



RAILROAD COMMISSION OF TEXAS

REQUEST FOR PROPOSAL SOLICITATION NO. 455-24-1028 REPORT ON HYDROGEN DEVELOPMENT IN TEXAS

Sole Point of Contact:
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Solicitation Issued
March 14, 2024
Responses Due *NO LATER THAN*
2:00PM (CT) April 19, 2024
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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 (<https://www.txsmartbuy.com/esbd>) prior to the Response due date.

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.

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

Request for Proposal (“RFP”): Request for Proposal; this solicitation document and all attachments, appendices and exhibits hereto 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.

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 the Respondent’s statement of qualifications and other information evidencing the Respondent’s qualifications to perform the services and work required under the Contract.

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

Scope Of Work (“SOW”): A section within the SOS or issued under the Contract that provides detailed specifications of the services to be provided.

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 issued thereunder.

Texas Administrative Code (“TAC”): A compilation of all state agency rules in Texas. There are 17 titles in the TAC. Each title represents a subject category and related agencies are assigned to the appropriate title.

Texas Government Code (“TGC”): *Texas Government 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 issued under such contract.

PART I: NOTICE TO RESPONDENTS

1. Introduction.

In accordance with applicable provisions of Texas Government Code Chapters 2155, 2156, 2254, and Texas Natural Resources Code Section 81.051(5), the Railroad Commission of Texas extends this RFP to qualified entities to submit a Response detailing the entity's qualifications to provide to RRC with a study that outlines possible effects of hydrogen production in Texas 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. 455-24-1028, Report on Hydrogen Development in Texas 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), Friday, April 19, 2024.

1.1. Services, Generally.

The RRC seeks a study of the development of hydrogen industries in this state, including the development of upstream facilities for the production, pipeline transportation, and storage of hydrogen, as required by HB 2847 of the 88th Regular Session of the Texas Legislature (see **RFP Attachment 1 Statement of Services**).

1.2. Background.

Texas Natural Resources Code Chapter 81.051(5) establishes the Texas Hydrogen Production Policy Council. The Council is charged with studying and making recommendations relating to the RRC policy framework for hydrogen energy development. As part of that charge, the Council shall study the development of hydrogen industries in the State of Texas, "including the development of facilities for the production, pipeline transportation, and storage of hydrogen;..."

An initial step towards that charge is for the Council to obtain the services of a qualified entity or entities to produce a study detailing the possible effects of hydrogen production in Texas. This RFP is RRC's process to select highly qualified Vendor(s) and enter into one or more contracts for Services to be provided to the Texas Hydrogen Production Policy Council of the state of Texas. Selection of the most highly qualified Service providers shall be based upon demonstrated competence, detailed credentials, and other evaluation criteria further described within this RFP. Contracts for the Services in which RRC has a need shall be awarded to the most qualified Respondents expressing interest in delivering the Services.

For purposes of this RFP, the Services in which RRC has a need may fall within the following general categories:

- a. Energy optimization modeling to provide an analysis on the development of hydrogen and its potential impact for production, transportation, and storage in Texas.
- b. A study of and evaluation on the development of hydrogen and its potential in Texas from economic data modeling, infrastructure needs, job creations, and possible impacts on other fuel sources.
- c. An assessment of the hydrogen sector model
- d. A Tariffs Model analyses for rate and bill impacts in hydrogen sector.
- e. A Macroeconomic analysis of hydrogen sector technologies for production, transportation, and storage and a detailed investigation of existing and future hydrogen sector infrastructure needs.

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 Services from other sources during the term of the Contract. A Contract shall have no monetary value and no guarantee that any Work will be

issued thereunder. An award of a Contract arising from this RFP shall not disqualify a Vendor from responding to a future RRC project-specific solicitation for Services.

1.3. Performance Period.

Any Contract resulting from this RFP shall include an original term beginning on the Contract effective date and ending on August 31st of the following year (“Original Term”).

1.4. 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:

- Respondent possesses the equipment, staff, and all other components necessary to perform the Services detailed within this Solicitation.
- Respondent possesses successful performance of Services similar in scope (as judged by RRC).
- Respondent is financially solvent and adequately capitalized, as judged by the RRC.

Respondents that do not meet required qualification requirements may be determined to be non-responsive and subject to rejection.

1.5. Costs of Response Preparation.

All costs associated with the preparation and submission of a Response, including costs associated with the 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.

1.6. 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 ([16 TAC §20.1](#)).

PART II: INSTRUCTIONS TO RESPONDENTS

2. General Response Instructions.

2.1. Strict Adherence to Submission Deadline.

Proposals 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.**

2.2. 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 Addenda posted to the Texas Comptroller's ESBD website no later than the Proposal due date and time. Award Date is estimated only; at the RRC's sole discretion, the award may occur at any time after due date of Proposal and completion of evaluation of Proposals received.

Table 1: Schedule of Events

Event	Date
Issuance of RFP	<i>March 14, 2024</i>
Deadline for Submission of Written Inquiries (no later than 3:00PM CT)	<i>March 29, 2024,</i>
Response to Written Inquiries, if any (Addendum posted to ESBD)	<i>April 5, 2024,</i>
Response Due Date (no later than 2:00PM CT)	<i>April 19, 2024</i>
Award Date (estimated only)	<i>April 26, 2024</i>

2.3. Response Delivery. It is the Respondent's responsibility to properly label and deliver the Response to RRC by the specified date and time for this RFP. Only email submissions will be allowed. Any Response submitted by US Postal Service, Overnight, Hand Delivery, or by facsimile will be rejected. 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 the Respondent's chosen delivery method:

Table 2: RRC Response Recipient

Submit Responses To:
Reese.Miller@rrc.texas.gov

2.4. Prohibited Communications; Sole Point of Contact.

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.

For information, including technical information, related to this **RFP No. 455-24-1028 Report on Hydrogen Development in Texas**, and administration of any resulting Contract, RRC’s Sole Point of Contact shall be J. Reese Miller, Contract Manager, whose contact information is:

Table 3:RRC Sole Point of Contact

Mailing Address	Email
Railroad Commission of Texas Contract Management Section J. Reese Miller, Contract Manager PO Box 12967 Austin, TX 78711-2967	Reese.Miller@rrc.texas.gov
	Phone
	512-463-6752

2.5. Inquiries and Addenda.

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 the Respondent be in doubt as to the exact meaning of information within the RFP, the 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. and/or Table 3) RRC shall not be responsible for oral instructions or for misinterpretation of the Solicitation and Contract Documents.

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 the deadline for submission of written questions. When issuing responses to questions submitted, RRC shall issue Addenda posted to the Texas Comptroller’s ESBD website.

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. Response Requirements.

Required Number of Response Originals and Copies. Respondent must submit one (1) electronic copy of the Response to the sole point of contact listed in Section 2.4 .

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 the required contents.

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®.

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 PDF documents containing the following information:

One (1) email submission, 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. 455-24-1028 Report on Hydrogen Development in Texas. CONTAINS CONFIDENTIAL INFORMATION."**

One (1) email submission, 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. 455-24-1028 Report on Hydrogen Development in Texas."**

- 2.7. 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. Respondent is specifically prohibited from taking exception to any of the terms and conditions in Part III of this Solicitation or the Statements and Covenants in Attachment 2 of the same. Furthermore, any exception may be considered negatively during the evaluation and scoring process or may result in a contract not being awarded to Respondent. Exceptions to RRC's Standard Terms and Conditions are strongly discouraged, as many of them are non-negotiable by state laws and regulations.
- 2.8. 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:

Title Page (Tab A). The Response title page must include:

- a. RRC's RFP number: **RFP No. 455-24-1028**;
- 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.

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, and shall identify Services Respondent can deliver within the Services categories described in 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 the 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. Identification of Services categories Respondent can and is willing to deliver.
- d. Clear, concise, detailed explanation of Respondent's exceptions taken, if any, to the terms and/or conditions of this RFP.

Experience and Qualifications (Tab C). Tab C shall include elaboration of, and details related to, projects identified within Respondent's Qualifications Statement form contained within Tab F Respondent's Submittals.

Respondent shall include examples and detailed description of at least three (3) projects delivered by Respondent within past five (5) years that demonstrate Respondent's ability and qualifications to deliver the Services required under a contract arising from this RFP. **Respondent shall include projects that represent delivery of Services similar in scope to that of the work described within RFP Attachment 1 Statement of Services, and that demonstrate Respondent's ability to meet or exceed the minimum qualifications and experience required under this RFP.**

Respondent's Approach to Performing Work Under the Contract (TAB D). Contents of Tab D shall include elaboration of, and details related to, Respondent's approach to performance of Services described within **RFP Attachment 1 Statement of Services**. Respondent's approach shall demonstrate Respondent's experience, expertise, and ability to plan, execute, and complete projects within one or more of the following categories:

- Detailed description of the vendor's approach and methodologies for planning, executing, and completing the work outlined in Attachment 1 Statement of Services.
- Detailed Work Breakdown Structure to include, but not be limited to a Gantt chart that provides descriptions of and dates related to tasks that vendor will undertake to complete the work.

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

Respondent's Submittals (TAB F). Required RRC RFP Attachments. Response **TAB F** 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

In addition to the Required RRC RFP Attachments, a Respondent shall include within the "Respondent's Submittals" section any additional statements, , 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.

Mandatory Disclosures. Each Response shall include within *Tab F Respondent's Submittals* Respondent's statements addressing the following disclosures:

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 and/or termination of the Contract.

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 the jurisdiction of legal action or contract dispute, the reason for penalties or liquidated damages, and penalties or liquidated damages amount for each incident.

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 to determine the 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. **RRC RFP Attachments.** *TABLE 4 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 4 of this RFP is not intended as a minimum, comprehensive, or exhaustive checklist of the required elements of a Response.* Respondent solely is responsible for reviewing and understanding 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 4: RRC RFP Attachments

Attachment Number	Name	Return with Response?
Attachment 1	Statement of Services	No
Attachment 2	Respondent’s Statements and Covenants	Yes (TAB F)
Attachment 3	Respondent’s Qualifications Statement Form	Yes (TAB F)
Attachment 4	Sample RRC Contract	No

2.10. Response Evaluation and Contract Award.

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. RRC reserves the right to continue to evaluate Responses until the achievement of best value to the State as defined by and in accordance with Texas Government Code §2155.074 and §2155.075.

Responsiveness. Each Response shall be evaluated to determine responsiveness to this RFP. Determination of responsiveness shall include, but may not be limited to, pass/fail determination of a Response.

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 the award of a Contract. - 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 an understanding of requirements for responsiveness. All determinations of responsiveness to this RFP shall be final.

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 the 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 Services required under the Contract and to promptly and timely provide Services without delay or interference;
- c. Indicators of Respondent’s probable performance under the Contract; indicators may include but not be limited to Respondent’s past performance on RRC projects and work for other state agencies, Respondent’s financial resources, and Respondent’s experience or demonstrated capability and responsibility in delivery of same or substantially similar services;
- d. Respondent’s compliance with RFP Response submission requirements; and
- e. 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 5** of this RFP.

Table 5: Weighted Criteria

Criteria	Weight
Respondents Approach to RFP	50%
Qualifications	40%
Price	10%
Total Percentage Points	100%

Respondents Approach to RFP: Evaluation and scoring shall include, but not be limited to, overall organization and presentation of Response, demonstration of understanding of RFP requirements, and contents in *Tab D Respondent’s Approach to Performing Work Under the Contract* in accordance with requirements of *RFP Attachment 1 Statement of Services* and all terms and conditions of all Solicitation and Contract Documents.

Respondent’s Qualifications. Evaluation and scoring shall include, but not be limited to, contents in Response *Tab B Executive Summary* including Respondent’s ability to meet and exceed minimum qualifications stated in this RFP, contents in Response *Tab C Experience and Qualifications* that demonstrate Respondent’s experience and success in delivery of same or substantially similar services as those required under this RFP, contents in Response that demonstrate Respondent’s ability to provide the Services and Respondent’s past performance and/or response to RRC inquiries to other entities, including but not limited to Respondent’s references.

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 at comptroller.texas.gov/](http://comptroller.texas.gov/);
- 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 canceled for non-performance in the previous 12 months.

To evaluate and score Respondent’s past performance, RRC may also make inquiries with other entities including Respondent’s references within *RFP Attachment 3 Respondent’s Qualifications 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 any other 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.

Contract Negotiations. RRC reserves the option to negotiate with one or more Respondents deemed highly qualified to provide the Services sought by RRC 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.

Best and Final Offer (“BAFO”). At the 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 the 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.

RRC Contact(s) Following Award. RRC contact(s) for the day-to-day administration of the Contract shall be determined following the 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.

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: Railroad Commission of Texas Standard Terms and Conditions

As used herein, **RRC** shall mean the Railroad Commission of Texas, and **Vendor** shall mean the Vendor identified on the RRC Purchase Order for goods and/or services to which these RRC Standard Terms and Conditions is attached or incorporated within by reference.

The following terms and conditions shall be fully incorporated into and constitute part of any offer by Vendor to RRC and any agreement between RRC and Vendor. Vendor shall comply, and Vendor shall require all Vendor's subcontractors and sub-vendors (if any) to comply with these terms and conditions.

1. Contract Scope:

Vendor shall provide the goods and/or services in accordance with the specifications and terms and conditions of the solicitation.

2. No Quantity Guarantees:

RRC makes no express or implied guarantees or warranties that any specific quantity or dollar amount of products and related services will be procured except as agreed to within the fully executed Contract.

3. Definitions:

As used throughout the Contract, the following terms have the meaning set forth below:

1. **Compliance Check**- an audit of Vendor's compliance with the Contract may be performed by a third-party auditor, RRC's internal audit department, RRC's contract management and/or purchasing staff, or RRC's authorized designees.
2. **Contract** - the entire agreement between RRC and Vendor, including all the Contract Documents, into which these Terms and Conditions are incorporated as if fully set forth therein.
3. **Contract Documents** – includes the fully executed agreement between RRC and Vendor and fully executed amendments thereto (if any), these "Terms and Conditions of the Contract", specifications, solicitation documents, purchase orders, and any exhibits, appendices, and attachments thereto and incorporated therein through written reference.
4. **Day** - business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
5. **Party** – individually either RRC or Vendor; collectively, "Parties".
6. **Purchase Order** - RRC's fiscal form or format used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or another authorized instrument.) An RRC Purchase Order may be considered a Contract or one document of a collective set of Contract Documents that comprise a Contract.
7. **State**- the State of Texas.
8. **Term**- means the period during which the Contract remains in force and effect. Extension of the Term shall occur only through written amendment to the Contract, fully executed prior to date of the Contract's then current Term.

4. General Provisions:

4.1. Entire Agreement:

The Contract Documents constitute the entire agreement between RRC and Vendor. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained in the Contract Documents shall be binding or valid.

4.2. Modification of Contract Terms and/or Amendments:

The terms and conditions of the Contract shall govern all transactions between RRC and Vendor under 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.

4.3. Invalid Term or Condition:

1. To the extent any term or condition in the Contract conflicts with any applicable State and/or United States law or regulation, such Contract term or condition is void and unenforceable. By executing a contract which contains the conflicting term or condition, RRC makes no representations or warranties regarding the enforceability of such term or condition and RRC does not waive the applicable State and/or United States law or regulation which conflicts with the Contract term or condition.
2. If one or more terms or conditions in the Contract, or the application of any term or condition to a Party or circumstance, is held invalid, unenforceable, or illegal in any respect by a final judgment or order of a court of competent jurisdiction, the remainder of the Contract and the application of the term or condition to a Party or circumstance shall remain valid and in full force and effect.

4.4. Assignment:

Vendor may not assign the Contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the Contract without the prior written consent of RRC, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void.

4.5. Survival:

All applicable guarantees and warranties for products and services delivered under the Contract shall survive the expiration or termination of the Contract. Rights and obligations under this Contract which by their nature should survive, including but not limited to any payment obligations invoiced prior to the termination or expiration hereof, obligations of confidentiality, and indemnification will remain in effect after termination or expiration hereof.

4.6. Governing Law and Venue:

The laws of the State shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in a court of competent jurisdiction, Travis County, Texas. The Parties expressly agree that no provision of the Contract, Exhibits, Appendices, Amendments, or any Purchase Order is in any way intended to constitute a waiver by the State of Texas or by the RRC of any immunities from suit or from liability that the State of Texas or the RRC may have by operation of law. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the State of Texas and the RRC under this Contract or under applicable law does not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

4.7. Limitation of Authority:

Vendor shall have no authority to act for or on behalf of the State of Texas except as expressly provided for in this Contract; no other authority, power, or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or RRC.

4.8. Proof of Financial Stability:

RRC may require Vendor to provide proof of financial stability prior to or at any time during the Contract term.

4.9. Vendor Identification:

Vendor shall provide Vendor's Texas Identification Number (TIN) issued by the Texas Comptroller of Public Accounts prior to Vendor issuing its first invoice to RRC.

5. Product Terms and Conditions:

1. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only):

1. Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
2. Upon request, but not later than thirty (30) calendar days after request, Vendor shall provide RRC with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

2. Warranties:

Notwithstanding any disclaimers in Vendor's terms and conditions and notwithstanding any other provision of the Contract to the contrary, Vendor warrants and guarantees that all services will meet all specifications of the Contract.

6. Contract Fulfillment:

6.1. Use of Access Data Prohibited:

If Vendor stores, collects, or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor to implement the Contract and shall not be disseminated to third parties or used for marketing or other purposes unauthorized by RRC.

6.2. Orientation Meeting:

At discretion of RRC, an orientation meeting to discuss the content and procedures of the Contract may be required. In the event of such requirement, Vendor agrees to attendance of such meeting. Orientation meeting may be scheduled at a mutually agreed time and location; RRC reserves the right to schedule such meeting to be held via telephone or teleconference.

7. Pricing, Purchase Orders, Invoices, and Payments:

7.1. All-inclusive Price:

Unless otherwise noted within the Contract Documents, the purchase price to be paid by RRC to Vendor under this Contract shall include all expenses related to Vendor's delivery of all goods and/or services required under the Contract.

7.2. Tax-Exempt:

As per Section 151.309, Texas Tax Code, purchased by RRC under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, purchases by RRC under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

7.3. Purchase Orders:

As applicable, all RRC Purchase Orders will be placed directly with the Vendor. Accurate Purchase Orders not conflicting with the Contract Documents shall be effective and binding upon Vendor when accepted by Vendor.

7.4. Invoices:

1. Invoices shall be submitted by the Vendor directly to RRC and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any provision of acceptance of such products and/or services shall be made by the RRC to Vendor.
2. Invoices must be timely and accurate. Each invoice must match RRC's Purchase Order and include any written changes that may apply, as it relates to products, prices, and quantities, as applicable. Invoices must include the RRC's Purchase Order number or other pertinent information for verification of receipt of the product or services by the RRC.

7.5. Payments:

RRC shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. The statute states that payments for goods and services are due thirty (30) calendar days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

8. Contract Administration:

8.1. Contract Managers:

RRC and Vendor will each provide a dedicated staff member to support the Contract.

1. State Contract Specialist:

RRC shall provide a Contract Specialist or Purchasing Manager whose duties shall include, but not be limited to, i) advising RRC and Vendor of Vendor's compliance with the terms and conditions of the Contract, ii) periodic verification of product pricing, and iii) verification of monthly reports submitted by Vendor, if required.

Upon execution of the Contract, RRC shall provide Vendor with written notification of the RRC Contract Specialist's name and contact information.

2. Vendor Contract Manager:

Vendor shall provide a dedicated Contract Manager or designated point of contact whose duties shall include but not be limited to: i) supporting the management of the Contract, ii) facilitating dispute resolution between Vendor and RRC, and iii) advising RRC of Vendor's performance under the terms and conditions of the Contract. RRC reserves the right to require a change in Vendor's then-current Contract Manager if the assigned Contract Manager is not, in the reasonable opinion of RRC, adequately serving the needs of the State.

Upon execution of the Contract, Vendor shall provide RRC with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of

Vendor personnel responsible for submitting reports (if required under the Contract) and receiving RRC's payment.

8.2. Records and Audit:

1. 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. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to the Contract.
2. Vendor shall maintain adequate records to establish compliance with the Contract until the later of a period of seven (7) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: Vendor's name, RRC name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, RRC Purchase Order number, contact name, RRC's complete billing address, HSP reports, and such other documentation as RRC may request.
3. Upon reasonable request of RRC, Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of the Contract to the RRC Internal Audit department or RRC Contract Management staff, including the compliance checks designated by the RRC Internal Audit department, RRC Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by RRC for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor shall provide copies and printouts requested by RRC without charge. RRC shall provide Vendor ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the Vendor's books and records shall be available to the RRC Internal Audit department, RRC Contract Management staff, and/or designees as needed. Vendor shall provide adequate office space to RRC staff during the performance of Compliance Checks. If Vendor is found to be responsible for inaccurate reports, RRC may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

9. Vendor Responsibilities:

9.1. Indemnification:

1. General:

VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND RRC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE 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 VENDOR WITH THE OFFICE OF THE TEXAS 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 TEXAS ATTORNEY GENERAL. VENDOR AND THE RRC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

THIS GENERAL INDEMNIFICATION SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OF TEXAS OR RRC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE RRC OR ITS EMPLOYEES.

For avoidance of doubt, RRC shall not indemnify Vendor or any other entity under this Contract.

2) Infringement: Patent, Trademark, Copyright, and Other Intellectual Property:

3. Claims.

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

OR IF RRC IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, RRC WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND VENDOR WILL PAY ALL REASONABLE COSTS OF RRC'S COUNSEL. VENDOR REPRESENTS THAT IT HAS DETERMINED WHAT LICENSES, PATENTS, AND PERMITS, IF ANY, ARE REQUIRED UNDER THIS CONTRACT AND HAS ACQUIRED ALL SUCH LICENSES, PATENTS, AND PERMITS.

4. 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 Vendor's goods and/or services, or (ii) modify or replace the affected portion of Vendor's goods and/or services with functionally equivalent or superior product or service so that RRC's use is non-infringing.

5. Limitations.

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

9.2. Independent Contractor:

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE STATE OF TEXAS OR THE RRC. Vendor's employees are not and shall not be construed as employees or agents of the State of Texas or RRC. 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.

9.3. Taxes/Worker's Compensation/Unemployment Insurance:

1. VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE 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 RRC.

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

9.4. Legal Obligations:

Vendor shall procure and maintain for the duration of the Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification, or certification required by statute, ordinance, law, or regulation to be held by Vendor to provide the goods or services required by the Contract. 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 its subcontractors during performance of Contract.

9.5. Federal, State, and Local Requirements:

Vendor shall demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2s to common law employees. Vendor is solely responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Vendor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Vendor or its employees for any unemployment or workers' compensation coverage, or federal or State 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.

9.6. Ability to Conduct Business in Texas:

Vendor shall be authorized and validly existing under the laws of its state of organization and shall be authorized to do business in the State of Texas.

9.7. Equal Opportunity Compliance:

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon request, Vendor will furnish

information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

9.8. Use of Subcontractors:

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

9.9. Responsibility for Actions:

1. Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of RRC or the State.
2. Vendor, for itself and on behalf of its subcontractors, shall report to RRC promptly any changes to the disclosures, certifications, representations, and warranties within the Contract Documents, including but not limited to those within section 10 of this Exhibit A-Terms and Conditions of the Contract. Vendor covenants to fully cooperate with RRC to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest.
3. Vendor agrees to fully cooperate with RRC 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 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.
4. If Vendor employs subcontractors on a project funded by federal or state financial assistance (e.g. grants or cooperative agreements), Vendor shall establish reasonable oversight. Vendor shall oversee subcontractor compliance with and enforcement of any financial assistance terms and conditions incorporated into the Contract and applicable to subcontractors. In the event a subcontractor defaults on any applicable term and condition described in this paragraph, Vendor shall be responsible for notifying RRC, returning the subcontractor to compliance if possible, and remedying the deficiency. A material breach by a subcontractor of the applicable terms of any financial assistance shall be considered a material breach of contract by Vendor.

9.10. Confidentiality:

1. Vendor acknowledges that RRC is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that RRC is a government agency that will comply with the Public Information Act and with all opinions of the Texas Attorney General's office concerning this Act.
2. Information, documentation, and other material in connection with the Contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Texas Government Code §2252.907,

Vendor is required to make any information created or exchanged with the State pursuant to this 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 formats acceptable to RRC include MS Word®, MS Excel®, and *.pdf.

3. Under the terms of the Contract, RRC may provide Vendor with information related to RRC. Vendor shall not re-sell or otherwise distribute or release RRC information to any party in any manner.

9.11. Security of Premises, Equipment, Data and Personnel:

Vendor may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and/or materials (collectively referred to as “Data”) belonging to the RRC. Vendor shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the RRC, in accordance with the instruction of the RRC. Vendor shall be responsible for damage to RRC's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If a Vendor fails to comply with RRC's security requirements, then RRC may immediately terminate its Purchase Order and related Service Agreement.

9.12. Background and/or Criminal History Investigation:

By signature to the Contract, Vendor agrees and consents that prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the RRC under the Contract may be performed by RRC. Should any employee or subcontractor of the Vendor who will be providing services to the RRC under the Contract not be acceptable to the RRC because of results from the background and/or criminal history check, then RRC may immediately terminate the Contract or request replacement of the employee or subcontractor in question.

9.13. Limitation of Liability:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the RRC shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

9.14. Overcharges:

Vendor hereby assigns to RRC all its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq.

9.15. Antitrust Affirmation:

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

9.16. Required Insurance Coverage:

As a condition of this Contract with RRC, Vendor shall provide the listed insurance coverage within five (5) business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any RRC premises and/or use employer vehicles to conduct work on behalf of RRC. Vendor may not begin performance under the Contract until such proof of insurance coverage is provided to, and approved by, RRC.

1. All required insurance must be issued by companies that have both a financial strength rating of A or better and a financial size category class of VII or better by A.M. Best, licensed in the State of Texas, and authorized to provide the corresponding coverage.
2. Policies shall be provided on a form approved by the Texas Department of Insurance and be satisfactory to the RRC.
3. Required policies and coverages must be written on a primary and non-contributory basis with any other insurance coverage Vendor currently has in place, include a Waiver of Subrogation endorsement, and provide 30-day Notice of Cancellation, non-renewal, or reduction in coverage.
4. All certificates of insurance except Worker's Compensation shall name the State of Texas and the Railroad Commission of Texas as Additional Insureds.
5. 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 notice by the RRC, Vendor will be liable for all costs, liabilities, damages and penalties resulting to the State of Texas and the RRC from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Vendor by the RRC. In the event of any failure by Vendor to comply with the provisions of this Contract, the RRC may, without compromising or waiving any right or remedy at law or in equity, on notice to the Vendor, purchase such insurance, at the Vendor's expense, provided that the RRC shall have no obligation to do so and if the RRC shall do so, Vendor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
6. Required coverage must remain in effect through the full term of the Contract. The minimum acceptable insurance provisions are as follows:

Table 6: Minimum Acceptable Insurance Provisions

Type of Insurance	Each Occurrence/Aggregate
Worker's Compensation	Statutory limits Pursuant to Texas Labor Code §§406.096(a) and 406.096(b)
Employer's Liability Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	\$1,000,000 Each Accident \$1,000,000 Each Employee \$1,000,000 Policy Limit
Commercial General Liability (occurrence based) 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.	Bodily Injury and Property Damage \$1,000,000 Each Occurrence Limit \$2,000,000 Aggregate Limit \$5,000 Medical Expense each person \$2,000,000 Products/Completed Operations Aggregate Limit \$1,000,000 Personal Injury and Advertising Liability
Automobile Liability. <u>Any Auto</u> coverage required	\$1,000,000 Combined Single Limit (for each accident)

9.17. Use of State Property:

Vendor is prohibited from using the RRC's equipment, the RRC's location, or any other resources of the RRC or the State for any purpose other than performing services under this Agreement. For this purpose, equipment includes, but is not limited to, copy machines, computers and telephones using State long distance services. Any charges incurred by Vendor using the RRC's equipment for any purpose other than performing services under this Agreement must be fully reimbursed by Vendor to the RRC immediately upon demand by the RRC. Such use shall constitute breach of contract and may result in termination of the contract and other remedies available to RRC and RRC under the contract and applicable law.

9.18. Immigration:

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Vendor shall require its subcontractors to comply with the requirements of this section, and Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

9.19. U.S. Department of Homeland Security's E-Verify System:

By entering into this Contract, the Vendor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system (<https://www.uscis.gov/e-verify>) to determine the eligibility of:

1. All persons employed to perform duties within Texas, during the term of the Contract; and
2. All persons (including subcontractors) assigned by Vendor to perform work pursuant to the Contract, within the United States of America.

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

IF THIS CERTIFICATION IS FALSELY MADE, THE CONTRACT MAY BE IMMEDIATELY TERMINATED, AT THE DISCRETION OF RRC AND AT NO FAULT TO RRC, WITH NO PRIOR NOTIFICATION. IN THE EVENT OF SUCH TERMINATION, VENDOR SHALL BE RESPONSIBLE FOR DIRECT, CONSEQUENTIAL, AND INDIRECT COSTS OF ANY SOLICITATION RRC MUST UNDERTAKE TO REPLACE THE TERMINATED CONTRACT.

9.20. Public Disclosure:

No public disclosures or news releases pertaining to this Contract shall be made without prior written approval of RRC.

9.21. Product and/or Services Substitutions:

Substitutions are not permitted without the written permission of RRC.

9.22. Warranties:

Notwithstanding any disclaimers in Vendor's Proposal and notwithstanding any other provision of the Contract to the contrary, Vendor warrants and guarantees that all services will meet all specifications of the Contract.

9.23. Secure Erasure of Hard Disk Products and/or Services:

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services in accordance with 1 TAC 202.

9.24. Deceptive Trade Practices; Unfair Business Practices:

Vendor represents and warrants that neither Vendor nor any of its subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

9.25. Drug Free Workplace Policy:

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

9.26. Vendor Reporting Requirements:

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

9.27. Vendor Certifications:

Vendor certifies that the information contained in this Contract is accurate and complete. By Vendor's signature affixed to the Contract, Vendor certifies on behalf of Vendor and Vendor's subcontractors, if any, that they:

1. have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
2. are not currently delinquent in the payment of any franchise tax owed the State and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;
3. under Section 231.006 of the Family Code, Vendor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate;
4. neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for obtaining an unfair price advantage;
5. have not received payment from RRC or any of its employees for participating in the preparation of the Contract;
6. under §2155.004(b) of the Texas Government Code, Vendor certifies that the individual or business entity named in the Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated, and payment withheld, if this certification is inaccurate;
7. to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
8. Vendor and its principals are not suspended, debarred, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency;
9. as of the effective date of the Contract, are 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;
10. to the extent applicable to the Contract, Vendor certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328;
11. agree that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support;

12. are in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency, and Vendor certifies that it is not (1) the executive head of RRC, (2) a person who at any time during the four years before the date of the Contract was the executive head of RRC, or (3) a person who employs a current or former executive head of RRC;
13. have identified all current or former, within the last five years, employees of the State assigned to work on the RRC Contract 20% or more of their time and have disclosed them to RRC and have disclosed or do not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, certify they shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
14. represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certify that they will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
15. under §§2155.006 and 2261.053 of the Texas Government Code Vendor and Vendor's subcontractors, if any, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated, and payment withheld, if this certification is inaccurate;
16. have complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.
17. in accordance with §2155.4441, Texas Government Code, Vendor agrees that during the performance of this Contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state;
18. represent and warrant that the RRC's payment and their receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;
19. represent and warrant that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by §2252.152 of the Texas Government Code;
20. represent and warrant that (1) Vendor does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Texas Government Code §2271.002 does not apply to the Contract, and if circumstances relevant to this provision change during the course of the Contract, Vendor shall promptly notify RRC;
21. represent and warrant that pursuant to Texas Government Code §2272.003, Vendor either (1) meets an exemption criterion under Texas Government Code §2272.002; or (2) it is not an abortion provider or an affiliate of an abortion provider during the term of the Contract resulting from this solicitation;
22. represent and warrant that pursuant to Texas Government Code §2274.002 as added by SB 13 (87R), Vendor (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract;
23. represent and warrant that pursuant to Texas Government Code §2274.002 as added by SB 19 (87R), Vendor (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not

- discriminate during the term of the contract against a firearm entity or firearm trade association;
24. to the extent applicable to the Contract, Vendor represents and warrants that it will comply with the requirements of Texas Government Code §2054.5192 relating to cybersecurity training and required verification of completion of the training program;
 25. upon request of RRC, Vendor shall provide the descriptions of its business continuity and disaster recovery plans;
 26. under §2155.0061 of the Texas Government Code Vendor certifies that the individual or business entity named in the Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminate and payment withheld if this certification is inaccurate;
 27. if Vendor signs the 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 the Contract, Vendor will be in default under the Contract and RRC may terminate or void the Contract;
 28. the individual signing the Contract (including a Purchase Order issued by RRC), is duly authorized to execute the Contract on behalf of the Vendor.

10. Contract Enforcement:

10.1. Enforcement of Contract and Dispute Resolution:

1. Vendor and RRC agree to the following: (i) a Party's failure to require strict performance of any provision of the Contract shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision; (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; and (iii) actions or proceedings arising from the Contract shall be heard in any court of competent jurisdiction in Travis County, Texas.
2. Disputes arising between a RRC and Vendor shall be resolved in accordance with the dispute resolution process in subparagraph A.1), above. RRC shall not be a Party to any dispute resolution process inconsistent with that listed in subparagraph A.1), above, unless RRC and Vendor otherwise agree in writing.
3. State agencies are required by 34 TAC §20.115 to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

10.2. Termination:

The Contract may be terminated, canceled, or cancellation of services may occur, in whole or in part, in any one of the following circumstances

1. Termination or Cancellation for Convenience:

- a) **Bi-lateral Agreement:** Upon a written agreement between RRC and Vendor the Contract may be terminated or canceled.
- b) **RRC Cancel 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.

2. Termination for Lack of Appropriated Funds, Legislative Action, or Necessity of Performance:

The Contract is subject to termination or cancellation, without penalty to RRC, in either whole or in part, subject to the availability of state funds. In the event of a termination or cancellation under this Part, RRC will not be liable to Vendor for any damages which are caused or associated with such termination or cancellation, and RRC will not be required to give prior notice.

3. Termination or Cancellation for Cause:

a) **Absolute Right:** RRC shall have the absolute right to terminate the Contract without recourse in the event: i) Vendor becomes listed on 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; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or (iii) Vendor is found by RRC to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

b) **Breach of Material Term:** Either party may, upon giving thirty (30) calendar day's 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 day 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.

Upon termination or cancellation under this provision, Vendor shall refund to RRC any amounts attributable to the terminated or canceled months within thirty (30) days of the termination or cancellation.

c) **Vendor Nonperformance:** If Vendor defaults on the Contract after execution of the Contract, RRC reserves the right to cancel the Contract without notice. In such instance Vendor will not be considered for award of a Contract, and may not be considered in future solicitations, for the same type of work unless the specification or scope of work significantly changed. Vendor's period of suspension from being considered will be determined by the agency based on the seriousness of the default. The Vendor remains liable for all covenants and indemnities under the Contract. The Vendor is liable for all costs and expenses, including court costs, incurred by RRC with respect to the enforcement of any remedies listed herein.

d) **Bankruptcy:** Upon the filing of a petition for bankruptcy, or upon the judgment of bankruptcy or insolvency by or against the 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.

e) **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.

f) **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 any 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.

4. **Miscellaneous Termination Provisions:**

a) **RRC Rights Under Termination:** In the event the Contract expires or is terminated for any reason RRC shall retain its rights under the Contract.

b) **Vendor Rights Under Termination:** In the event a Purchase Order expires or is terminated RRC shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted.

c) **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.

5) **Force Majeure:**

RRC or Vendor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the Party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the Party's control to ensure performance and to shorten the duration of the event of Force Majeure. The Party suffering an event of Force Majeure shall provide notice of the event to the other Party when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, RRC may terminate a Purchase Order if it is determined by RRC that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of RRC.

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.

10.3. Severability.

If any provision contained in the Contract is held to be unenforceable by a court of law or equity, the 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.

11. Notification:

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to the awarded vendor.

12. Captions:

Captions, titles, headers, and labels contained in the Contract, Exhibits, Appendices, and Attachments, if any, are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

13. Counterparts:

The Contract 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.

14. Signatures:

The Parties agree that where the Contract and any written amendments thereto necessary for the consummation of the transaction contemplated by the Contract requires signature of one or more Party, such Contract and any amendments thereto 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. If signature is required, the Parties to this Contract have electronically executed this Contract which shall be deemed an original. By affixing of a signature to the Contract each signatory represents and warrants that they have the authority to enter into the Contract on behalf of the respective Parties.

ATTACHMENTS

Attachment 1: Statement of Services

Attachment 2: Respondent's Statements and Covenants

Attachment 3: Respondent's Qualifications Statement Form

Attachment 4: Sample RRC Contract

Statement of Services

Background and Introduction.

The Railroad Commission of Texas (“RRC”), participating as a member of the Texas Hydrogen Production Policy Council is seeking a vendor to assist with the Council charge relating to the jurisdiction of the RRC and to provide RRC with a study of the production, pipeline transportation, and storage of hydrogen as referenced in SB 2847 of the 88th Regular Session of the Texas Legislature.

RRC intends to contract with a highly qualified, experienced consultant (“Vendor”) with demonstrated expertise in energy optimization modeling and analysis, and in RRC’s sole discretion are deemed highly capable of completing all work required under a Contract arising from **RFQ No. 455-24-1028** and any Work issued thereunder.

Vendor shall provide all labor, materials, equipment, tools, incidentals, authorizations, and services necessary to provide 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 issued under the Contract, and all terms and conditions of the Contract.

The vendor selected will provide a report that assesses, calculates, and analyzes the potential hydrogen may have in Texas as an energy source and for trade with other US states. The report will provide a detailed analysis of the infrastructure requirements for the production, pipeline transportation, and storage of hydrogen.

Scope of Services.

Report Requirements.

Vendor shall use energy optimization modeling to provide an analysis on the development of hydrogen and its potential impact for production, transportation, and storage in Texas. RRC needs a study of and evaluation of the development of hydrogen and its potential in Texas from economic data modeling, infrastructure needs, job creation, and possible impacts on other fuel sources. This study may be done using an energy systems model and must provide an assessment of the hydrogen sector model that includes but is not limited to, changes in energy systems, prices, energy prices, greenhouse gas mitigation costs, greenhouse gas mitigation options, and identification of emerging technologies. In the report the vendor needs to also provide a Tariffs Model analyses for rate and bill impacts in hydrogen sector. Vendor will also provide a Macroeconomic analysis of hydrogen sector technologies for production, transportation, and storage and a detailed investigation of existing and future hydrogen sector infrastructure needs. At the RRC's discretion, vendor reports may be distributed to the Legislature and other agencies. Additionally, the reports might be made publicly accessible on our agency's website or the Legislature standing committee's website. Under no circumstances shall any part of the report be claimed as proprietary information or confidential.

Deliverables

The Vendor must provide, at a minimum, the following items in their report.

1. Using an energy systems modeling tool, provide a draft report that includes an assessment of the hydrogen sector model that includes, but is not limited to, changes in energy systems, energy prices, greenhouse gas mitigation costs, greenhouse gas mitigation options, along with other environmental concerns, and identification of emerging technologies.
2. Perform changes required after RRC review on the draft report that includes results documentation from the modeling tool.
3. Provide an initial review of Tariff Model data to RRC that includes, but is not limited to, rates and possible state rule impacts.
4. Implement changes required after RRC review on the initial review of the Tariff Model draft report.
5. Provide a draft report that details the Development of Hydrogen Potential in Texas and its impacts on economics, infrastructure, jobs, and as an alternative fuel source.
6. Provide a final report that implements changes required after RRC reviews and provides feedback on the initial review of the draft document that details Hydrogen Potential in Texas.
7. Present a report to the Hydrogen Council that includes a long-term feasibility study for a spatial, grid-based approach.

Assumptions

1. This project will be completed in phases with each deliverable representing a portion of the entire project scope. Having a short timeline assumes that there will be limited review time allocated for each deliverable prior to release of a notice to proceed for the next portion.
2. RRC specific data will be provided by the Commission, but a majority of the work product will be developed and provided by the vendor.
3. Vendor will follow RRC's Notice to Proceed and Notice of Completion process as outlined in the solicitation.

Work Schedule.

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

- Within the time specified by the vendor and agreed to in writing by RRC, Vendor shall organize all necessary equipment, resource materials, and personnel in accordance with the Contract specifications.
- It is the sole discretion of RRC to approve any requested extension to agreed-upon dates. Nevertheless, an extension will not be unreasonably withheld in the event of *force majeure*.
- RRC shall issue approved extensions in writing.
- Only extensions authorized by RRC in writing shall be honored by RRC as an acceptable delay.
- Should Vendor fail to provide services by the designated deadline, RRC reserves the right to unilaterally revoke and/or terminate the Contract. In the event of Contract revocation and/or Contract termination under this provision, RRC may award the Contract to the next qualified Vendor offering the best value to the state as determined by RRC.
- Any alterations to the RRC approved 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.
- Vendor shall not perform any work without the authorization of RRC. Any work performed by Vendor without prior written authorization from the RRC's 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.

- 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 Contract within the time specified in the Contract or Contract. 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.

Vendor Responsibilities.

- Vendor shall provide a detailed description of the vendor's approach and methodologies for planning, executing, and completing the work outlined in this statement of services.
- Vendor shall provide RRC with a detailed work breakdown structure to include, but not be limited to a Gantt chart that provides descriptions of and dates related to tasks that vendor will undertake to complete the work.
- 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 perform the Services in accordance with all terms, conditions, and specifications of the Contract and any Contract issued thereunder.
- Vendor shall conduct and deliver the Services in accordance with procedures approved by the RRC and in accordance with applicable RRC Statewide Rules.
- Vendor shall obtain written approval of the RRC Authorized Representative prior to making or commencing any changes to an approved Services plan or procedure.
- Vendor shall schedule and manage resources to ensure safe and efficient prosecution of all Services.
- Vendor shall maintain all appropriate training, licenses, permits, certifications, and registrations applicable to the performance of work and delivery of Services throughout the lifetime of the Contract.
- 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. 455-24-1028** 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

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.

11. 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.
12. 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).
13. 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.
14. 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: _____
15. 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.
16. 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.
17. 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.**
18. 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

19. 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.
20. 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.
21. 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.
22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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.)

Respondent's Statements and Covenants

29. 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 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.

30. 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), reviewing the instructional video, creating a username and password, and completing and electronically filing with the TEC the "Certificate of Interested Parties".

31. 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:
- All persons employed by Respondent to perform duties within Texas; and
 - 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.

32. 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.
33. 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

34. 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 |
35. 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.
36. 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.
37. 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.
38. 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.
39. 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.

Respondent's Statements and Covenants

40. 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 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.
41. 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.
42. 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:

_____	_____
Respondent Name	Federal Employer Identification Number
_____	_____
Signature of Authorized Representative	Date signed

Printed Name & Title of Authorized Representative	

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.

COMPANY			
ADDRESS			
PHONE		FAX	
E-MAIL			
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:

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 \$ _____

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

BANK		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 100% COMPLETE AND 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 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 RFQ 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 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 RFQ work.					

RESPONDENT'S EXPERIENCE RECORD (CONTINUED):

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 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 RFQ 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

ATTACHMENT 4
RRC SAMPLE CONTRACT

SAMPLE CONTRACT NO. 455-24-1028
between
RAILROAD COMMISSION OF TEXAS
and
VENDOR NAME
for
Report on Hydrogen Development in Texas

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’s Complete Street Address - NO PO Box (individually “Party”; collectively “Parties”).

WITNESSETH

WHEREAS, Texas Government Code Chapters 2155, 2156, 2254 and Texas Natural Resources Code Chapter 81.051(5) provide for RRC’s authority to procure goods and services and RRC is seeking a study of the development of hydrogen industries in this state, including the development of upstream facilities for the production, pipeline transportation, and storage of hydrogen, as required by HB 2847 of the 88th Regular Session of the Texas Legislature (“Report on Hydrogen Development in Texas”), and

WHEREAS, in accordance with applicable provisions of Texas Government Code Chapters, 2155, 2157 and 2261, RRC has selected Vendor to provide the desired Report on Hydrogen Development in Texas solution referenced within the RRC RFP No. 455-24-1028 (“RFP No. 455-24-1028”), and the Vendor has agreed to provide the desired Report on Hydrogen Development in Texas solution referenced within RFP No. 455-24-1028, subject to the terms and conditions hereinafter set forth; and

WHEREAS, all terms and conditions of RFP No. 455-24-1028 including but not limited to insurance, bonding requirements (if any), and specifications within the Statement of Work, constitute part of this Contract No. 455-24-1028.

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 this Contract, including all Contract Documents incorporated by reference, Vendor shall deliver throughout the term of the Contract including renewal or extension periods (if any), the Report on Hydrogen Development in Texas (“Services”), including all labor, qualified personnel, management, coordination, equipment, materials, insurance, bonding (if applicable), 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. 455-24-1028;
- b. Exhibit A, RFP 455-24-1028, including all associated attachments, appendices, exhibits, and addenda; and
- c. Exhibit B, Vendor's Offer, dated Month, DD, YYYY (Vendor's Offer).

1.02. INCORPORATED BY REFERENCE. All elements listed in 1.01.a. through 1.01.c. are attached 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. 455-24-1028 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. 455-24-1028; then
- b. Exhibit A, RFP 455-24-1028; and then
- c. Exhibit B, Vendor's Proposal.

II. TERM

2.01. CONTRACT AWARD.

- a. The original term of this Contract shall include an original term beginning on the Contract effective date and shall continue through August 31st of the following year ("Original Term"), unless terminated earlier as provided in RFP 455-24-1028, section 1.3., 12.2. and/or section 2.02. set forth below.
- 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 the following Section 2.02.c.
- 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 additional (extended or renewal) terms, if any, shall not exceed **CONTRACT AMOUNT IN WORDS (\$##,###,###.##)**. This Contract not-to-exceed amount may be changed only through written Amendment to the Contract.

3.02. SERVICES.

- a. Vendor shall provide the goods and services necessary and reasonably inferable to complete the work described in RFP 455-24-1028.
- 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 deliver all services 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 Proposal in response to the RFP 455-24-1028. 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 Scope of Work (Attachment 1 of RFP 455-24-1028) describes the intended project scope and character. The Parties agree it is Vendor's responsibility to review and understand requirements of the entire Statement of Work, including specifications therein, and to provide deliverables, including information resources 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 (ii) in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders 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 Work 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/services in accordance with the terms and conditions of RFP 455-24-1028.
- g.** Vendor agrees to furnish efficient business administration and superintendence and to use Vendor's best efforts to fulfill the Contract 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. Changes of Vendor's key personnel identified in Vendor's Proposal 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 phases of Vendor's goods and/or services delivery and shall be available as required for the benefit of the 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 will be paid for completion of work accepted and approved by RRC.
- b.** Vendor shall invoice RRC for work accepted and approved by RRC. Vendor shall submit invoices as specified in RFP 455-24-1028.

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
Operations Division-Contract Management
P.O. Box 12967
Austin, Texas, 78711-2967
Attention: Theresa Lopez
Phone: 512-463-6953
Fax: 512-936-6402
Email: theresa.lopez@rrc.texas.gov

For Vendor: Vendor Legal Name
Full Mailing Address

Attention: _____
Phone: _____
Fax: _____
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. 455-24-1028 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 agree and acknowledge that nothing contained in RFP 455-24-1028, Vendor's Offer, 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. RRC and the State of Texas retain all legal defenses and immunities available to each. RRC does not waive any privileges, rights, defenses, remedies, or immunities, available to RRC as an agency of the State of Texas or otherwise available to RRC.

7.05. PROHIBITION ON CONTRACTING WITH COMPANIES BOYCOTTING ISRAEL. In accordance with Texas Government Code §2270.002, Vendor hereby represents and warrants that it does not, and shall not for the duration of the Contract, boycott Israel as the term is defined by Texas Government Code §808.001(1).

7.06. PROHIBITION ON CONTRACTING WITH COMPANIES ENGAGED IN BUSINESS WITH FOREIGN TERRORIST ORGANIZATIONS. Vendor 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.

7.07. 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.

7.08. ENTIRE CONTRACT AND MODIFICATION. This Contract No. 455-24-1028 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 LEGAL NAME

Wei Wang
Executive Director

Printed Name
Title: _____

Date of Execution

Date of Execution

_____RRC use only below this line.

Div. Director: _____

CM Director: _____

OGC: _____