



<p><b>REQUEST FOR QUALIFICATIONS</b></p>
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**Waco Campus Master Plan**

**RFQ-DG-19-002**

NIGP Class Code(s): 906-04,906-07,906-10

**RESPONSES ARE DUE BEFORE:  
Thursday, June 20, 2019, 2:00 PM CST**

POINT OF CONTACT:  
Danny de la Garza, CTCD/CTCM  
Texas State Technical College  
Phone: (956)364-4554  
[danny.delagarza@tstc.edu](mailto:danny.delagarza@tstc.edu)

## TABLE OF CONTENTS

SECTION 1:	GENERAL INFORMATION
SECTION 2:	SCOPE OF SERVICES
SECTION 3:	PROPOSAL REQUIREMENTS
SECTION 4:	EVALUATION
SECTION 5:	CONTRACT
SECTION 6:	FORMS
FORM A:	EXECUTION OF OFFER
FORM B:	DEVIATION/COMPLIANCE SIGNATURE FORM
FORM C:	NON-COLLUSION STATEMENT
FORM D:	REFERENCES
FORM E:	INTERLOCAL AGREEMENT CLAUSE
FORM F:	HUB SUBCONTRACTING PLAN (Submit if Proposers Bid Response is over \$100,000)
FORM G:	CONFLICT OF INTEREST
FORM H:	NO BID RESPONSE (Optional)

## **SECTION 1: GENERAL INFORMATION**

### **1.1 Background of Texas State Technical College**

Texas State Technical College (“TSTC” or “College”) a state-supported two-year technical college and is the state’s largest provider of technical education. TSTC was originally established in 1965 as the James Connally Technical Institute (JCTI), a two year college in the Texas A&M University System designed to meet the state’s evolving workforce needs. In 1969, the State of Texas gained ownership of James Connally Air Force Base and renamed the college Texas State Technical Institute (TSTI), which became a separate state agency with its own Board of Regents, appointed by the governor. TSTC has been accredited by the Southern Association of Colleges and Schools Commission on Colleges (SACS-COC) as a Level I institution since 1968. The College is an open enrollment institution with a full-time equivalent enrollment of approximately 12,000. In contrast with Texas’s regionally-focused community colleges, TSTC has a statewide role and mission with a legislative mandate to focus specifically on highly specialized, advanced, and emerging technical and vocational areas leading to certificates or associate degrees.

In 2015, the College was granted single-accreditation status from SACS-COC, the regional body for the accreditation of degree-granting higher education institutions in the Southern states. TSTC central administration is located in Waco, Texas, the site of the flagship campus. The College services students throughout the state of Texas at campuses located in Abilene, Breckenridge, Brownwood, Fort Bend County, Harlingen, Marshall, North Texas (Red Oak), Sweetwater, Waco, and Williamson County.

### **1.2 Purpose of the Request for Qualifications**

TSTC (“Owner”) is soliciting Statements of Qualifications (“Proposals”) for selection of an Architect/Engineer for a multiple phase project (“Project”)to design the transformation of the Waco Campus to include the “Site Selection for a new housing facility”, a detailed “Demolition and Site Renovation Plan”, a “Campus Master Plan” and a detailed “select renovation and tenant finish plan” on the Waco Texas Campus in accordance with the terms, conditions, and requirements set forth in this Request for Qualifications (“RFQ”).

### **1.3 Submission of Proposal**

Pursuant to *Texas Government Code Title 10, Subtitle D, Chapter 2156.121-2158.127*, sealed proposals will be received until the date and time established as the submittal deadline. After the submittal deadline, proposals will be opened and only the names of Respondents that properly submitted a Proposal will be made public. Prices and other proposal details will only be divulged after the contract award, if one is made.

***Proposals must be received before the hour and date specified as the submittal deadline. Any proposal received after the expiration of the submittal deadline will be immediately disqualified from consideration.***

Proposals will not be accepted by telephone, fax, or email. Proposals will only be accepted at the address below:

Charlotte Ables  
Texas State Technical College  
Patterson Hall/Procurement Services  
2<sup>nd</sup> Floor Room 265  
103 10<sup>th</sup> Street  
Waco, Texas 76705  
Phone: 254.867.3751  
[charlotte.ables@tstc.edu](mailto:charlotte.ables@tstc.edu)

***NOTE: Address above is campus address only, recognized by FEDEX and UPS. If sending via USPS, use following street address: 3801 Campus Drive, Waco, TX 76705.***

**Submit one (1) original signed proposal and one (1) identical electronic copy of the original signed proposal including all of its contents (“Proposal”).** The original Proposal should contain the mark “original” on the Proposal Cover Page. The electronic copy shall be submitted in a USB/Flash Drive or CD in the same envelope as the hard-copy original proposal.

Proposal must be enclosed in a sealed envelope (box or container) addressed as described above. The envelope must clearly identify the RFQ number, submittal deadline, and the name and return address of the Respondent. Proposal and any other information submitted by a Respondent in response to this RFQ shall become the property of TSTC and will not be returned.

TSTC will not provide “delivery or hand stamp” receipt of Proposal or proof of delivery of Proposal which are delivered by hand or courier.

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

By submitting a Proposal in response to this RFQ, Respondent acknowledges and accepts the evaluation process and that determination of the “best value” will require subjective judgments by TSTC.

#### 1.4 Questions and Clarifications

All questions and clarifications regarding this RFQ must be submitted in writing to Danny de la Garza, at [danny.delagarza@tstc.edu](mailto:danny.delagarza@tstc.edu) no later than **Monday, June 10, 2019, 5:00 PM CST**. TSTC reserves the right to request clarification of any information contained in a proposal. Any clarifications or interpretations of this RFQ that materially affect or change its requirements will be issued by TSTC as an Addendum. All such Addenda will be issued by TSTC before the submittal deadline as part of the RFQ and Respondents shall acknowledge receipt of each Addendum to the RFQ in proposal submission.

#### 1.5 Schedule of Events

Issuance of RFQ	Tuesday, May 21, 2019
Mandatory Pre-proposal Conference	Friday, May 31, 2019 10:00 AM CST
Deadline for Written Questions	Monday, June 10, 2019, 5:00 PM CST
Submittal Deadline	Thursday June 20, 2019, 2:00 PM CST
Evaluation and Selection Period (tentative)	Friday, June 21, 2019
Interviews and Negotiations (optional)	Monday, June 24, 2019-Friday, June 28, 2019
Award/Drafting of Contract (tentative)	Monday July 1, 2019-Wednesday July 3, 2019
Issuance of PO	TBA

#### 1.6 PRE-SUBMITTAL CONFERENCE:

There will be a mandatory pre-proposal meeting on Friday May 31<sup>st</sup> 2019 at the TSTC JB Connally Building on the Waco Campus.

## **1.7 Historically Underutilized Business Submittal Requirements**

It is the policy of TSTC to promote full and equal opportunities for the contracting and subcontracting of Historically Underutilized Businesses (HUB) in accordance with *Texas Government Code*, Chapter 2161. This Chapter applies to all contracts for the purchase of goods and/or services with an expected value of \$100,000 or more.

A HUB Subcontracting Plan Form (Included as Separate Attachment) must be filled out and returned with the Proposal to be considered responsive. If the Proposal does not include a HUB Subcontracting Plan, it shall be rejected as a material failure to comply with advertised specifications.

Search the State of Texas HUB Database for HUB vendors by the NIGP class and item at: <https://mycpa.cpa.state.tx.us/tpasscmlsearch/index.jsp>

Additional minority and women owned business association resources are available for subcontracting notices at: <http://comptroller.texas.gov/procurement/prog/hub/mwb-links-1/>

Additional information and training regarding how to complete a HUB Sub-Contracting Plan can be found on the CPA Website at the following link: <http://comptroller.texas.gov/procurement/prog/hub/hub-subcontracting-plan/>

## **1.8 Subcontracting Approval**

The Respondent shall perform the Contract with its own resources and those subcontractors identified in the Respondent's HUB Subcontracting Plan. In the event that the Respondent should determine that it is necessary or expedient to execute additional or alternative subcontracts for any of the performances under the Contract, the Respondent shall submit a revised HUB Subcontracting Plan for prior approval before executing any subcontracts.

In any subcontracts entered into by Contractor for the performance of the work, Contractor shall require the Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to Contractor by the terms of the contract between Contractor and TSTC and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the contract between Contractor and TSTC, assumes toward TSTC.

The Respondent shall manage all quality and performance, project management, and schedules for subcontractors. The Respondent shall be held solely responsible and accountable for the completion of all work for which the Respondent has subcontracted.

## **1.9 Proposal Requirements**

Proposals cannot be altered after the proposal submittal deadline and must be firm for up to 90 days from the submittal deadline. Proposals cannot be withdrawn after submittal deadline without written approval by TSTC based on a written request to withdraw.

### **1.10 Signature, Certification of Proposer**

Proposals submitted without the required forms and authorized signatures, as specified in Section 3(Proposal Requirements) and Section 6(Attachments) are subject to disqualification at TSTC's sole discretion.

### **1.11 Proposal Evaluation and Award Process**

Proposals will be evaluated in accordance with Section 4.1 of the RFQ.

### **1.12 Exceptions to RFQ**

Any exceptions to terms, conditions, and requirements of the RFQ, including the Service Agreement, must be made in writing and noted in the Proposal. Please refer to Section 6, Form B for the required form.

### **1.13 No Reimbursement for Proposal Costs**

TSTC specifically disclaims the responsibility and/or liability for all costs, expenses, or claims related to or arising out the proposers' participation in this RFQ process, including but not limited to costs incurred as a result of preparing, copying, shipping, presenting, and/or clarifying their Proposal and the information relevant to the Proposal. Proposers acknowledge and accept that any costs incurred from proposers' participation in this RFQ process shall be at their sole risk and responsibility.

### **1.14 Taxes**

As an institute of higher education and agency of the State of Texas, TSTC is exempt from payment of Texas State and local sales or use taxes on all purchases (*Texas Tax Code, Section 151.309*). Do not include sales tax in Proposal. Tax exemption certificates are available upon request.

### **1.15 Reservation of Rights**

TSTC reserves the right to modify the RFQ, divide the Scope of Services into multiple parts, and reject any and all proposals to re-solicit for new proposals or temporarily or permanently abandon the RFQ prior to the date on which TSTC's delegated authority executes a contract with the selected Proposer.

### **1.16 Texas Public Information Act**

Proposers acknowledge that TSTC is an agency of the State of Texas, and is therefore required to comply with the Texas Public Information Act (*Texas Government Code, Chapter 552.001, et seq.*) TSTC strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of public information. All information, documentation, and other materials submitted in response to this RFQ are considered non-confidential and/or non-proprietary and are subject to public disclosure. If proposals include proprietary data, trade secrets, or information, proposers must specifically label such data, secrets, or information as follows: **“PRIVILEGED AND CONFIDENTIAL – PROPRIETARY INFORMATION”**.

### **1.17 Equal Opportunity**

Proposer 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.

### **1.18 Accuracy of Information**

The information presented in this RFQ is complete and accurate to the best of TSTC’s knowledge. If proposers have any questions in regards to this RFQ, a written request should be submitted to Point of Contact before the Deadline for Written Questions specified herein.

### **1.19 Contract Award**

Proposals to this RFQ are offers to contract with TSTC. Proposals do not become contracts and are not binding until a written contract is executed by TSTC’s delegated authority and awarded Proposer. Awarded Proposal will become incorporated by reference in the written contract. TSTC shall reserve the right to award a contract for part or all requirements in the RFQ, to award multiple awards, or not award any contract, according to what is in the best interest of the TSTC.

### **1.20 Ethics Conduct**

Any direct or indirect actions taken to unduly influence competitive purposes, to circumvent equal consideration for competitive bidders, or to disregard ethical and legal trade practices will disqualify proposers from current and future consideration for participation in TSTC purchase orders and contracts.



## SECTION 2: SCOPE OF SERVICES

### 2.1 Overview

Texas State Technical College (TSTC) (“Owner”) is soliciting statements of qualifications (“Qualifications”) for selection of an Architect/Engineer (“A/E”) for a multiple phase project to design the transformation of the Waco Campus to include the “site selection for a new housing facility”, a detailed “demolition and site renovation plan”, a “Campus Master Plan” and a detailed “select renovation and tenant finish plan” on the Waco Texas Campus in accordance with the terms, conditions, and requirements set forth in this Request for Qualifications (“RFQ”).

This RFQ is the first step in a two-step process for selecting an A/E for the Project as provided by ***Texas Government Code §2254.004***. The RFQ provides the information necessary to prepare and submit Qualifications for Design Services and initial ranking by the Owner. Based on the initial rank, the Owner may select up to three (3) of the top ranked Qualification respondents for interview.

In the second step of the process, Owner will attempt to negotiate a fair and reasonable price for the services to be provided with the top ranked respondent. If Owner is unable to successfully negotiate a contract for services with the selected firm, Owner will formally end negotiations and select the next qualified respondent, and attempt to negotiate a contract with that respondent at a fair and reasonable price.

### 2.2 Scope of Services

TSTC is preparing to transform the TSTC Waco campus. The Project will be performed in multiple phases with a multi-phase project. The purpose of the RFQ is to select an A/E firm to perform the following services for each phase of the project. The phases will be performed concurrently.

- Phase I: TSTC is planning to build a new 450 bed housing complex on the Waco Campus with a P3 partner (not included in this contract) The awarded firm in this contract will however perform a site evaluation and assist TSTC in the site selection for the new facility. The site selection must be made no later than 10/1/2019
- Phase II: A large number of pre 1965 former military housing units and pre 1965 buildings must be abated and selectively demolished. The A/E Firm will design the demolition and site restoration plan including demolition of roads, demolition of infrastructure and the associated site restoration. The plan will include CD's and bid documents for the demolition. A cost estimate must be prepared to be taken to the TSTC Board of Regents for budget approval no later than November 14, 2019.

- Phase III: Several Programs and support functions will be displaced from buildings that will be demolished. The A/E Firm will furnish the design, bid documents, and budget estimate to relocate displaced programs and operations into existing space so the pre 1965 buildings can be demolished. Moving the programs and operations will require repurposing, and renovation (tenant finish) of existing space. Renovations are scheduled to be complete in May of 2020 so tenants can be moved during the summer of 2020.
- Phase IV: The AE firm will perform a complete 10 year master plan of the TSTC Waco Campus.

### **2.3 Contract Administration**

Contract Manager for this project is Ray Fried.

### **2.4 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.

### **SECTION 3: PROPOSAL REQUIREMENTS**

The Proposal must be organized in sections and divided by tabs in the following format and contain the following information. Respondents should note that elaborate or unnecessary voluminous proposals are not desired. All forms must be completed, signed, and returned as part of the Respondent's proposal.

#### **3.1 Execution of Offer**

The Execution of Offer (Form A, Section 6) should be the first page of your Proposal. This form **must be signed** by a person authorized to sign for the Respondent.

#### **3.2 Proposal Criteria (Each section should be in a separate tab)**

##### **Tab One: Firm's Overview**

###### **Provide: Cover Letter**

- A. Provide Company's interest in the project
- B. Company Characteristics, Resources, Capabilities
- C. Company's Years in Business
- D. Address and Location of Office that will be assigned to the project.
- E. Contact Information for the Primary Contact concerning this response.

##### **Tab Two: Project Team Overview**

- A. Describe the Company's Team that will be working on this project.  
Provide their qualifications.
- B. Include their role and the % of time they will be assigned to the project.
- C. Provide Resumes of Company's Team that will be working on this project  
and experience on similar projects.
- D. Provide at least 3 references with current contact information for each  
team member.

### **Tab Three: Financial Stability**

#### **Financial Stability and Volume:**

- A. Provide the annual volume of work your company has booked in the past four years.
- B. Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specific date(s), details, circumstances, and prospects for resolution.
- C. Describe firm's involvement, if any, in litigation with Owners, Consultants, or Architect/Engineer firms as the plaintiff, defendant and consultant.

### **Tab Four: Experience & Qualifications**

- A. Provide at least 3 relevant projects completed within the last ten (10) years of similar type and size. A relevant project scope includes demolition, site restoration, renovation of tenant finish, and 10 year master plan. A single project may not have all disciplines to be relevant but the respondent must demonstrate experience in all disciplines. The projects must include:
  - a. Project Title/Name
  - b. Planned project design duration
  - c. Actual project design duration.
  - d. List references to include the following information: Company Name
    - 1. Company Address
    - 2. Contact Person
    - 3. Current contact information
- B. Describe your firm's past performance on other contracts for any of the Texas State Technical College locations.
- C. Demonstrate the ability (with examples) to accurately budget and complete projects within budget.
- D. Demonstrate knowledge of local conditions

**Tab Five: Your Companies approach to this project**

- A. Based on the information provided describe the process and your companies approach to performing this project.
- B. Why should TSTC select your firm for this important project?

**3.3 All Required Forms (Each form should be in a separate tab)**

- Form A: Execution of Offer [MUST BE SIGNED FOR RESPONSE TO BE ACCEPTED]
- Form B: Deviation/Compliance Signature Form
- Form C: Non-Collusion Statement
- Form D: References
- Form E: Inter-Local Agreement
- Form F: HUB Sub-Contracting Plan [If proposal is over \$100,000, must be signed]
- Form G: Conflict of Interest
- Form H: Non Bid Response [Optional]

## SECTION 4: EVALUATION

Respondent is encouraged to propose terms and conditions offering the maximum benefit to TSTC in terms of (1) services to TSTC, (2) total overall cost to TSTC, and (3) expertise. Respondents should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to TSTC.

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

Respondents shall carefully read the information contained in Section 4.1 and submit a complete statement of Proposals to all questions in Section 3.2. Incomplete Proposals will be considered non-responsive and subject to rejection.

	Scored Criteria:	Weight:
1.	Respondents interest in the project, resources, and demonstrated ability to provide A/E services	15%
2.	Strength of the Organization and proposed team to be assigned to the project	15%
3.	Financial Stability, Litigation,	10%
4.	Relevant experience in designing, planning, accurate cost estimating, staying on schedule	15%
5.	Quality of references and work with TSTC	15%
6.	Knowledge of local conditions	15%
7.	Approach to this project	15%
	Total	100%

## 4.1 CRITERIA

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.

### 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 RFQ
- 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
- 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 photos of equipment, 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
- 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 RFQ or Request for Qualifications

## SECTION 5: CONTRACT

### PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement, hereinafter referred to as the “Agreement”, is made and entered into by and between **Texas State Technical College**, an institution of higher education and an agency of the State of Texas (hereinafter referred to as “TSTC”), and **[Insert the proper legal name of A/E]** a/an [insert type of business entity—individual, corporation, partnership, non-profit organization, etc.], with its principal place of business at [insert address of the contractor] (hereinafter referred to as the “Contractor”). Contractor and TSTC may individually be referred to as a “Party” or collectively as “Parties” to this Agreement.

Now, therefore, the Parties agree as follows:

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#### ARTICLE 1      BINDING DOCUMENTS

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- 1.01 This Agreement shall provide for the performance of all work (hereinafter referred to as the “Work”) described in and in the manner required by the following documents, attached to and incorporated as part of this Agreement for all purposes:
- (a) This Agreement
  - (b) TSTC’s 2012 Uniform General Conditions which can be downloaded from <https://www.tstc.edu/procurement/business/> as of May 24, 2019
  - (c) Exhibit A: TSTC’s RFQ-DG-19-002 for Waco Housing Master Plan
  - (d) Exhibit B: Scope of Work and Drawings for the project, prepared by the TSTC Facilities Planning & Department, entitled, “Waco Housing Master Plan” (hereinafter referred to as the “Project”).
  - (e) Exhibit C: Contractor’s proposal/quote [match what is stated on vendor’s document] # [insert proposal/quote number, if any] entitled “\_\_\_\_\_” dated [insert “dated month/day/year”]
  - (e) Exhibit D: Historically Underutilized Business (HUB) Subcontracting Plan (delete if non-applicable)
  - (f) Exhibit X: Contractor’s contract [if applicable]



- 1.02 Order of Precedence. *In case of any inconsistency, conflict, or ambiguity among the Agreement and any of the documents specified in Section 1.01, the documents shall govern in the following order:*
- (a) This Agreement
  - (b) TSTC's 2012 Uniform General Conditions which can be downloaded from <https://www.tstc.edu/procurement/business/> as of May 24, 2019
  - (c) Exhibit A: TSTC's RFQ-DG-19-002 for Waco Housing Master Plan
  - (d) Exhibit B: Scope of Work and Drawings for the project, prepared by the TSTC Facilities Planning & Department, entitled, "Waco Housing Master Plan" (hereinafter referred to as the "Project").
  - (e) Exhibit C: Contractor's proposal/quote [match what is stated on vendor's document] # [insert proposal/quote number, if any] entitled " \_\_\_\_\_ " dated [insert "dated month/day/year"]
  - (e) Exhibit D: Historically Underutilized Business (HUB) Subcontracting Plan (delete if non-applicable)
  - (f) Exhibit X: Contractor's contract [if applicable]
- 1.03 Contractor represents and warrants that it has the requisite qualifications, experience, personnel and other resources to perform the Work in the manner required by this Agreement.

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## **ARTICLE 2      TERM OF AGREEMENT AND TIME OF COMPLETION**

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- 2.01 Initial Term: This initial term of this Agreement shall begin on the date the Agreement is signed by the TSTC delegated authority, who shall sign after the Contractor signs, and shall terminate not later than August 31 2021 unless renewed or terminated in accordance with the terms of the Agreement.
- 2.02 Renewal Terms: Provided A/E's contract that is still in full force and effect, TSTC has the option to renew the Agreement for four (4) successive terms, with each Renewal Term being twelve (12) month periods, upon written notice to the Contractor at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term.
- 2.03 Time of Completion: TSTC 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 A/E shall achieve substantial completion of the work within August 31, 2021 after such commencement date; as such completion date may be extended by written agreement, signed by TSTC, (hereinafter referred to as "Approved Change Orders"). The time set forth for completion of the work is an essential element of the Agreement.

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**ARTICLE 3      AUTHORIZED CONTRACT SUM**

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- 3.01 TSTC shall pay Contractor for performance of the Agreement, subject to additions and deductions provided therein, the sum of \_\_\_\_\_ (\$TBD) and make payment on account as hereinafter provided.

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**ARTICLE 4      LOSS OF FUNDING**

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- 4.01 Performance of the Work specified under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of Texas State Technical College (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then TSTC will issue written notice to Contractor and TSTC may terminate the Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of TSTC.

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**ARTICLE 5      SUBCONTRACTING WITH HISTORICALLY UNDERUTILIZED BUSINESSES**

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- 5.01 To the extent applicable, Contractor shall subcontract the Work to historically underutilized businesses ("HUB(s)") in accordance with Contractor's HUB Subcontracting Plan ("HSP") set forth in Exhibit D entitled "HUB Subcontracting Plan," attached and incorporated for all purposes. In accordance with the HSP, Contractor shall submit to TSTC information necessary to assure that Contractor is adhering to the HSP, and TSTC may conduct audits to assure that Contractor's is adhering to the HSP. No changes to the HSP may be made unless approved in writing by TSTC. Except as specifically provided in the HSP, Contractor shall not subcontract any of its duties or obligations under this Agreement, in whole or in part.

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**ARTICLE 6      INVOICING AND PAYMENT**

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- 6.01 Invoicing. Contractor will invoice TSTC for services performed. Each invoice will be accompanied by documentation that TSTC may reasonably request to support the invoice amount. Each invoice must reference TSTC's valid purchase order number and be sent to one of TSTC's billing addresses:

Texas State Technical College 3801 Campus Drive Waco, TX 76705 wacoinvoice@tstc.edu Fax: 254-867-3792	Texas State Technical College 1902 N. Loop 499 Harlingen, TX 78550 harlingeninvoice@tstc.edu Fax: 956-364-5173
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- 6.02 Payment Terms. Notwithstanding any term or condition in the Agreement to the contrary, all invoices shall be payable to Contractor within thirty (30) days after TSTC's receipt of invoice and delivery of the Work in accordance with the Texas Prompt Payment Act, currently codified in Section 2251, Texas Government Code. Interest shall be payable by TSTC on all past due amounts at the rate specified in Section 2251.025 of such Code. Notwithstanding anything to the contrary, Contractor understands and acknowledges that TSTC's payment processes are stipulated by the Texas Prompt Payment Act, and nothing in the Agreement shall be construed to prevent or restrict TSTC from full compliance with such Act.
- 6.03 Payment Method. TSTC will pay Contractor with a credit card or direct deposit payment. TSTC will provide a direct deposit form to the Contractor upon request.
- 6.04 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 the 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.
- 6.05 Tax Exemption. Contractor understands and accepts that TSTC, as an agency of the State of Texas, is exempt from most State and Federal taxes. Contractor will not attempt to pay taxes on TSTC's behalf and TSTC will not reimburse contractor for any taxes paid. A tax exempt certificate is available to contractor upon request.

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## **ARTICLE 7      RECORDS; RIGHT TO AUDIT**

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- 7.01 Records of expenses pertaining to Additional Work 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 TSTC or TSTC's authorized representative on reasonable notice.
- 7.02 Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to TSTC or its authorized representative during business hours and shall be retained for four (4) years after final payment or abandonment of the Project, unless TSTC otherwise instructs Contractor in writing.
- 7.03 Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c) and 73.115(c), Texas Education Code. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

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**ARTICLE 8      LIQUIDATED DAMAGES**

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- 8.01 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 TSTC will sustain for late completion.

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**ARTICLE 9      OWNERSHIP AND USE OF WORK MATERIAL, IF APPLICABLE**

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- 9.01 All drawings, specifications, plans, computations, sketches, data, records, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any Contractor's subcontractor in connection with the Work (collectively, "Work Material"), whether or not accepted or rejected by TSTC, are the property of TSTC and for its use and reuse at any time without further compensation and without any restrictions.
- 9.02 Contractor hereby grants and assigns to TSTC all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with TSTC in any steps TSTC may take to obtain patent, copyright, trademark or like protections with respect to the Work Material.
- 9.03 TSTC will have the right to use the Work Material for the completion of the Work or otherwise. TSTC may, at all times, retain the originals of the Work Material.
- 9.04 The Work Material will not be used or published by Contractor or any other party unless expressly authorized by TSTC in writing. Contractor will treat all Work Material as confidential.

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**ARTICLE 10      INDEMNIFICATION**

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- 10.01 CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS AND EMPLOYEES, AND TEXAS STATE TECHNICAL COLLEGE, THE TEXAS STATE TECHNICAL COLLEGE SYSTEM, ITS 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 AGREEMENT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TEXAS STATE TECHNICAL COLLEGE.

- 10.02 PARAGRAPH 8.01 IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OF TEXAS, TEXAS STATE TECHNICAL COLLEGE OR TEXAS STATE TECHNICAL COLLEGE SYSTEM FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSION OF TEXAS STATE TECHNICAL COLLEGE, TEXAS STATE TECHNICAL COLLEGE SYSTEM OR ITS EMPLOYEES.

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## **ARTICLE 11     INSURANCE**

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- 11.01 Consistent with its status as an independent contractor, Contractor will obtain and maintain in force for the duration of this Agreement 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 insurance coverage obtained from companies authorized to do business in Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code.
- 11.02 TSTC in no way warrants that these limits are sufficient to protect the Contractor from liabilities that might arise out of the performance of the Work. The Contractor will assess its own risks and, if it deems appropriate or prudent, maintain higher limits or broader coverages. The Contractor is not relieved of any liability or other obligations assumed by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.
- 11.03 Contractor agrees to furnish insurance certificates reflecting the following coverage:
- i. 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;
  - ii. Employer's Liability: \$1,000,000 per accident and employee;
  - iii. Comprehensive General Liability (including contractual liability): \$2,000,000 per occurrence;
  - iv. Product/Completed Ops: \$2,000,000 aggregate;
  - v. Business Automobile Liability: \$1,000,000 combined single limit
  - vi. Professional Liability: \$1,000,000 (if applicable)
  - vii. All other insurance required by state or federal law
- 11.04. 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.
- 11.05 CERTIFICATES OF INSURANCE VERIFYING THE SPECIFIED REQUIREMENTS SHALL BE PROVIDED TO TSTC PRIOR TO COMMENCEMENT OF WORK IN ACCORDANCE WITH THE NOTICES SECTION PROVIDED HEREIN. CONTRACTOR WILL MAINTAIN INSURANCE AS REQUIRED HEREIN FOR THE TERM OF THE AGREEMENT AND SHALL PROVIDE RENEWAL CERTIFICATES TO TSTC AS APPLICABLE.

- 11.06 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.
- 11.07 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 WORK.
- 11.08 Each policy of required insurance shall provide for ten (10) days written notice of cancellation to TSTC 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."

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## **ARTICLE 12    CONFIDENTIALITY**

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- 12.01 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 this Agreement 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.
- 12.02 FERPA Protection of Confidential Data. To the extent that 34 Code of Federal Regulations § 99.33(a)(2) is applicable, Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act and with the terms set forth in this subsection. 34 FR 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from TSTC may use the information, but only for the purposes for which the disclosure was made. Definition: Covered data and information (CDI) includes paper and electronic student education record information supplied by Institution, as well as any data provided by TSTC's students to the Contractor. Acknowledgment of Access to CDI: Contractor acknowledges that the Agreement allows the Contractor access to CDI. Prohibition on Unauthorized Use or Disclosure of CDI: Contractor agrees to hold CDI in strict confidence. Contractor shall not use or disclose CDI received from or on behalf of TSTC (or its students) except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by TSTC. Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made. Upon termination, cancellation, expiration or other conclusion of the Agreement, Contractor shall return all CDI to TSTC or, if return is not feasible, destroy any and all CDI. Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information: Contractor shall, within one day of discovery, report to TSTC any use or disclosure of CDI not authorized by this Agreement or in writing by TSTC. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate

any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by Institution.

- 12.03 Protected Data Security. For purposes of this section, "TSTC Confidential Information" means records maintained by TSTC, and records obtained by Contractor from TSTC under this Agreement, including (1) records and data provided electronically, on paper, or via online access or e-mail, (2) records and data that Contractor has converted into another format or medium (such as handwritten or electronic notes), and (3) records and data incorporated in any manner into Contractor's records, files or data compilations.
- (a) To the extent applicable, Contractor shall protect the confidentiality of TSTC Information and comply with all statutory, regulatory and Agreement requirements. Contractor's protection of the confidentiality of TSTC Information will survive the termination of this Agreement. Contractor shall keep and maintain complete and accurate records sufficient to allow TSTC, the Texas State Auditor's Office, the United States government, and their authorized representatives to determine Contractor's compliance with this Agreement. Contractor shall be responsible and liable for any and all damages, without limitations, resulting from a breach by Contractor including damages and losses of third parties. Contractor shall reimburse TSTC, without limitations, for any costs incurred by TSTC in reimbursing third parties damaged by Contractor's breach and costs incurred in attempts by TSTC to limit third party losses resulting from Contractor's breach. Contractor agrees to accept liability, without limitations, for any damage to TSTC's hardware, software, or TSTC Information when such damage is caused by the actions or negligence of employees, contractors, sub-contractors or agents of Contractor, whether or not the individual was an authorized User under this Agreement.
  - (b) Security Breach Notification. To the extent applicable, Contractor agrees to notify TSTC as soon as it becomes aware of any actual or unintended access of the TSTC data that may access, process, or store data, files, confidential information or personal data produced under, provided under or related to this Agreement or any Scope of Work subject to this Agreement. Unintended access includes, but is not limited to, compromise by a computer worm, search engine web crawler, password compromise or access by an unauthorized individual or automated program. Contractor agrees to notify TSTC within twenty-four (24) hours of the discovery of the actual or suspected unintended access.
  - (c) Disposal. To the extent applicable, Contractor shall dispose of any TSTC information and any copies thereof after the limited purposes of the Agreement or any Statements of Work are achieved, except for TSTC information possessed by any court. Disposal means the return of TSTC information to TSTC or the destruction of TSTC information, as directed by TSTC. Disposal includes deletion of personal identifiers in lieu of destruction. In any case, Contractor shall dispose of all TSTC information within thirty (30) calendar days after the termination, cancellation, or expiration of the Agreement.

- (d) Access Limited. To the extent applicable, Contractor shall limit access to TSTC information to Contractor's employees who need access to achieve the limited purposes of the Agreement or any related Statement of Work.
- (e) Mobile Device and Removal. To the extent applicable, Contractor shall not place TSTC information on mobile, remote, or portable storage devices, or remove storage media from Contractor's facility, without the prior written authorization of TSTC.
- (f) Acceptance Testing. To the extent applicable, upon receipt of the initial feature set of the Contractor's services prior to launch of the Contractor's services, or any subsequent enhancements to the Contractor's services both Parties will test the Deliverable for compliance with the specifications in the detailed design document provided to TSTC by Contractor in accordance with TSTC's launch checklist (Acceptance Testing). If a dispute arises regarding testing criteria, TSTC will make the final determination. Acceptance of any Deliverable will occur upon the earlier of either: (a) Contractor's receipt of a notice from TSTC stating that the Deliverable has met the Acceptance Criteria; or (b) 60 days, or other mutually agreeable time period, after the date of delivery, unless notice of non-acceptance (including specific reasons for non-acceptance) is provided to Contractor within the 60-day period. Contractor will use commercially reasonable efforts to correct any non-conformance in a timely manner. The Parties will provide each other with commercially reasonable assistance as necessary to correct any non-conformance, including information necessary to recreate the error or non-conformity identified. The Parties will work together in good faith to complete Acceptance Testing according to any applicable development schedule. Upon successful completion of Acceptance Testing the Parties will notify each other of final acceptance.

12.04 Notwithstanding any provisions of this Agreement to the contrary, Contractor understands that TSTC 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. TSTC agrees to notify Contractor of a request for information related to Contractor's work under this Agreement. The Contractor will cooperate with TSTC in the production of documents responsive to the request. The Contractor may request that TSTC seek an opinion from the Attorney General of the State of Texas. However, TSTC 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, Contractor shall notify TSTC's Office of 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. Contractor understands 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.



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**ARTICLE 13    PUBLICITY**

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- 13.01 Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to the Work or the engagement of Contractor as an independent Contractor of TSTC in connection with the Work, or release any information relative to the Work for publication, advertisement or any other purpose without the prior written approval of TSTC, which approval may be withdrawn by TSTC with written notice to the Contractor. All name, logos and symbols of TSTC ("TSTC Marks") are owned by the Board of Regents. No displays or other advertising may state/imply that TSTC endorses a particular Contractor's services. Any use of TSTC marks must have prior written approval of TSTC. In specific instances Contractor can reference TSTC by name but only as a customer of Contractor and may appear on Contractor's promotional material or website so long as reference does not endorse Contractor. Contractor will obtain assurances similar to those contained in this Section from persons, contractors, and subcontractors retained by Contractor.

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**ARTICLE 14    TSTC AND CONTRACTOR REPRESENTATIVES**

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- 14.01 Appointment. TSTC and Contractor will designate by notice to the other Party a representative(s) to act partially or wholly for TSTC or Contractor in connection with the performance of the obligations of both Parties. Contractor shall act only upon instructions from the TSTC designated representative(s) unless otherwise specifically notified to the contrary.

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**ARTICLE 15    NOTICES**

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- 15.01 Any and all notices, demands, or other communications required or desired to be given hereunder by either Party shall be in writing and shall be validly given or made to the other Party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the Party to whom such notice, demand or other communication is to be given at the addresses as listed below. Either Party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

If to TSTC: [Insert Name, Title, Address]

With copies to:

TSTC Procurement Division  
Office of Contract Administration  
3801 Campus Drive, Waco TX 76705  
[ContractAdmin@tstc.edu](mailto:ContractAdmin@tstc.edu)

If to Contractor: [Insert Name, Title, Address]

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**ARTICLE 16     DISPUTE RESOLUTION**

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- 16.01 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 TSTC and Contractor to attempt to resolve any claim for breach of contract made by Contractor:
- (a) 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 TSTC in accordance with the notice provisions in this Agreement. 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 TSTC 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 Senior Executive Director of TSTC Procurement Services of TSTC, or such other officer of TSTC as may be designated from time to time by TSTC, by written notice thereof to Contractor in accordance with the notice provisions in this Agreement, shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims.
  - (b) 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 TSTC.
  - (c) 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 (i) neither the execution of this Agreement by TSTC nor any other conduct, action or inaction of any representative of TSTC relating to this Agreement constitutes or is intended to constitute a waiver of TSTC's or the state's sovereign immunity to suit and (ii) TSTC has not waived its right to seek redress in the courts.
- 16.02 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.
- 16.03 TSTC and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

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**ARTICLE 17     CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK**

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- 17.01 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 TSTC and the Architect [delete if non-applicable] 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 in the performance of this Agreement 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 the 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.

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## **ARTICLE 18     INDEPENDENT CONTRACTOR**

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- 18.01 Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Contract, and the individual executing the Contract on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 18.02 For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of TSTC. Contractor will not bind nor attempt to bind TSTC to any Agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. Contractor is responsible for its conduct of business operations, including but not limited to employee salaries, benefits, and travel expenses.

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## **ARTICLE 19     SUBCONTRACTORS**

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- 19.01 Notwithstanding any other provisions contained herein, if Contractor intends to subcontract all or a portion of the Work, Contractor must identify all proposed Subcontractors ("Subcontractors") to TSTC in its submitted proposal [make sure this matches the terminology in Sections 1.01 and 1.02]. Contractor will not delegate any of its duties or responsibilities under the Agreement to any Subcontractors, except as expressly provided for in the Agreement. Subcontractors providing Work under the Agreement must meet the same requirements and level of experience required of the Contractor. The utilization of any Subcontractor for provided Work under the Agreement will not relieve the Contractor of the responsibility for ensuring the requested Work is provided in accordance with the requirements herein.

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## **ARTICLE 20     BACKGROUND CHECKS AND IDENTIFICATION**

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- 20.01 DPS Background Checks. Contractor is required to do a Texas Department of Public Safety background check on each and every one of its employees or assigns that are on TSTC premises. Contractor shall share any negative background check results with TSTC prior to the employee or assign coming onto TSTC premises and TSTC, in its sole discretion, shall determine if said employee or assign shall be allowed on TSTC premises. The Contractor also ensures that any of its 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.

20.02 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 education environments. Contractor will ensure 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 and National Sex Offender Public Website at <https://records.txdps.state.tx.us/SexOffender/> and <http://www.nsopw.gov/> ("Registries"). The Contractor will ensure that any employees or subcontractors found on the Registries 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. Any employees or Subcontractors that are shown on the sexual offender registries must be documented. Documentation shall include explanation and verification of any employees 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 institutions.

20.03 Access and Identification. All of Contractor's personnel, while on TSTC premises, must have all of the following:

- (a) A valid State of Texas ID or driver's license
- (b) A photo ID bearing:
  - i. the name of the company for which the individual works,
  - ii. the individual's name, and
  - iii. a recent photo of the individual.

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## **ARTICLE 21    CONFLICT OF INTEREST; ANTITRUST**

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21.01 Conflict of Interest. TSTC officers and employees may not have a direct or indirect interest, including financial and other interests, engage in a business transaction or professional activity, or incur any obligation of any nature, that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest. A TSTC officer or employee will not: 1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows, or should know, is being offered with the intent to influence the officer's or employee's official conduct; 2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position; 3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of their official duties; 4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or 5) intentionally or knowingly solicit, accept or agree to accept any benefit for having exercised the officer's or employee's official powers or performed their official duties in favor of another. TSTC may not use appropriated money to compensate a state employee who violates a standard of conduct. In accordance with the Texas Constitution, an officer or employee of the state may not, directly or indirectly, profit by or have a pecuniary interest in the preparation,

printing, duplication, or sale of a publication or other printed material issued by a department or agency of the executive branch. A person who violates this provision may be dismissed from TSTC employment.

- 21.02 No Financial Interest. Contractor and its employees, agents, representatives and subcontractors have read and understand TSTC's Conflicts of Interest Policy HR 2.1.12 available at [www.tstc.edu/docs/doc.php?id=855/](http://www.tstc.edu/docs/doc.php?id=855/) as of May 13, 2019 [check this and change date], and applicable state ethics laws and rules available at <https://www.ethics.state.tx.us/main/research.htm/> as of May 13, 2019 [check this and change date]. 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.
- 21.03 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.

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## ARTICLE 22 COMPLIANCE WITH LAW

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- 22.01 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 this Agreement.
- 22.02 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 this Agreement.
- 22.03 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.
- 22.04 Tax Delinquency. If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code, then Contractor certifies that it is not currently delinquent in the payment of any taxes due under such Chapter, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 22.05 Certain Contracts Prohibited. Pursuant to Sections 2155.004 and 2155.006, Texas Government Code, Contractor certifies that the individual or business entity named in the Agreement is not ineligible to receive

the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if these certifications are inaccurate.

- 22.06 Texas Family Code Child Support Certification. To the extent applicable, pursuant to Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.
- 22.07 Franchise Tax Certification. Contractor certifies that (a) it is not currently delinquent in the payment of any franchise taxes due under Chapter 171 of the Texas Tax Code, or (b) that the Contractor is exempt from the payment of such taxes, or (c) that the Contractor is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.
- 22.08 Prohibition on Contracts with Companies Boycotting Israel. Pursuant to the provisions of Chapter 2270 of the Texas Government Code, Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of the Agreement.
- 22.09 Products and Materials Produced in Texas. If Contractor will provide services under the Agreement, Contractor covenants and agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under the Agreement, Contractor will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
- 22.11 Illegal Dumping. The Contractor shall ensure that it and all of its Subcontractors prevent illegal dumping of litter, hazardous waste, matches, medical waste, solid waste, chemicals, petroleum, rubbish, sludge, or other materials in accordance with Title 5, Texas Health and Safety Code, Chapter 365.
- 22.12 Travel and Per Diem. Contractor understands that any travel or per diem required by Contractor to perform its obligations under the Agreement will be at Contractor's expense. However, TSTC has sole discretion to and may pay Contractor's travel and per diem requests, but prior to expenditure, Contractor must have approval from TSTC in writing, and if approved by TSTC all travel and per diem that Contractor requests are subject to, and shall not exceed, the reimbursement limitations applicable to Texas state employees in conducting official state business as prescribed by applicable law, rules, and regulations including, but not limited to, Chapter 660 of the Texas Government Code, the General Appropriations Act and rules adopted by the Comptroller.
- 22.13 Outside Terms. TSTC rejects and will not be bound by Contractor's "click-wrap" terms and conditions, "browse-wrap" terms and conditions, "shrink-wrap" terms and conditions, or any other terms and conditions which can be found on an internet webpage, hereinafter collectively referred to as "Internet Terms". TSTC rejects and will

not be bound by any terms and conditions on invoices or acknowledgements whether or not said invoices or acknowledgements are signed by a representative of TSTC. Said Internet Terms or invoice/acknowledgement terms and conditions will not currently, nor in the future, bind TSTC or be made applicable to the Agreement, unless assent to said Internet Terms or invoice/acknowledgement terms and conditions is shown by the signatures of duly authorized representatives from both Parties.

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## **ARTICLE 23    TERMINATION**

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- 23.01 If either Party is in default of performance of any material obligation under this Agreement, the Party that is not in default may give written notice of the default to the other Party and if the Party notified fails to correct the default within thirty (30) days or other specified period fails to satisfy the Party giving notice that the default does not exist, the Party giving notice may terminate this Agreement upon expiration of the thirty (30) day or other specified period.
- 23.02 Notwithstanding the termination or expiration of this Agreement, the provisions of this Agreement regarding indemnification, confidentiality, records, right to audit, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Agreement.
- 23.03 The termination of this Agreement shall not affect any right or remedy that has accrued to either Party at the time of termination.
- 23.04 If applicable, upon termination of this Agreement, Contractor shall deliver to the appropriate representative of TSTC all Work Material related to the services performed by Contractor together with any keys, identification badges, or equipment owned by TSTC.

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## **ARTICLE 24    OTHER TERMS AND CONDITIONS**

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- 24.01 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted assigns and successors.
- 24.02 Assignment. This Agreement is a personal service contract for the Work specified herein, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.
- 24.03 Venue; Governing Law. As required by Chapter 135 of the Texas Education Code, McLennan County or Travis County, Texas, will be the proper place of venue for suit on or in respect of the Agreement. The Agreement 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.

- 24.04 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.
- 24.05 Entire Agreement. Notwithstanding the provisions in Section 1, this Agreement supersedes all prior agreements, written or oral, between Contractor and TSTC and will constitute the entire Agreement and understanding between the Parties with respect to the Project. The Agreement and each of its provisions will be binding upon the Parties and may not be waived, modified, amended or altered except in writing signed by TSTC and Contractor.
- 24.06 Captions. The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 24.07 Force Majeure. Neither Party to this Agreement will be liable or responsible to the other for any loss or damage, or for any delays or failure to perform, due to causes beyond its reasonable control including, but not limited to, acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("force majeure occurrence").
- 24.08 Severability. If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (a) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (b) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.
- 24.09 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.

IN WITNESS WHEREOF, duly authorized representatives of the Parties have agreed to the terms of this Agreement and thereby execute and deliver this Agreement to the other Party.

Texas State Technical College

Contractor

By: \_\_\_\_\_

(Authorized Signature)

\_\_\_\_\_

(Authorized Signature)

\_\_\_\_\_

(Printed Name)

\_\_\_\_\_

(Printed Name)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Date)

FORM APPROVED: [FOR RAY RUSHING OR ED VALLEJO TO COMPLETE/SIGN.]

By: \_\_\_\_\_

(Authorized Signature)

\_\_\_\_\_

(Printed Name)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Date)

## Exhibit A:

TSTC's RFQ-DG-19-002 for Waco Housing Master Plan

## Exhibit B:

Scope of Work and Drawings for the project, prepared by the TSTC Facilities Planning & Department, entitled, “Waco Housing Master Plan” (hereinafter referred to as the “Project”).

## Exhibit C

Contractor's proposal

## Exhibit D

### Historically Underutilized Business (HUB) Subcontracting Plan

SAMPLE

## Exhibit X

Contractor's contract [if applicable]

SAMPLE

## SECTION 6: FORMS

TSTC Requires that the Respondent complete and return the following forms as part of their proposal.

- FORM A: Execution of Offer
- FORM B: DEVIATION/COMPLIANCE SIGNATURE FORM
- FORM C: NON-COLLUSION STATEMENT
- FORM D: REFERENCES
- FORM E: INTERLOCAL AGREEMENT CLAUSE
- FORM F: HUB Subcontracting Plan (MUST BE SIGNED)
- FORM G: Conflict of Interest
- FORM H: No Bid Response (Optional)



**FORM A: Execution of Offer**

The undersigned, in submitting this Proposal and endorsement of same, represents that he/she is authorized to obligate his/her firm, that he/she is an equal opportunity employer and will not discriminate with regard to race, color, religion, sex, national origin, age or disability; that he/she will abide by all the policies and procedures of TSTC; and that he/she has read the entire RFQ package, is aware of the covenants contained herein and will abide by and adhere to the written requirements in ***ALL*** sections of the RFQ. **Failure to manually sign this RFQ Response Form will be reason for the RFQ to be rejected.**

SUBMITTED BY:

Firm: \_\_\_\_\_  
(OFFICIAL Firm Name)

***MUST BE SIGNED IN INK TO BE  
CONSIDERED RESPONSIVE***

By: \_\_\_\_\_  
(Original Signature)

Name: \_\_\_\_\_  
(Typed or Printed Name)

Title: \_\_\_\_\_  
(Type or Printed Title) \_\_\_\_\_  
(Date)

Contact  
Representative: \_\_\_\_\_

Address: \_\_\_\_\_

City/ST/Zip: \_\_\_\_\_

Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Email: \_\_\_\_\_

Taxpayer Identification #: \_\_\_\_\_

Prompt Payment Discount: \_\_\_\_\_% \_\_\_\_\_ Days

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

I hereby acknowledge receipt of the following addenda which have been issued and incorporated into the RFQ Document. (*Please initial in ink beside each addenda received. If none received, leave blank*)

Addendum No. 1 \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_

Addendum No. 2 \_\_\_\_\_

Addendum No. 4 \_\_\_\_\_

## FORM B: DEVIATION/COMPLIANCE SIGNATURE FORM

If the undersigned Firm intends to deviate from the Specifications listed in this RFQ document or Contract, all such deviations must be listed on this page, with complete and detailed conditions and information included or attached. TSTC will consider any deviations in its RFQ award decisions, and TSTC reserves the right to accept or reject any RFQ based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this form, the Firm assures TSTC of his/her full compliance with the Terms and Conditions, Specifications, and all other information contained in this RFQ document.

☐ No Deviation

☐ Yes Deviations

Firm's Name: \_\_\_\_\_

Authorized Company Official's Name: \_\_\_\_\_  
(Typed or printed)

Title of Authorized Representative: \_\_\_\_\_  
(Typed or printed)

Signature of Authorized Company Official: \_\_\_\_\_

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

If yes is checked, please list below. Attach additional sheet(s) if needed.

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**FORM C: NON-COLLUSION STATEMENT**

“The undersigned affirms that he/she is duly authorized to execute this RFQ, that this company, corporation, firm, partnership or individual has not prepared this RFQ in collusion with any other proposer, and that the contents of this RFQ as to prices, terms or conditions of said RFQ have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this RFQ.”

Firm's Name: \_\_\_\_\_

Firm's Name: \_\_\_\_\_

Authorized Company Official's Name: \_\_\_\_\_  
**(Typed or printed)**

Title of Authorized Representative: \_\_\_\_\_  
**(Typed or printed)**

Signature of Authorized Company Official: \_\_\_\_\_

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

Firm hereby assigns to purchaser any and all claims for overcharges associated with this RFQ which arise under the antitrust laws of the United States, 15 USCA Section 1 and which arise under the antitrust laws of the State of Texas, Business and Commerce Code, Section 15.01.

**FORM D: REFERENCES**

1. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Business Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Email: \_\_\_\_\_

Description of project or work completed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Business Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Email: \_\_\_\_\_

Description of project or work completed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Business Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Email: \_\_\_\_\_

Description of project or work completed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**REFERENCES (continuation page if needed)**

4. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Business Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Email: \_\_\_\_\_

Description of project or work completed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Business Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Email: \_\_\_\_\_

Description of project or work completed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PAGE 2/2**

**FORM E: Inter-Local Agreement Clause**



**INTERLOCAL AGREEMENT  
CLAUSE**

Several governmental entities around the Texas State Technical College have indicated an interest in being included in this contract. Should these governmental entities decide to participate in this contract, would you, (the vendor) agree that all terms, conditions, specifications, and pricing would apply?

Yes \_\_\_\_\_ No \_\_\_\_\_

If you (the Vendor) checked yes, the following will apply:

Governmental entities utilizing interlocal agreements with the Texas State Technical College will be eligible, but not obligated, to purchase materials/services under the contract(s) awarded as a result of this solicitation. All purchases by governmental entity other than Texas State Technical College will be billed directly to that governmental entity and paid by that governmental entity. Texas State Technical College will not be responsible for another governmental entity's debts. Each governmental entity will order its own material/service as needed.

For information regarding the Educational Purchasing Cooperative of North Texas, please visit their website at the following address: <http://www.epcnt.com/INDEX.htm>.

Company Name: \_\_\_\_\_  
**(Typed or printed)**

Title of Authorized Representative: \_\_\_\_\_  
**(Typed or printed)**

Signature of Authorized Company Official: \_\_\_\_\_

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

**FORM F - HUB Subcontracting Plan**  
**(MUST BE SUBMITTED FOR PROPOSAL TO BE ACCEPTED)**

<https://drive.google.com/a/tstc.edu/file/d/1D1eTngzJ4GaPmQex-YQjLTR4nuhCzB4-/view?usp=sharing>

## **FORM G – CONFLICT OF INTEREST**

[https://drive.google.com/a/tstc.edu/file/d/1WRMiXoKh3TRk8ATuzR1\\_3rBbLYSbHzbv/view?usp=sharing](https://drive.google.com/a/tstc.edu/file/d/1WRMiXoKh3TRk8ATuzR1_3rBbLYSbHzbv/view?usp=sharing)



## FORM H: NON-BID RESPONSE (OPTIONAL)

If your firm is unable to submit a proposal at this time, complete this form and return it to:

Texas State Technical College  
Building SSC  
1901 N. Loop 499  
Harlingen, Texas 78550  
[danny.delagarza@tstc.edu](mailto:danny.delagarza@tstc.edu)

by the date/time for submission of this solicitation.

I/WE DID NOT SUBMIT A PROPOSAL FOR THE FOLLOWING REASONS:

*(Please place an X by all the reasons that apply)*

1. ☐ Do not supply the requested product/service.
2. ☐ Quantities offered or scope of job is TOO SMALL to be supplied by my company.
3. ☐ Qualities offered or scope of job is TOO LARGE to be supplied by my company.
4. ☐ Specifications are "too constrictive" or appear to be written around a proprietary product.
5. ☐ Time frame for responding was too short. (Please elaborate on your primary reason for this judgment.)
6. ☐ Other reasons: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_

Vendor Signature

Date

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Phone No.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Fax No.