect to performing the services, duties, and obligations under this Contract. Vendor, and Vendor's consultants and subcontractors (if any) shall perform all services pursuant to this contract diligently and shall endeavor to further the interest of RRC in accordance with RRC's requirements and procedures and the standards of care and performance as described herein. Vendor agrees to use its best efforts to perform the Services (i) in accordance with the usual and customary professional standards of care, skill and diligence consistent with industry best practices for vendors that provide services for projects that are similar in size, scope, and budget to that within this Contract and any Work Order issued thereunder, and (ii) in compliance with all applicable federal, state, and local statutes, laws, ordinances, regulations, codes, and rules and with those of any other body having jurisdiction. There are no obligations, commitments, or impediments of any kind known to Vendor that will limit or prevent performance by Vendor of the Services required under the Statement of Services and the Contract. Vendor hereby agrees to correct, at its own cost, any of its Services, and the Services of its consultants and subcontractors (if any) that do not meet this standard of care.
- f. Vendor's Services shall be reasonably accurate and free from any material errors or omissions. Neither acceptance nor approval of Vendor's Services by RRC shall relieve Vendor of any of its duties or release it from any liability, it being understood that RRC is, at all times, relying upon Vendor for its skill and knowledge in performing Vendor's Services. RRC shall have the right to reject any of Vendor's goods and/or services in accordance with the terms and conditions of **RFP No. 455-22-1023**.
- g. Vendor agrees to furnish efficient business administration and superintendence and to use Vendor's best efforts to fulfill the Contract and Work Order requirements in an expeditious and economical manner consistent with the interest of RRC and Vendor's professional skill and care.
- h. Vendor shall allocate adequate time, personnel, and resources as necessary to deliver goods and/or perform services and work under the Contract and Work Orders issued thereunder. Changes of Vendor's key personnel identified in Vendor's Response shall not be made without prior written approval of RRC. Vendor's day-to-day project team will be led by Vendor's Project Manager unless otherwise directed by RRC or prevented by factors beyond the control of Vendor. Vendor's Project Manager shall act on behalf of Vendor with respect to all aspects of Vendor's goods and/or services delivery and shall be available as required for the benefit of each project and RRC.

### **3.03. PAYMENTS TO VENDOR.**

- a. Payments to Vendor will be made in accordance with the terms and conditions of the Contract, and within thirty (30) days from receipt of a complete, correct, and approved invoice or statement of payment in accordance with Texas Government Code Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by RRC. Vendor shall be paid for completion of work accepted and approved by RRC.
- b. Vendor shall invoice RRC for work performed and accepted by RRC. Vendor shall submit invoices as specified in RFP No. 455-22-1023.

**IV. FUNDING.**

**4.01. STATE FUNDING.** It is understood that all obligations of RRC hereunder are subject to the availability of state funds, federal grant(s) and/or other federal funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In such event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

**V. VENDOR PERSONNEL.**

**5.01. REQUIRED QUALIFICATIONS.** At all times during the term of the Contract, Vendor shall have available, under direct employment and supervision and/or subcontract agreement fully incorporating the terms and conditions of the Contract Documents, the required qualified and properly licensed (as applicable) personnel to properly fulfill all the terms and conditions of the Contract.

**VI. NOTICES.**

**6.01. LEGAL NOTICES.**

- a. Any legal notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to RRC or Vendor at the address set forth below:

|          |   |
|----------|---|
| For RRC: | Railroad Commission of Texas  |
|          | Administration Division – Contract Management   |
|          | P.O. Box 12967  |
|          | Austin, Texas 78711-2967  |
|          | Attention: <span style="border-bottom: 1px solid black; padding-left: 20px;">Randall D. Collins, COO</span>   |
|          | Phone: <span style="border-bottom: 1px solid black; padding-left: 20px;">512-463-5982</span>                  |
|          | Email: <span style="border-bottom: 1px solid black; padding-left: 20px;">Randall.Collins@rrc.texas.gov</span> |

|             |                      |
|-------------|----------------------|
| For Vendor: | Vendor Legal Name    |
|             | Full mailing address |
|             | Attention:           |
|             | Phone:               |
|             | Email:               |

- b. Legal notice given in any other manner shall be deemed effective only if, and when, received by the Party. Either Party may change its address for notice by written notice to the other Party as provided herein.

**VII. MISCELLANEOUS PROVISIONS.**

**7.01. GOVERNING LAW AND VENUE.** This Contract shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of law provisions. The venue of any suit brought under this Contract is fixed in any court of competent jurisdiction in Travis County, Texas unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the RRC. Vendor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this Section shall be construed as a waiver of sovereign immunity by RRC.**

**7.02. SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this **Contract No. 455-22-SAMPLE** shall be construed as if such provision did not exist and the

non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

**7.03. PROPER AUTHORITY.** The Parties hereto represent and warrant that the person executing this Contract on behalf of each Party has full power and authority to enter into this Contract. Vendor acknowledges Contract is effective for the period specified in the Contract. Any services performed by Vendor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Vendor.

**7.04. SOVEREIGN IMMUNITY.** The Parties expressly agree that nothing contained in **RFP No. 455-22-1023** or this Contract is in any way intended to constitute a waiver by the State of Texas or RRC of any immunities from suit or from liability that the State of Texas or RRC may have by operation of law. Further, the Parties agree that nothing contained in RFP No. 455-22-1023 or this Contract will in any manner be construed as a waiver of sovereign immunity or official immunity by RRC, its employees, or the State of Texas.

**7.05. FALSE STATEMENTS; BREACH OF REPRESENTATIONS.** By signature to this Contract, Vendor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Vendor signs this Contract with a false statement or it is subsequently determined that Vendor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Vendor shall be in default under this Contract, and RRC may terminate or void this Contract for cause and pursue other remedies available to RRC under this Contract and applicable law.

**7.06. ENTIRE CONTRACT AND MODIFICATION.** This **Contract No. 455-22-SAMPLE** and all Contract Documents referenced in Section 1.01. herein constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension or amendment to this Contract shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto.

**EXECUTION SIGNATURES.** The Parties agree the Contract and any written Amendments thereto necessary for the consummation of the transaction contemplated by the Contract may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act ("UETA") and any applicable state law. Any document accepted, executed, or agreed to in conformity with such laws will be binding on each Party as if it were physically executed. The Parties to this Contract have electronically executed this Contract which shall be deemed an original. By the signatures below, each signatory represents and warrants that they have the authority to enter into this Contract on behalf of the respective Parties.

**RAILROAD COMMISSION OF TEXAS**

**VENDOR NAME**

By: \_\_\_\_\_  
Wei Wang,  
Executive Director

By: \_\_\_\_\_  
Printed Name:  
Title:

Date of Execution: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

\_\_\_\_\_  
RRC use only below this line.  
Div. Director: \_\_\_\_\_  
CM Director: \_\_\_\_\_  
CM Procurement & Contracts: \_\_\_\_\_  
OGC: \_\_\_\_\_

## PERFORMANCE EVALUATION STANDARDS

In accordance with Texas Government Code Chapter 2261, RRC has determined any Contract resulting from this RFP may require enhanced monitoring for performance and compliance with the Contract terms and conditions. Enhanced monitoring may include, but is not limited to frequency of site visits, Vendor meetings, and documentation requirements deemed necessary by RRC to assess progress of the Vendor toward meeting the identified goals and outcomes established in response to assessments of unsatisfactory performance. The performance evaluation standards herein shall be applied during routine and/or enhanced monitoring of Vendors and work performed under the Contract. Performance evaluations resulting in deficiencies shall be considered in determining, in RRC's sole discretion, the appropriate corrective actions to be implemented to cure Vendor's deficiencies. Significant or repeat performance evaluation score deficiencies may result in termination of the Contract in accordance with provisions of Part III of the RFP.

- **Services Performed:** this standard is defined as the Vendors' daily execution of Reclamation Services. This includes supervision, planning, progress, and coordination of earthwork activities to ensure effective utilization of resources. Vendor shall be evaluated daily and shall receive between zero (0) and thirty (30) points per day. Points shall be deducted in increments of three (3) points or more for each Vendor-controlled deficiency that results in unsatisfactory progress. Thirty (30) points shall be awarded if all Reclamation Services are performed as specified within the applicable Work Order.
- **Equipment:** this standard is defined as equipment, including any subcontractor equipment, necessary to complete daily tasks and properly perform Reclamation Services required under a Work Order in accordance with specifications and terms and conditions of the Contract and the applicable Work Order. Vendor shall be evaluated on the performance of equipment including subcontractor's equipment. Vendor shall receive between zero (0) and thirty (30) points each day. Points shall be deducted in increments of (3) points for each hour of downtime attributable to equipment failures within the Vendor's control.
- **Downtime:** this standard is defined any interruption in service due to equipment failure or otherwise within the Vendor's control. Vendor shall be daily evaluated on hours of downtime as a percentage of a full workday (i.e., 8-10 hours), and shall receive that percentage of points between zero (0) and twenty-five (25).
- **Personnel:** this standard considers Vendor's providing of fully trained personnel, including subcontractors' personnel, in accordance with specifications and terms and conditions of the Contract and the applicable Work Order. Vendor shall be daily evaluated and scored on Vendor's ability to maintain a fully trained crew that performs in accordance with the Contract and applicable Work Order at all times. Vendor shall receive up to fifteen (15) points for this standard. Three (3) points or more shall be daily deducted for each deficiency.
- **Safety:** this standard considers Vendor's maintenance of a documented safety program and Vendor's compliance with the safety program, OSHA, and established industry safety practices. Ten (10) points shall be deducted from Vendor's final performance rating for absence of a documented safety program and/or a lost time accident as a result of failure to comply with Vendor's safety program, OSHA, and/or established industry safety practices. This is a one-time point assessment issued at Contract completion.
- **Availability:** this standard considers Vendor's compliance with mobilization date specified within RRC's Notice to Proceed issued to Vendor. Vendor's failure to complete mobilization no later than the established deadline within the Notice to Proceed shall result in a ten (10) points deduction issued at Contract completion.
- **Vendor's financial resources to deliver goods and services:** this standard is defined, in part, as Vendor's in-field demonstration of financial capability to timely deliver to the work site all goods and services necessary to comply with all Contract terms and conditions, including those related to performance period, and Work Order specifications. Vendor's failure to timely deliver any and all goods and services in accordance with Contract terms and conditions and Work Order specifications shall result in a ten (10) point deduction issued at Contract Completion.

## **FEDERAL FORMS: FEDERALLY FUNDED WORK ORDERS**

A Work Order issued under a Contract arising from this RFP may, but may not be, be funded with federal dollars, including but not limited to grant dollars. A Work Order funded with federal dollars shall require, as applicable, completion of required federal forms, compliance with federal statutes, rules, and regulations, and agreement to and compliance with any applicable flow-down terms and conditions from a contract between RRC and a U.S. federal agency.

The federal forms listed below shall apply to only federally funded Work Orders. These forms are noted for information purposes only and shall not be returned with Respondent's Response to this RFP, however:

*To be eligible for consideration as a Vendor for a federally funded Work Order request, a Respondent must be able to complete, return and comply with these federal forms.*

- SBA Form 1624 (12/92) – 2 pages
- Standard Form 424B – 2 pages
- Standard Form LLL – 1 page

**RAILROAD COMMISSION OF TEXAS**

**PROGRESS PAYMENT AFFIDAVIT**

STATE OF TEXAS

RFP NO. 455-22-1023

COUNTY OF \_\_\_\_\_

CONTRACT NO. 455-22-SAMPLE

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared

\_\_\_\_\_ who being duly sworn, on oath,  
says that he/she is a duly authorized representative of

\_\_\_\_\_, VENDOR, and all  
terms of the Contract for the completion of certain works described as

**DRAFT ONLY**

have been satisfactorily completed to the extent indicated on the attached voucher and that ALL sums of money due for payrolls, bills for material and equipment, and other indebtedness connected with the Contract for which the State of Texas and the Railroad Commission of Texas, or its property or the real property on which the work was performed, might in any way be responsible, to the best of his/her knowledge and belief have been paid or will be paid or otherwise satisfied within ten days after receipt of the requested payment from the Railroad Commission of Texas or within the period of time required by Texas Government Code §2251.022.

Vendor agrees to indemnify and hold the State of Texas and the Railroad Commission of Texas harmless from any liens, debts or obligations which arise as a result of labor or materials provided by or through to the Contract. Vendor further agrees to indemnify and hold harmless all real property on which the work was performed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Vendor to the Contract.

Payments to subcontractors for labor and/or materials which are pending or disputed as of the date hereof are:

| <u>Individual or Company Name</u> | <u>Mailing Address</u> | <u>Amount Owed</u> |
|-----------------------------------|------------------------|--------------------|
| _____                             | _____                  | _____              |
| _____                             | _____                  | _____              |
| _____                             | _____                  | _____              |
| _____                             | _____                  | _____              |

\_\_\_\_\_  
Affiant's Signature / Date

\_\_\_\_\_  
Notary Public, in and for the County of \_\_\_\_\_, Texas

\_\_\_\_\_  
Printed Name / Title

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEAL)

Instructions: Affidavit must be signed by an individual owner, a partner in a partnership, or by a person authorized by bylaws or Board of Directors to sign for a corporation. If Vendor is a joint venture or partnership of individuals, either may sign, but if a joint venture in which a corporation is a party, separate affidavits must be executed by each corporation and by each individual owner or partnership.

RAILROAD COMMISSION OF TEXAS

**FINAL PAYMENT AFFIDAVIT**

STATE OF TEXAS RFP NO. 455-22-1023  
COUNTY OF \_\_\_\_\_ CONTRACT NO. 455-22-SAMPLE

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared

\_\_\_\_\_ who being duly sworn, on oath,  
says that he/she is a duly authorized representative of

\_\_\_\_\_, VENDOR, and all  
terms of the Contract for the completion of certain works described as

SAMPLE

\_\_\_\_\_ have been satisfactorily completed and that ALL sums of money for payrolls, bills for material and equipment, and other indebtedness connected with the Contract for which the State of Texas and the Railroad Commission of Texas or its property might in any way be responsible, to the best of his/her knowledge and belief, have been paid or will be paid or otherwise satisfied within ten days after receipt of final payment from the Railroad Commission of Texas, or within the period of time required by Texas Government Code §2251.022. Final payments to subcontractors for labor and/or materials which are pending or disputed as of the date of this Affidavit are:

| <u>Individual or Company Name</u> | <u>Mailing Address</u> | <u>Amount Owed</u> |
|-----------------------------------|------------------------|--------------------|
| _____                             | _____                  | _____              |
| _____                             | _____                  | _____              |
| _____                             | _____                  | _____              |

Except for those claims listed herein, if any, Vendor hereby waives all claims against the State of Texas and the Railroad Commission of Texas. Vendor agrees to indemnify and hold harmless the State of Texas and the Railroad Commission of Texas from any liens, debts, or obligations which arise from labor or materials provided by or through Vendor to the Contract. Vendor further agrees to indemnify and hold harmless all real property on which the work was performed and all interests in such property, including leasehold interests, from any liens, debts, or obligations arising from any labor or materials provided by or through Vendor to the project.

\_\_\_\_\_  
Affiant's Signature / Date  
\_\_\_\_\_  
Printed Name / Title

\_\_\_\_\_  
Notary Public, in and for the County of \_\_\_\_\_, Texas

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEAL)

\_\_\_\_\_  
Signature

Instructions: Affidavit must be signed by an individual owner, a partner in a partnership, or by a person authorized by bylaws or Board of Directors to sign for a corporation. If Vendor is a joint venture or partnership of individuals, either may sign, but if a joint venture in which a corporation is a party, separate affidavits must be executed by each corporation and by each individual owner or partnership.

## ATTACHMENT 10

### MANDATORY RATE SUBMISSION SHEET

| Item No. | Item  | Unit    | Unit Price |
|----------|---|---------|------------|
| 1        | Wheel Backhoe Loader - Cat 415                              | /hour.  |            |
| 2        | Wheel Loader - Cat 930                                      | /hour.  |            |
| 3        | Wheel Loader - Cat 966                                      | /hour.  |            |
| 4        | Motor Grader - Cat 12 (Cat 140 acceptable)                  | /hour.  |            |
| 5        | Skid Steer  | /hour.  |            |
| 6        | Articulated Truck small - Cat 725 class                     | /hour.. |            |
| 7        | Articulated Truck medium - Cat 735 class                    | /hour.. |            |
| 8        | Articulated Truck large - Cat 745 class                     | /hour.  |            |
| 9        | Track Dozer small - Cat D5 LGP (Cat D4 acceptable)          | /hour.. |            |
| 10       | Track Dozer medium - Cat D7 LGP (Cat D8 acceptable)         | /hour.  |            |
| 11       | Track Dozer medium - Cat D7 with ripper (Cat D8 acceptable) | /hour.. |            |
| 12       | Water Truck 1000 gallon minimum                             | /hour.  |            |
| 13       | Standard Scraper - Cat 631                                  | /hour.  |            |
| 14       | Push-Pull Scraper - Cat 637                                 | /hour.  |            |
| 15       | Tractor with Plow Disc                                      | /hour.  |            |
| 16       | Track Backhoe Excavator medium - Cat 330                    | /hour   |            |
| 17       | Pickup  | /day    |            |
| 18       | Site Foreman  | /hour.  |            |
| 19       | Survey Crew   | /hour.  |            |

\*Estimated items and quantities are not guaranteed.

\*\*Equipment shown as Caterpillar for model and size reference only. Equivalent model substitute is acceptable.

\*\*\*Equipment rates must include operator, fuel, and maintenance (does not include down time).

\*\*\*\* **Do not leave any category blank.**