



REQUEST FOR PROPOSAL

FOR

TSTC- Waco Bathroom Additions at Waco Inn/Bolling 2016

TEXAS STATE TECHNICAL COLLEGE  
RFP No.: RFP-16-EW-398424

SUBMITTAL DUE DATE:  
February 25, 2016 at 2:00 p.m.

Prepared By:  
Elise Wells  
Senior Buyer for Procurement Services – CTP  
Texas State Technical College  
Patterson Hall Building  
103 10<sup>th</sup> St.  
Waco, Texas 76705  
Phone: (254) 867-3753  
elise.wells@tstc.edu

**Table of Contents**

- 1. General Information..... 3**
  - 1.1 Purpose of the Request..... 3
  - 1.2 Conflicts of Interest..... 3
  - 1.3 Submission of Proposal..... 3
  - 1.4 Key Events Schedule..... 4
  - 1.5 Clarifications and Interpretations ..... 4
  - 1.6 Evaluation Process ..... 5
  - 1.7 Exceptions to RFP..... 5
  - 1.8 Bidding Requirements..... 5
  - 1.9 No Reimbursement for Costs ..... 5
  - 1.10 Taxes ..... 5
  - 1.11 Reservation of Rights ..... 5
  - 1.12 Texas Public Information Act ..... 6
  - 1.13 Equal Opportunity ..... 6
  - 1.14 Accuracy of Information ..... 6
  - 1.15 Invoices ..... 6
  - 1.16 Insurance ..... 6
  - 1.17 Indemnification ..... 7
  - 1.18 Alternative Dispute Resolution ..... 7
  - 1.19 Confidential Information..... 7
  - 1.20 Governing Law..... 8
  - 1.21 Licenses, Permits, Taxes, Fees, Laws and Regulations ..... 8
  - 1.22 Group Purchasing Authority ..... 8
- 2. Scope of Services ..... 9**
  - 2.1 Overview ..... 9
  - 2.2 Contractor Responsibilities ..... 9
  - 2.3 Documentation ..... 9
  - 2.4 Contract Administration..... 9
  - 2.5 Change or Addition to Scope of Services ..... 9
- 3. Proposal Format ..... 10**
  - 3.1 Cover Page ..... 10
  - 3.2 Execution of Offer..... 10
  - 3.3 Table of Contents ..... 10
  - 3.4 Proposal Contents..... 10
- 4. Proposal Selection Criteria ..... 10**
- 5. Attachments for this RFP..... 12**
  - Attachment A – Proposal Cover Page..... 12
  - Attachment B – Execution of Offer ..... 12
  - Attachment C – Terms & Conditions ..... 12
  - Attachment D – Conflict of Interest..... 12
  - Attachment E – Sample Agreement Between Owner and Contractor ..... 12
  - Attachment F – 2012 Uniform General Conditions ..... 12
  - Attachment G – Plans and Specifications ..... 12

## **1. General Information**

### **1.1 Purpose of the Request**

Texas State Technical College (TSTC) (“Owner”) is soliciting competitive sealed proposals (“Proposals”) for the additions of bathrooms to six existing housing units on the Waco campus. Units are comprised of 3 duplex units as follows: 88, 88A, 90, 90A, 92, 92A Bolling (Project), in accordance with the terms, conditions, and requirements set forth in this Request for Proposals (“RFP”). Units are pier and beam structures with crawlspace and attic access. This RFP and the Respondent’s submission will be referenced and form part of the Contract Purchase Order issued to the successful Respondent.

### **1.2 Conflicts of Interest**

#### *Actual and Perceived Conflicts*

By submitting a Proposal, Respondent represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in entering a contract with Owner. Respondent also represents and warrants that entering a contract with Owner will not create the appearance of impropriety. In its Proposal, respondent must disclose any existing or potential conflict of interest that it might have in contracting with Owner. The requirement to disclose any actual or potential conflict of interest will continue during the term of the contract, and will survive until the end of the recordkeeping requirements. The Owner will decide, in its sole discretion, whether an actual or perceived conflict should result in disqualification or contract termination.

#### *Current and Former Employees*

In addition to the disclosures required above, respondent must also disclose any of its personnel who are current or former officers or employees of the Owner or who are related, within the third degree of consanguinity (as defined by Texas Government Code 573.023) or within the second degree by affinity (as defined by Texas Government Code 573.025), to any current or former officers or employees of the Owner.

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

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

### **1.3 Submission of Proposal**

Pursuant to the provisions of Texas Government Code Title 10 Subtitle D Chapter 2156.121-2158.127, sealed proposals will be received until the date and time established for receipt. After, receipt, only the names of respondents will be made public. Prices and other proposal details will only be divulged after the contract award, if one is made.

***TSTC will receive Proposals until February 25, 2016 at 2:00 p.m. central standard time. Proposals must be time-stamped by TSTC before the hour and date specified. Proposals that are received late will be returned to the respondent unopened.***

Proposals will not be received by telephone, fax, or email. Proposals will only be received at the location described below:

Elise Wells, CTP  
Texas State Technical College  
Patterson Hall Building  
103 10th Street  
Waco, Texas 76705

**Submit one (1) original and one electronic copy of the Proposal and all of its contents.** The original Proposal should contain the mark “original” on the Proposal Cover Page.

Proposal must be enclosed in a sealed envelope (box or container) addressed as described above. The envelope must clearly identify the RFP number, submittal due date, and the name and return address of the respondent. Proposal and any other information submitted by respondents in response to this RFP shall become the property of the TSTC.

Failure to comply with all requirements contained in this RFP may result in the rejection of the Proposal that are qualified with conditional clauses, alterations, items not called for in the RFP, or irregularities of any kind are subject to rejection.

Properly submitted Proposals will be opened publicly and the names of the respondents will be read aloud. Proposal cannot be altered or amended after opening time. Proposal cannot be withdrawn after opening time without written approval by TSTC based on a written request to withdraw.

**Late received Proposals will be returned to the respondent.**

#### **1.4 Key Events Schedule**

Issuance of RFP	Friday, February 5, 2016
Pre-proposal Walk-through	Thursday, February 16, 2016, 10:00 a.m.
Deadline for Submittal of Questions	Monday, February 22, 2016, 10:30 a.m.
Submittal	<b>Thursday, February 25, 2016, 2:00 p.m.</b>
Evaluation and Award	Friday, February 26 through March 4, 2016

#### **1.5 Clarifications and Interpretations**

All questions regarding this RFP must be submitted in writing to Elise Wells, Senior Buyer for Procurement Services, at [elise.wells@tstc.edu](mailto:elise.wells@tstc.edu) no later than **February 22, 2016 at 10:30AM** any clarifications or interpretations of this RFP that materially affect or change its requirements will be issued by TSTC as an addendum. All such addenda are issued by TSTC before the Proposals are due as part of the RFP and respondents shall acknowledge receipt of each addendum to the RFP in its Proposal.

Respondents obtaining this RFP are responsible for notifying TSTC that they are in receipt of this RFP and intend to respond. Please send the respondent's name, contact person, address, phone number, fax number, and email to Elise Wells, Senior Buyer for Procurement Services, at [elise.wells@tstc.edu](mailto:elise.wells@tstc.edu). This information is required in the event addenda are issued. It is the responsibility of all respondents to obtain addenda in a timely manner. Respondents shall acknowledge receipt of each addendum to the RFP in the Proposal.

Upon issuance of the RFP, besides written inquiries as described above, other employees and representatives of TSTC will not answer questions or otherwise discuss the contents of the RFP with any potential consultant's representatives. Failure to observe this restriction may result in disqualification of any subsequent response. This restriction does not preclude discussions with TSTC for the purpose of conducting business unrelated to this RFP.

### **1.6 Evaluation Process**

TSTC may select the Proposal that offers the "best value" for the institution based on the published selection criteria and on its ranking evaluation. TSTC may first attempt to negotiate a contract with the selected respondent. TSTC may discuss with the selected respondent options for a scope or time modification and any price change associated with the modification. If TSTC is unable to reach a contract with the selected respondent, TSTC may formally end negotiations with that respondent and proceed to the next "best value" respondent in the order of the selection ranking until a contract is reached or all Proposals are rejected. TSTC is not obligated to select the Respondent offering the most attractive economic terms if that Respondent is not the most advantageous to TSTC overall, as determined by TSTC.

### **1.7 Exceptions to RFP**

The Respondent shall explicitly set forth in this section any assumptions regarding, or exceptions to, any part of this RFP, including the Attachments, noting the specific RFP section number or Attachment Letter. If there are no exceptions, the Respondent shall explicitly state that the Respondent takes no exception to any part of this RFP. **Any exception may result in this RFP not being awarded to the Respondent.**

### **1.8 Bidding Requirements**

Proposal prices must be firm for TSTC acceptance for 120 days from the submittal due date and the RFP Document Submission shall be irrevocable from the close of the call until acceptance by TSTC or the passage of a period of 120 days, whichever shall occur first.

### **1.9 No Reimbursement for Costs**

Respondent acknowledges and accepts that any costs incurred from Respondent's participation in this RFP process shall be at the sole risk and responsibility of the Respondent.

### **1.10 Taxes**

TSTC is exempt from taxes pursuant to the provisions of the *Texas Tax Code*, Chapter 151. Do not include tax in the Proposal. Excise Tax Exemption Certificates are available upon request.

### **1.11 Reservation of Rights**

TSTC may evaluate the Proposal based on the anticipated completion of all or any portion of the Project. TSTC reserves the right to divide the Project into multiple parts, to reject any and all Proposals and re-solicit for new Proposals, or to reject any and all Proposals and temporarily or permanently abandon the Project. TSTC makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.

### **1.12 Texas Public Information Act**

All information, documentation, and other materials submitted in response to this RFP are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, *et seq.*) after the solicitation is completed. TSTC strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of public information.

### **1.13 Equal Opportunity**

The Respondent must be an equal opportunity employer. No person shall be discriminated against in employment because of race, color, religion, gender, national origin, disability, or age.

### **1.14 Accuracy of Information**

TSTC and its officers, directors, employees and agents assume no responsibility for the accuracy of the information in this document. Should dispute arise regarding the meaning or intent of the Contract Documents, the decision of the TSTC shall be final and binding upon the Contractor.

### **1.15 Invoices**

Original invoices must be submitted monthly in connection with all payments. To be a proper invoice that may be accepted and paid, the invoice must include the following information and/or attachments; Name and address of the Respondent, Respondent's invoice remittance address, Purchase order number authorizing the services, and Detailed breakdown of monthly total price for services to include operating expense plus labor for man-hours worked including, as applicable, the time period, guard's individual hours, signed time sheets as supporting documentation, and any other related documentation to show proof of hours documented for payment. Invoices should be received no later than the (15) fifteenth day of every month. Each invoice is subject to review and approval by TSTC before payment will be processed. Normal payment processing time for services which have been completed, delivered to, and approved by TSTC is thirty (30) calendar days after receipt of a valid, uncontested invoice. TSTC will incur no penalty for late payment if payment is made in thirty (30) or fewer days from receipt of goods or services and an uncontested invoice. Payments shall be made consistent with Chapter 2251, Texas Government Code. Any invoice that does not comply with the minimum requirements stated above may not be considered valid and may be subject to rejection and/or return to the contractor.

Invoices shall be submitted by mail to:  
Texas State Technical College  
Procurement Services  
3801 Campus Drive  
Waco, Texas 76705

### **1.16 Insurance**

Contractor will obtain and maintain in force for the duration of the contract and any extensions thereof, at Contractor's sole expense, and to cause its agents, suppliers and permitted subcontractors (if any) to maintain at their sole expense the following insurance coverage for the duration of the contract, in at least the amounts specified:

Workers Compensation:	Statutory Limits	
General Liability:	Each occurrence	\$1,000,000
	Personal Injury	\$1,000,000
	General Aggregate	\$2,000,000
	Product Liability	\$1,000,000
	EBL	\$1,000,000
Automobile Liability	Each Accident	\$1,000,000
Umbrella Liability	Each Occurrence	\$2,000,000
Professional Liability	Each Occurrence	\$5,000,000
All other insurance required by state or federal law		

All policies (except Workers' Compensation) shall name TSTC as an Additional Insured. A Waiver of Subrogation in favor of TSTC and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements shall be provided to TSTC prior to commencement of any services under the contract. If a policy contains deductible provisions, Contractor shall be responsible for payment of the deductible amount for any claim(s) or the pursuit of any claim(s) or asserted claim(s) against TSTC, its agents, employees or representatives.

CONTRACTOR ACKNOWLEDGES AND UNDERSTANDS THAT TSTC DOES NOT MAINTAIN AND WILL NOT OBTAIN INSURANCE OF ANY TYPE TO PROTECT CONTRACTOR AGAINST ANY LOSS, DAMAGE OR INJURY THAT MAY IN ANY WAY RESULT FROM CONTRACTOR'S PERFORMANCE OF THE SERVICES.

**1.17 Indemnification**

THE ARCHITECT FOR ITSELF, ITS SUCCESSORS, SERVANTS, EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, SUBCONTRACTORS AND ASSIGNS SHALL AT ALL TIMES INDEMNIFY AND HOLD HARMLESS TSTC, ITS OFFICERS, DIRECTORS, SUCCESSORS, ASSIGNS, AGENTS, SERVANTS AND EMPLOYEES FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, COSTS, EXPENSES, LEGAL FEES AND DISBURSEMENTS AND OBLIGATIONS OF ANY NATURE WHATSOEVER, KNOWN OR UNKNOWN, IN LAW OR IN EQUITY, WHETHER BASED UPON, OCCASIONED BY, ARISING OUT OF, OR ATTRIBUTABLE TO THE CONTRACTOR'S CONTRACT WITH TSTC OR ANY SERVICES PROVIDED, OR ANY PRIVILEGE GRANTED OR ACTION TAKEN OR THING DONE OR MAINTAINED BY VIRTUE OF THE EXISTENCE OF THE SAID CONTRACT OR THE EXERCISE OF ANY RIGHT ARISING THEREUNDER.

**1.18 Alternative Dispute Resolution**

To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("Chapter 2260"), will be applicable to the Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by TSTC and Contractor to attempt to resolve any claim for breach of contract made by Contractor.

**1.19 Confidential Information**

All information owned, possessed or used by TSTC that is communicated to, learned, developed or otherwise acquired by Contractor in the performance of services for TSTC, that is not generally known to the public, will be confidential and Contractor will not, beginning on the date of first association or communication between TSTC and Contractor and continuing throughout the term of the contract and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Contractor's own benefit or the benefit of another, any confidential information, unless required by law.

Except when defined as part of the Services, Contractor will not make any press releases, public statements, or advertisement referring to the Services or the engagement of Contractor as an independent contractor of TSTC in connection with the Services, or release any information relative to the Services for publication, advertisement or any other purpose without the prior written approval of TSTC. Contractor will obtain assurances similar to those contained in this Section from persons, contractors, and subcontractors retained by Contractor.

### **1.20 Governing Law**

The contract and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

### **1.21 Licenses, Permits, Taxes, Fees, Laws and Regulations**

Contractor warrants that it will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for Contractor's performance of the contract.

Contractor will be responsible for the payment of all taxes, excises, fees, payroll deductions, employee benefits (if any), fines, penalties or other payments required by federal, state, or local law or regulation in connection with Contractor's performance of the contract.

Contractor will comply with, and will be responsible for requiring its officers and employees to comply with, all applicable federal, state, and local laws and regulations, and the rules and regulations of TSTC.

### **1.22 Group Purchasing Authority**

Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (Texas Education Code 51.9335). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that Texas State Technical College is comprised of several campuses across the state of Texas described at <http://www.tstc.edu/about/welcome>. TSTC may routinely evaluate whether a contract resulting from a procurement conducted by one of the campuses might be suitable for use by another, and if so, this could give rise to additional purchase volumes. As a result, in submitting its proposal in response to this RFP, Proposer should consider proposing pricing and other commercial terms that take into account such higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP.



## **2. Scope of Services**

### **2.1 Overview**

Texas State Technical College (TSTC) (“Owner”) is soliciting statements of proposals (“Proposals”) for the additions of bathrooms to six existing housing units on the Waco campus. Units are comprised of 3 duplex units as follows: 88, 88A, 90, 90A, 92, 92A Bolling (“Project”), in accordance with the terms, conditions, and requirements set forth in this Request for Proposals (“RFP”). Units are pier and beam structures with crawlspace and attic access

### **2.2 Contractor Responsibilities**

The purpose of this Request for Proposals (RFP) is to engage a Proposer to furnish materials, labor, and equipment required to complete this project in accordance with the plans and specifications developed by **TSTC Physical Plant.**

### **2.3 Documentation**

Monitoring the performance of service will be completed based upon contract negotiations.

### **2.4 Contract Administration**

Cole Woodard will be the Contract Manager for this project.

### **2.5 Change or Addition to Scope of Services**

TSTC, without invalidating the contract, may make changes by altering, adding to, or deduction from the Scope of Services at any time during the term of the contract in order to meet current TSTC needs. The Contract pricing shall be adjusted accordingly, upon mutual agreement between TSTC and Contractor. Should TSTC request additional services during the term of the Contract, an agreement to provide these services at the same price as quoted will be understood as included in the Respondent’s submission.

### **3. Proposal Format**

#### **3.1 Cover Page**

The Proposal Cover Page, Attachment A, should be the first page of your Proposal. The Proposal Cover Page must be signed by a person authorized to sign for Respondent.

#### **3.2 Execution of Offer**

The Execution of Offer Page, Attachment B, should be the second page of your Proposal. The Execution of Offer must be signed by a person authorized to sign for Respondent.

#### **3.3 Table of Contents**

A Table of Contents should be the third page of your Proposal. The Table of Contents shall give page numbers for each section of the Proposal. Number all pages of the Proposal sequentially using Arabic numerals (1, 2, 3, etc.).

#### **3.4 Proposal Contents**

Responses to this RFP must address the following:

- Cover Page- Attachment A
- Execution of Offer- Attachment B
- Table of Contents
- Address each of the following:
  - (a) Firm's financial organization stability
  - (b) Project team's relative experience
  - (c) Knowledge and sensitivity to local conditions
  - (d) Experience on similar projects and past performance on other contracts for any of the TSTC College locations
  - (e) References on three previous projects- include name and contract information, project description and project budget

Attachments and other forms may be placed under a separate tab labeled "Attachments"

### **4. Proposal Selection Criteria**

The evaluation of the Proposals shall be based upon the requirements described in the RFP. All the properly submitted Proposals will be reviewed, evaluated, and ranked by the Owner.

An evaluation team from TSTC will evaluate the Proposal. The evaluation of Proposal and the selection of a respondent will be based on the information provided by Respondent in its Proposal. TSTC may give consideration to additional information if TSTC deems such information relevant.

The criteria to be considered by TSTC in evaluating Proposal and selecting a Contractor will be those factors listed below:

Threshold Criteria Not Scored:

- Ability of TSTC to comply with laws regarding Historically Underutilized Businesses; and
- Ability of TSTC to comply with laws regarding purchases from persons with disabilities.

	<b>Scored Criteria:</b>	<b>Weight:</b>
1.	Scheduling and Management Approach	20%
2.	Quality of work on previous projects	15%
3.	Relevant experience with TSTC Waco/Campus	15%
4.	Key personnel relevant experience	20%
5.	Schedule experience and compliance	10%
6.	References	20%
	<b>Total</b>	<b>100%</b>

## **5. Attachments for this RFP**

Attachment A – Proposal Cover Page

Attachment B – Execution of Offer

Attachment C – Terms & Conditions

Attachment D – Conflict of Interest

Attachment E – Sample Agreement Between Owner and Contractor

Attachment F – 2012 Uniform General Conditions

Attachment G – Plans and Specifications

**Attachment A - Proposal Cover Page**

TEXAS STATE TECHNICAL COLLEGE  
TSTC- Waco Bathroom Additions at Waco Inn/Bolling 2016  
RFP No.: RFP-16-EW-398424

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

FEDERAL EMPLOYER ID #: \_\_\_\_\_ or SS # (if sole owner): \_\_\_\_\_

TEXAS CHARTER # IF APPLICABLE: \_\_\_\_\_

IS YOUR COMPANY A HUB VENDOR? \_\_\_\_\_ WHAT CATEGORY? \_\_\_\_\_

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## **Attachment B – Execution of Offer**

TEXAS STATE TECHNICAL COLLEGE  
TSTC- Waco Bathroom Additions at Waco Inn/Bolling 2016  
RFP No.: RFP-16-EW-398424

### **NOTE TO RESPONDENTS: SUBMIT ENTIRE SECTION WITH RESPONSE.**

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED, AND RETURNED WITH THE RESPONDENT'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE PROPOSAL MAY RESULT IN REJECTION OF THE PROPOSAL.

SIGNING A FALSE STATEMENT MAY VOID THE SUBMITTED PROPOSAL OR ANY AGREEMENTS OR OTHER CONTRACTUAL ARRANGEMENTS, WHICH MAY RESULT FROM THE SUBMISSION OF RESPONDENT'S PROPOSAL, AND THE RESPONDENT MAY BE REMOVED FROM ALL PROPOSER LISTS. A FALSE CERTIFICATION SHALL BE DEEMED A MATERIAL BREACH OF CONTRACT AND, AT OWNER'S OPTION, MAY RESULT IN TERMINATION OF ANY RESULTING CONTRACT OR PURCHASE ORDER.

- A. By signature hereon, Respondent acknowledges and agrees that (1) this RFP is a solicitation for Proposals and is not a contract or an offer to contract; (2) the submission of Proposals by Respondent in response to this RFP will not create a contract between the Owner and Respondent; (3) the Owner has made no representation or warranty, written or oral, that one or more contracts with the Owner will be awarded under this RFP; and (4) Respondent shall bear, as its sole risk and responsibility, any cost which arises from Respondent's preparation of a response to this RFP.
- B. By signature hereon, Respondent offers and agrees to furnish to the Owner the products and/or services more particularly described in its Proposals, and to comply with all terms, conditions and requirements set forth in the RFP documents and contained herein.
- C. By signature hereon, Respondent affirms that he has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted Proposal.
- D. By signature hereon, a corporate Respondent certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, Texas Tax Code, or that the corporate Respondent is exempt from the payment of such taxes, or that the corporate Respondent is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable.
- E. By signature hereon, the Respondent hereby certifies that neither the Respondent nor the firm, corporation, partnership or Owner represented by the Respondent, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the Qualifications made to any competitor or any other person engaged in such line of business.
- F. By signature hereon, Respondent represents and warrants that:

1. Respondent is a reputable company regularly engaged in providing products and/or services necessary to meet the terms, conditions and requirements of the RFP;
  2. Respondent has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the terms, conditions and requirements of the RFP;
  3. Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances;
  4. Respondent understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Contract under which Respondent will be required to operate;
  5. Respondent, if selected by the Owner, will maintain insurance as required by the Contract;
  6. All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. Respondent acknowledges that the Owner will rely on such statements, information and representations in selecting the successful Respondent. If selected by the Owner as the successful Respondent, Respondent will notify the Owner immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.
- G. By signature hereon, Respondent certifies that the individual signing this document and the documents made part of the RFP is authorized to sign such documents on behalf of the company and to bind the company under any agreements or other contractual arrangements, which may result from the submission of Respondent's Proposal.
- H. By signature hereon, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Resident Respondent as defined in Rule 1 TAC 111.2.
- I. By signature hereon, Respondent certifies as follows:
1. "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, RFP, or application 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."
  2. "Under Section 2155.004, *Texas Government Code*, the vendor or applicant certifies that the individual or business entity named in this RFP or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
  3. "Under Section 2254.004, *Texas Government Code*, the vendor or applicant certifies that each individual or business entity which is an engineer or architect proposed by Respondent as a member of its team was selected based on demonstrated competence and qualifications only."
- J. By signature hereon, Respondent certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship exist between Respondent and an employee of any Texas State Technical College component, or Respondent has not been an employee of any Texas State Technical College component within the immediate twelve (12)

months prior to your RFP response. All such disclosures will be subject to administrative review and approval prior to the Owner entering into any contract with Respondent.

- K. By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this RFP. (ref. Section 2155.004 Texas Government Code).
- L. Respondent represents and warrants that all articles and services quoted in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this solicitation.
- M. By signature hereon, Respondent signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- N. By signature hereon, Respondent agrees to defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Respondent or any agent, employee, subcontractor, or supplier of Respondent in the execution or performance of any agreements or other contractual arrangements which may result from the submission of Respondent's Proposal.
- O. By signature hereon, Respondent agrees that any payments that may become due under any agreements or other contractual arrangements, which may result from the submission of Respondent's Proposal, will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.
- P. By signature hereon, Respondent certifies that no member of the Board of Regents of Texas State Technical College, or the Executive Officers of Texas State Technical College or its component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of the contract.



**Execution of Offer: RFP No. RFP-16-EW-398424**  
**TSTC- Waco Bathroom Additions at Waco Inn/Bolling 2016**

The Respondent must complete, sign and return this Execution of Offer as part of their submittal response. The Respondent's company official(s) who are authorized to commit to such a submittal must sign submittals. Failure to sign and return this form will subject the submittal to disqualification.

The undersigned, having carefully examined the specifications, drawings, and related documents entitled:

TSTC- Waco Bathroom Additions at Waco Inn/Bolling 2016  
3801 Campus Drive, Waco Texas

all as prepared by Texas State Technical College Physical Plant as well as all other conditions affecting the cost and/or execution of the work, proposes to furnish all materials, labor, and equipment necessary to complete the work in accordance with said documents, of which this proposal is a part, for the following sum:

TOTAL PROPOSAL: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

(Note: All amounts shall be shown in both written and figure form. In case of discrepancy between the written amount and the figure, the written amount will govern. For alternates, check whether it is an add, deduct or no change.)

We have included, in the Proposal sum, all applicable taxes and all material and contingency allowances described in Section 01200 – PRICE AND PAYMENT.

The undersigned acknowledges receipt of \_\_\_ addenda to the Drawings and Project Manual as follows:

No. \_\_\_\_\_ Date \_\_\_\_\_    No. \_\_\_\_\_ Date \_\_\_\_\_    No. \_\_\_\_\_ Date \_\_\_\_\_

No. \_\_\_\_\_ Date \_\_\_\_\_    No. \_\_\_\_\_ Date \_\_\_\_\_    No. \_\_\_\_\_ Date \_\_\_\_\_

(The Proposer is to fill in I.D. Number and date of each thereby acknowledging receipt of Addenda).

If awarded the contract, the undersigned agrees to commence work under this contract (See Notice to Proceed) and to substantially complete the project within \_\_\_\_\_ (Proposer to fill in days) calendar days from said commencement date, unless modified by change order.

Proposer agrees to pay the Owner \$300.00 per day, as liquidated damages, for each day the **substantial completion** of this project extends beyond the stipulated substantial completion date. **SHOULD BE FINAL COMPLETION NOT SUBSTANTIAL**

If notified of the acceptance of this proposal within thirty (30) days of the time set for the opening of proposals, proposer agrees within ten (10) days of notification, to execute a contract in the form of the Standard Form of Agreement Between Owner and Contractor where the Basis of Payment Is a Stipulated Sum, as amended for the above work, for the above stated compensation.

Respectfully Submitted,

Respondent's Name: \_\_\_\_\_

Respondent's State of Texas Tax Account No.: \_\_\_\_\_  
(This 11 digit number is mandatory)

If a Corporation:

Respondent's State of Incorporation: \_\_\_\_\_

Respondent's Charter No: \_\_\_\_\_

Identify each person who owns at least 25% of the Respondent's business entity by name:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

Submitted and Certified By:

\_\_\_\_\_  
(Respondent's Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Fax Number)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Date)

## **Attachment C: Terms and Conditions**

ITEMS BELOW APPLY TO AND BECOME A PART OF TERMS AND CONDITIONS OF RFP, ANY EXCEPTIONS THERE TO MUST BE IN WRITING.

### **A. BIDDING REQUIREMENTS**

1. Proposers must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
2. RFP should be submitted on this form. RFP must be time stamped at ordering agency on or before the hour and date specified for the RFP opening.
3. Late and/or unsigned RFP will not be considered under any circumstances. Person signing RFP must have the authority to bind the firm in a contract.
4. RFP should give Payee ID Number, full firm name and address of proposer on the face of this form. Enter in the space provided, if not shown. Additionally, firm name should appear on each continuation page of a RFP, in the block provided in the upper right hand corner. The Payee ID Number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. If this number is not known, complete the following:

Enter Federal Employer's Identification Number

\_\_\_\_\_

Sole owner should also enter Social Security Number

\_\_\_\_\_

5. RFP cannot be altered or amended after opening time. Alterations made before opening time should be initialed by proposer or his authorized agent. No RFP can be withdrawn after opening time without approval by TSTC based on an acceptable written reason.
6. TSTC reserves the right to accept or reject all or any part of any kind, waive minor technicalities and award the RFP to best serve the interests of TSTC.
7. Consistent and continued tie bidding could cause rejection of RFP by TSTC and/or investigation for antitrust violations.
8. TSTC shall not be responsible for failure of electronic equipment or operator error. Late illegible, incomplete, or otherwise non-responsive RFP'S will not be considered.

### **B. SPECIFICATIONS**

1. Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. RFP'S on brands of like nature and quality will be considered unless advertised under Texas Government Code, Title 10, Subtitle D, and Section 2155.067. If bidding on other than references, RFP should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified offered, illustrations and complete description of product offered are requested to be made part of the RFP. Failure to take exception to

specifications or reference data will require proposer to furnish specified brand names, numbers, etc.

2. Unless otherwise specified, items shall be new and unused and of current production.
3. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
4. Samples, when requested, must be furnished free of expense to TSTC. If not destroyed in examination, they will be returned to the proposer, on request, at proposer's expense. Each sample should be marked with proposer's name and address, and requisition number. Do not enclose in or attach RFP to sample.
5. Any oral statement or representation will not bind TSTC contrary to the written specifications of this Request for Proposal (RFP).
6. Manufacturer's standard warranty shall apply unless otherwise stated in the RFP.

### **C. TIE BIDS**

Awards will be made in accordance with Rule 1 TAC Section 113.6 (b) (3) and 113.8 (preferences).

### **D. DELIVERY**

1. Show number of days required to place material in the TSTC central receiving designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified.
2. If delay is foreseen, vendor shall give written notice to the ordering agency. Vendor must keep the ordering agency advised at all times of status of order. Default promised delivery (without accepted reasons) or failure to meet specifications authorizes the ordering agency to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.
3. No substitutions permitted without written approval of TSTC.
4. Delivery shall be made during normal working hours only, unless prior written approval has been obtained from ordering agency.

### **E. INSPECTION AND TESTS**

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

### **F. AWARD OF CONTRACT**

A response to this RFP is an offer to contract based upon the terms, conditions and specifications contained herein. RFP's do not become contracts until they are accepted through an open market purchase

order. The contract shall be governed, construed and interpreted under the laws of the State of Texas. The factors listed in Texas Government Code, Title 10, Subtitle D, Section 2155.074, 2155.144, 2156.007, and 2157.003 shall also be considered in making an award. Any legal actions must be filed in Cameron County, Texas.

#### **G. PAYMENT**

Vendor shall submit an itemized invoice showing TSTC's purchase order number. TSTC will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. For restrictions regarding prepayment, see section 11, below.

#### **H. PATENTS OR COPYRIGHTS**

The vendor agrees to protect TSTC from claims involving infringement of patents or copyrights.

#### **I. VENDOR ASSIGNMENTS**

Vendor hereby assigns to ordering agency any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967). Inquiries pertaining to IFBs must give the requisition number, codes, and opening date.

#### **J. BIDDER AFFIRMATION**

Signing this RFP with a false statement is a material breach of contract and shall void the submitted RFP or any resulting contracts, and the vendor shall be removed from all bid lists.

1. The proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted RFP.
2. Neither the proposer nor the firm, corporation, partnership, or institution represented by the proposer, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State or the Federal Antitrust Laws (see section 9, above), nor communicated directly or indirectly the RFP made to any competitor or any other person engaged in such line of business.
3. Pursuant to Section 2155.004 Government Code the proposer has not received compensation for participation in the preparation of the specifications for this RFP.
4. Pursuant to Section 231.006(d), Family Code (relating to child support), the proposer certifies that the individual or business entity named in this RFP is not ineligible to receive this specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
5. Under Section 2155.004 Government Code the proposer certifies that the individual or business entity named in this RFP is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
6. The Contractor shall defend, indemnify, and hold harmless TSTC, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or commissions of contractor

or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract.

7. Proposer agrees that any payments due under this will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
8. Proposer certifies that they are in compliance with section 669.003 of the Government Code, relating to contracting with executive head of a State agency. If section 669.003 applies proposer will complete the following information in order for the RFP to be evaluated:

Name of Former executive: \_\_\_\_\_

Name of State agency: \_\_\_\_\_

Date of separation from State agency: \_\_\_\_\_

Date of Employment with proposer: \_\_\_\_\_

9. Proposer agrees to comply with government Code 2155.4441, pertaining to service contract use of products in the State of Texas.

#### **11. Pursuant to Section 231.006©, Family Code,**

RFP must include names and Social Security Numbers of each person with at least 25% ownership of the business entity submitting the RFP. Attach name & social security numbers for each person. This information must be provided prior to contract award.

#### **12. NOTE TO PROPOSER:**

Any terms and conditions attached to a RFP will not be considered unless specifically referred to on this RFP form and may result in disqualification of the RFP. The dispute resolution process provided for in chapter 2260 of the Texas Government Code must be used by the ordering agency and the contractor to attempt to resolve all disputes arising under this contract.

#### **13. BEST VALUE CRITERIA**

- the quality, availability, and adaptability of the supplies, materials, equipment, or contractual services to the particular use required;
- the number and scope of conditions attached to the RFP;
- the ability, capacity, and skill of the proposer to perform the contract or provide the service required;
- whether the proposer can perform the contract or provide the service promptly, or within the time required, without delay or interference;
- the character, responsibility, integrity, reputation, and experience of the proposer;
- proximity of the proposer's office to the site, and is there a firm principal at the local office, and how much of the design work will be done at the local office;
- related to the above, how close are the proposer's sub-consultants to the site, and are there firm principals at the local sub-consultants' offices, and how much of the design work will be done at the local sub-consultants' offices;

- the quality of performance of previous contracts or services;
- any previous or existing noncompliance by the proposer with specification requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information; the sufficiency of the financial resources and ability of the proposer to perform the contract or provide the service;
- and the ability of the proposer to provide future maintenance, repair parts, and service for the use of the contract.
- The purchase price:
- Any relevant criteria specifically listed in the RFP or request for proposals.

**Attachment D - Conflict of Interest Questionnaire**

<p><b>CONFLICT OF INTEREST QUESTIONNAIRE</b></p> <p><b>For vendor or other person doing business with local governmental entity</b></p>	<p><b>FORM CIQ</b></p>
<p>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	<p><b>OFFICE USE ONLY</b></p> <hr/> <p>Date Received</p>
<p><b>1</b> Name of person who has a business relationship with local governmental entity.</p>	
<p><b>2</b> <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p>(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p>	
<p><b>3</b> Name of local government officer with whom filer has employment or business relationship.</p> <p align="center">_____</p> <p align="center">Name of Officer</p> <p>This section (item 3 including subparts A, B, C &amp; D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?</p> <p align="center"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p align="center"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p align="center"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p>	
<p><b>4</b></p> <p align="center">_____</p> <p align="center">Signature of person doing business with the governmental entity</p> <p align="center">_____</p> <p align="center">Date</p>	



**Attachment E – SAMPLE AGREEMENT BETWEEN OWNER AND CONTRACTOR**

CONTRACT NO. 013014

This Agreement is made the 30th day of January, in the year 2014, by and between \_\_\_\_\_, hereinafter called the Contractor, and Texas State Technical College (TSTC), an institution of higher education and an agency of the State of Texas, hereinafter called the Owner.

WITNESSETH, that the Contractor and the Owner, for the consideration hereinafter named, agree as follows:

**ARTICLE 1. SCOPE OF WORK:** The Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications for the project entitled “**Parachute and Dinghy Shop Bldg. Abatement**” in Waco, Texas” (Project No. \_\_\_\_\_). The Construction Drawings and Specifications were prepared by TSTC Waco physical Plant. TSTC’s 2012 Uniform General Conditions (UGC) are incorporated by reference for all purposes, and attached hereto as **Exhibit 1**. The Contractor shall do everything required by this Agreement, the Uniform General Conditions, the Special Conditions, the Addenda, the Specifications, the Drawings, the Proposal (attached as **Exhibit 2**, including any unit prices stated therein), and the Historically Underutilized Business (HUB) Subcontracting Plan (attached as **Exhibit 3, if applicable**)

ALTERNATES: The following Alternate Proposals, fully described in the Specifications, are included as a part of this Contract: NONE

**ARTICLE 2. TIME OF COMPLETION:** The Owner shall provide a Notice to Proceed in which a date for commencement of the work shall be stated; such commencement date shall be 10 or more days after the date of the notice. The Contractor shall achieve substantial completion of the work within Twenty One (21) calendar days after such commencement date; as such completion date may be extended by approved Change Orders. The time set forth for completion of the work is an essential element of the Contract.

**ARTICLE 3. THE CONTRACT SUM:** The Owner shall pay the Contractor for performance of the Contract, subject to additions and deductions provided therein, the sum of **XXXX XXXX Five Hundred Dollars and No Cents (\$XX.xxxx)**, and make payment on account as hereinafter provided.

**ARTICLE 4. HUB SUBCONTRACTING PLAN:** The Owner has adopted a Policy on Utilization of Historically Underutilized Business ("Policy"), which is incorporated herein by reference. Contractor, as a provision of the Agreement must comply with the requirements of the Policy and adhere to the HUB Subcontracting Plan submitted with Contractor's Proposal and attached as **Exhibit 3**. No changes to the HUB Subcontracting Plan can be made by the Contractor without the prior written approval of the Owner in accordance with the Policy.

**ARTICLE 5. DEFAULT:** Owner may, by written notice of default to the Contractor terminate this Agreement, in whole or in part, for cause if the Contractor fails to perform in full compliance with the contract requirements, through no fault of Owner. Owner will provide a thirty (30) day written notice of termination to the Contractor (delivered by certified mail, return receipt requested) of intent to terminate, and Owner will provide the Contractor with an opportunity for consultation with Owner prior to termination.

**ARTICLE 6. LIQUIDATED DAMAGES:** For each consecutive calendar day after the substantial completion period set forth in Article 2 above that any work, including the correction of deficiencies found

during the final testing and inspection, is not completed, the amount of **Three Hundred Dollars (\$300)** will be deducted from the money due or becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages which the Owner will sustain for late completion.

#### ARTICLE 7. CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK:

The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

The Contractor shall insure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

The Contractor shall provide at Substantial Completion, a notarized affidavit to the Owner and the Architect stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

The Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, materialmen, subcontractors, or their assigns, comply with this requirement.

All materials used on this Project shall be certified as non-Asbestos Containing Building Materials (ACBM). The Contractor shall insure compliance with the following acts from all of his subcontractors and assigns:

Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));

National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos)

Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection)

Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.

The Contractor shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products used in the construction of the Project to the Texas Department of Health licensed inspector or Project Architect or Engineer who will compile the information from the MSDS and, finding no asbestos in any of the product, make a certification statement.

At Final Completion the Contractor shall provide a notarized certification statement per TAC Title 25 Part 1, Ch. 295.34, par. c.1 that no ACBM was used during construction of the Project.

**ARTICLE 8. INDEPENDENT CONTRACTOR:** Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

ARTICLE 9. INSURANCE: The Contractor shall procure and maintain, at its expense, during the term of the contract or any extensions thereof, insurance as listed below. Insurance shall be written by companies acceptable to Owner and authorized to do business in the State of Texas. Policies shall include terms and provisions indicated below. The Contractor shall provide and furnish evidence of the following insurance:

Workers Compensation – Minimum coverage for employer liability in the amount of One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) annual aggregate;

Business Automobile Liability Insurance - Minimum coverage for employer liability in the amount of One Million Dollars (\$1,000,000.00) per occurrence;

Comprehensive General Liability - Minimum coverage for employer liability in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) annual aggregate.

Contractor shall obtain and maintain in full force at all times during the term of this contract insurance coverage naming the State of Texas, acting through Texas State Technical College Waco, as an additional insured and loss payee on its policies described above.

Each policy of required insurance shall provide for ten (10) days written notice of cancellation to Owner and include the following provisions: “It is a condition of this policy that the Company shall furnish written notice to Texas State Technical College Waco, 3801 Campus Drive, Waco, Texas 76705 ten (10) days in advance of any reduction in, or cancellation of this policy.”

Insurance shall be effective and evidence of acceptable insurance furnished to Owner prior to commencing any operations under this Agreement.

ARTICLE 10. BONDS: Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Chapter 2253, *Texas Government Code*.

Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to Owner, on Owner’s form, and in compliance with the relevant provisions of the *Texas Insurance Code*. If any bond is for more than ten (10) percent of the surety’s capital and surplus, Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to Owner.

Contractor shall provide Performance and Payment bonds before the execution of this Agreement. Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS

AS A RESULT.

ARTICLE 11. ACCEPTANCE OF BID OR AWARD OF CONTRACT: By signing this Agreement, the undersigned certifies as follows:

Assignment. This Agreement is a personal service contract for the services of Construction, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

Family Code Child Support Certification. Pursuant to Section 231.006, Texas Family Code, Contractor certifies that it 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.

Background Checks. Contractor is required to do a Department of Public Safety background check on each and every person on the project site. The Contractor also ensures that any employees or assigns that are noted on the Department of Public Safety background reporting are in compliance with federal laws and the laws of the State of Texas.

Access and Identification. All personnel, while on the project site, must have all of the following:

1. A valid State of Texas ID or driver's license.
2. A photo ID bearing:
  - a. the name of the company for which the individual works,
  - b. the individual's name,
  - c. a recent photo of the individual.

Sexual Offender Search. TSTC recognizes that some sexual offenders, after having served their sentence, are no longer considered to be a threat to society, and the State of Texas has approved them to work in Higher Educational environments. The Respondent ensures that it, and all of its subcontractors and assigns that will be on TSTC property have been searched on the Texas Public Sex Offender Registry. The Contractor also ensures that any employees or assigns that are on the Texas Public Sex Offender Registry or any other state or federal sexual offender registry are in compliance with federal laws and the laws of the State of Texas regarding sexual offenders. The Texas Public Sex Offender Registry website is: <https://records.txdps.state.tx.us/SexOffender>. The National Sex Offender Public Website is: <http://www.nsopw.gov/>. Any employees, subcontractors, or assigns that are shown on the sexual offender registries must be documented. Documentation shall include explanation and verification of any employees, assigns or subcontractors that appear on the sexual offender lists; and show that those on the lists have met the requirements of the State of Texas to work on the property of higher education facilities.

Eligibility Certification. Pursuant to Section 2155.004, Texas Government Code, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

Franchise Tax Certification. A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code,

or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. The county where the Project is located shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.

Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to

the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

Illegal Dumping. The Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

Conflict of Interest. Contractor certifies that no member of the Board of Regents of Texas State Technical College, the Owner, or Executive Officers, including component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

Antitrust. Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this contract.

Ethics Matters/No Financial Interest. Contractor and its employees, agents, representatives and subcontractors have read and understand TSTC's Conflicts of Interest Policy available at <http://iam.tstc.edu/users/cop/COP2.48-12-10-07.pdf> and [http://www.system.tstc.edu/governance/sos/hr/HR\\_2\\_1\\_12.pdf](http://www.system.tstc.edu/governance/sos/hr/HR_2_1_12.pdf), and applicable state ethics laws and rules available at <http://www.utsystem.edu/ogc/ethics/statelaws.htm>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause TSTC employees to violate TSTC's Conflicts of Interest Policy or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

## ARTICLE 12. INDEMNIFICATION

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS AND EMPLOYEES, AND TEXAS STATE TECHNICAL COLLEGE WACO, THE TEXAS STATE TECHNICAL COLLEGE SYSTEM, IT OFFICERS, REGENTS, EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TEXAS STATE TECHNICAL COLLEGE WACO.

THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TEXAS STATE TECHNICAL COLLEGE WACO OR TEXAS STATE TECHNICAL COLLEGE SYSTEM FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSION OF TEXAS STATE TECHNICAL COLLEGE WACO, TEXAS STATE TECHNICAL COLLEGE SYSTEM OR ITS EMPLOYEES.

ARTICLE 13. BREACH OF CONTRACT CLAIMS:

- (a) To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by Owner and Contractor to attempt to resolve any claim for breach of contract made by Contractor:
- i. Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by subchapter B of Chapter 2260, to Owner in accordance with the notice provisions in this Contract. Contractor's notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific Agreement provision that Owner allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The Chief Business Officer of Owner, or such other officer of Owner as may be designated from time to time by Owner by written notice thereof to Contractor in accordance with the notice provisions in this Contract, shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims.
  - ii. If the parties are unable to resolve their disputes under subparagraph (a.) of this section, the contested case process provided in subchapter C of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by Owner.
  - iii. Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (1) neither the execution of this Agreement by Owner nor any other conduct, action or inaction of any representative of Owner relating to this Agreement constitutes or is intended to constitute a waiver of Owner's or the state's sovereign immunity to suit and (2) Owner has not waived its right to seek redress in the courts.
- (b) The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. Owner and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

ARTICLE 14. TEXAS PUBLIC INFORMATION ACT: Notwithstanding any provisions of this Agreement to the contrary, the Contractor understands that Owner will comply with the Texas Public Information Act, Chapter 552, *Texas Government Code*, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Owner agrees to notify Contractor of a request for information related to Contractor's work under this Agreement. The Contractor will cooperate with Owner in the production of documents responsive to the request. The Contractor may request that Owner seek an opinion from the Attorney General of the State of Texas. However, Owner will not honor Contractor's request for an opinion if the request is not based upon a reasonable interpretation of the Texas Public Information Act. Additionally, the Contractor will notify Owner's General Counsel of

receipt of any third party requests for information that was provided by the State of Texas for use in conducting this Agreement. This Agreement and all data and other information generated or otherwise obtained in the performance of its responsibilities under this Agreement may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Agreement, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

BY SIGNING THE SIGNATURE PAGE BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

**SIGNATURE PAGE**

(SEAL)

ATTEST:

By: \_\_\_\_\_  
(original signature)  
\_\_\_\_\_  
(name and title printed)

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

CONTENT PREPARED BY:

By: \_\_\_\_\_  
(original signature)

CONTRACTOR:

By: \_\_\_\_\_  
(original signature)  
\_\_\_\_\_  
(name and title printed)  
\_\_\_\_\_  
(company name printed)

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

TSTC:

By: \_\_\_\_\_  
(original signature)





Name: Selby Holder  
Title: Senior Executive Director FPC,  
Texas State Technical College

Name: Raymond D. Fried  
Title: AVC Facilities Planning,  
Texas State Technical College

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

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

FORM APPROVED:

By: \_\_\_\_\_  
(original signature)

Susan Shafer  
Associate General Counsel  
Texas State Technical College Waco

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