

UT System RFQ - Compliance Review Services-UT System BOR Intellectual Property *Updated 03/20/13*

Open Date: 03/27/13 02:00 PM Agency Requisition Number: OGC20130327

NOTE: You will need to download all of the following files for complete specifications and other required document, including a HUB subcontracting plan(if required).

Help: Right Click to and choose "save file as" or "save target as" to your computer.

- Package 1 size: 222208 (in bytes) Type: Specification Format: Word for Windows 97
- Package 2 size: 667378 (in bytes) Type: Specification Format: Word for Windows 97
- Package 3 size: 28160 (in bytes) Type: Additional Specification(s) Format: Word for Windows 97
- Package 4 size: 28160 (in bytes) Type: Additional Specification(s) Format: Word for Windows 97
- Package 5 size: 244452 (in bytes) Type: Non-Bid Information Format: Acrobat PDF Files

Update 03/20/13 to add UPDATED RFP Q&A(Package 3) *Updated 03/18/13 to add RFP Q&A, Preproposal Conference Notes and HUB Overview sheet (Packages 3, 4 and 5)* The University of Texas System ("UT System") is soliciting qualified professionals ("Professional" or "Professionals") to submit qualifications in response to this Request for Qualifications for Selection of a Professional to Provide Compliance Review Services related to Licensees of Intellectual Property Owned by The Board of Regents of The University of Texas System, RFQ No. OGC 20130327 (this "RFQ"), to provide compliance review services (the "Services") related to UT System intellectual property licenses. The Services, which are more specifically described in Section 5.4 (Scope of Work) of this RFQ, include (1) evaluating a licensee's compliance with the terms of the license agreement; (2) evaluating the accuracy and completeness of licensing payments (and other applicable payments) in accordance with the license agreement; and (3) documentation of the findings and observations of 1 and 2 above.

Agency: UNIVERSITY OF TEXAS SYSTEM (720)

Open Date: 03/27/13 02:00 PM Agency Requisition Number: OGC20130327

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REQUEST FOR QUALIFICATIONS

by

The University of Texas System

for

**Selection of a Vendor to Provide
Compliance Review Services**

related to

**Licensees of Intellectual Property owned by The University of Texas
System Board of Regents**

RFQ No. OGC 20130327

Submittal Deadline: Wednesday, March 27, 2013

Issued: February 28, 2013

REQUEST FOR QUALIFICATIONS

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SECTION 1

INTRODUCTION

1.1 Description of University

The Board of Regents of The University of Texas System (“UT System”) governs UT System, which was established by the Texas Constitution of 1876. In 1881, Austin was designated the site of the main academic campus and Galveston as the location of the medical branch. The University of Texas at Austin opened in 1883, and eight years later, the John Sealy Hospital in Galveston (now a part of The University of Texas Medical Branch) established a program for UT System-trained medical professionals. In addition to the original academic campus located in Austin, the UT System now includes eight additional academic campuses in Arlington, Dallas, El Paso, Odessa, San Antonio, Tyler, Brownsville and Edinburg. Health institutions for medical education and research have expanded beyond the original Galveston medical campus to include M. D. Anderson Cancer Center, Southwestern Medical Center at Dallas, and Health Science Centers at Houston, San Antonio, and Tyler. The System’s fifteen institutions have become one of the nation’s premier educational enterprises. Many of UT System’s programs in natural science, engineering, business, medicine, law, liberal arts and humanities rank among the very best in the country.

1.2 Background and Special Circumstances

The Rules and Regulations of the Board of Regents of The University of Texas System (“Board”) provide for the active development, management and commercialization of intellectual property created at institutions of UT System. One key element of this process is the licensing of intellectual property to outside agencies and/or companies (“Licensees”) to encourage the development and commercialization of intellectual property for the best interest of the public, the creator and research sponsors. Such intellectual property includes, but is not limited to, patented and unpatented devices, materials and methods, copyrightable materials and trademarks. Intellectual property rights owned by, or under the control of the Board of Regents, are conveyed via license agreements, option agreements, assignment agreements or other agreements with outside agencies or companies (“License Agreements”).

Within the UT System, each individual institution is charged with the responsibility of identifying, evaluating and selecting potential licensees. License Agreements are typically crafted to meet the unique needs of the particular intellectual property and the specific licensee.

Compliance review services are required to help ensure Licensees are in compliance with the responsibility and obligations of their License Agreements. Licensees must not only be in compliance with the payment provisions of their License Agreements, but also in compliance with reporting requirements and other obligations.

Successful Proposers will be considered eligible for potential selection to assist UT System in assessing the level of compliance of individual licensees with the contractual terms of their intellectual property agreements through a compliance review process. These reviews may include, but are not limited to, compliance with due diligence provisions, verification of gross sales, verification of gross sales to net sales conversions, confirmation of foreign currency transfers, calculations of royalties due, as

well as timeliness of royalty payments. UT System may enter into one or more non-exclusive agreements with successful proposers to provide the services desired.

1.3 Objective of this Request for Qualifications

The University of Texas System (“**UT System**”) is soliciting qualified professionals (“**Professional**” or “**Professionals**”) to submit qualifications in response to this Request for Qualifications for Selection of a Professional to Provide Compliance Review Services related to Licensees of Intellectual Property Owned by The Board of Regents of The University of Texas System, RFQ No. OGC 20130327 (this “**RFQ**”), to provide compliance review services (the “**Services**”) related to UT System intellectual property licenses. The Services, which are more specifically described in **Section 5.4** (Scope of Work) of this RFQ, include (1) evaluating a licensee’s compliance with the terms of the license agreement; (2) evaluating the accuracy and completeness of licensing payments (and other applicable payments) in accordance with the license agreement; and (3) documentation of the findings and observations of 1 and 2 above.

1.4 Group Purchase Authority

Texas law authorizes institutions of higher education (defined by Section 61.003, *Education Code*) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, *Education Code*). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Professional under this RFQ.

SECTION 2**NOTICE TO PROFESSIONAL****2.1 Submittal Deadline**

University will accept proposals submitted in response to this RFQ until **2:00 p.m.**, Central Prevailing Time on **Wednesday, March 27, 2013** (the "**Submittal Deadline**").

2.2 University Contact Person

Professionals will direct all questions or concerns regarding this RFQ to the following University contact ("**University Contact**"):

Theresa Shick
701 Colorado
Suite 6.622
Austin, TX 78701
tshick@utsystem.edu

University specifically instructs all interested parties to restrict all contact and questions regarding this RFQ to written communications forwarded to University Contact. University Contact must receive all questions or concerns no later than **Tuesday, March 19, 2013**. University will have a reasonable amount of time to respond to questions or concerns. It is University's intent to respond to all appropriate questions and concerns; however, University reserves the right to decline to respond to any question or concern.

2.3 Criteria for Selection

The successful Professional(s) will be Professional(s) that submits a proposal in response to this RFQ on or before the Submittal Deadline that is the most advantageous to University.

Professional is encouraged to submit a proposal offering the maximum benefit to University in terms of (1) demonstrated competence and qualifications, and (2) fair and reasonable cost. Professionals should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to University in a contract for the Services.

An evaluation team from University will evaluate proposals. The evaluation of proposals and the selection of the successful Professional will be based on the information provided by Professional in its proposal. University may give consideration to additional information if University deems such information relevant.

The criteria to be considered by University in evaluating proposals and selecting the successful Professional will be demonstrated competence and qualifications to perform the Services for a fair and reasonable cost.

2.4 Key Events Schedule

Issuance of RFQ	<u>Thursday, February 28, 2013</u>
Pre-Proposal Conference (ref. Section 2.6 of this RFQ)	<u>1 p.m. Central Prevailing Time on Wednesday, March 13, 2013</u>
Deadline for Questions/Concerns (ref. Section 2.2 of this RFQ)	<u>Tuesday, March 19, 2013</u>
Submittal Deadline (ref. Section 2.1 of this RFQ)	<u>2 p.m. Central Prevailing Time on Wednesday, March 27, 2013</u>

2.5 Historically Underutilized Businesses

2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a “**HUB**”) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFQ, Professional subcontracts any of the Services, then Professional must make a good faith effort to utilize HUBs certified by the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, “**TPSS**”). Proposals that fail to comply with the requirements contained in Sections 2.5.2 and 2.5.3 below will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFQ. Professional acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the Services will continue throughout the term of all agreements and contractual arrangements resulting from this RFQ. Furthermore, any subcontracting of the Services by Professional is subject to review by University to ensure compliance with the HUB program.

The HUB goal for this RFQ is 23.6%.

2.5.2 University has reviewed this RFQ in accordance with Title 34, *Texas Administrative Code*, Section 20.13 (a), and has determined that subcontracting opportunities are probable under this RFQ.

Accordingly, a HUB Subcontracting Plan (“**HSP**”) is required as part of Professional’s proposal. The HSP will be developed and administered in accordance with University’s Policy on Utilization of Historically Underutilized Businesses attached as **APPENDIX THREE** and incorporated for all purposes.

*Each Professional must complete and return the HSP in accordance with the terms of **APPENDIX THREE**. Proposals that do not include the HSP will be considered non-responsive to this RFQ in accordance with Section 2161.252, Government Code.*

Professional will not be permitted to change its HSP unless: (1) Professional provides University with revised versions of such documents that set forth all changes requested by Professional, (2) University approves such revised

documents in writing, and (3) all agreements or contractual arrangements resulting from this RFQ are amended in writing by University and Professional to conform to the modified HSP.

2.5.2.1. If Professional proposes to use subcontractors to perform such subcontracting opportunities, the HSP will include:

2.5.2.1.1 A letter of transmittal stating that Professional has read and understands the Policy on Utilization of Historically Underutilized Businesses; and

2.5.2.1.2 The HSP, as set forth on **pages 10 - 17 of Appendix Three**, related to Policy on Utilization of Historically Underutilized Businesses for Professional Services.

2.5.2.2 If Professional proposes to perform such subcontracting opportunities with its own employees and resources, the HSP will include:

2.5.2.2.1 A letter of transmittal stating that Professional has read and understands the Policy on Historically Underutilized Businesses; and

2.5.2.2.2 The Self Performance HUB Subcontracting Plan (HSP), as set forth on **page 14 of Appendix Three** related to Policy on Utilization of Historically Underutilized Businesses for Professional Services.

2.5.3 Professional must submit the three (3) originals of the HSP to University at the same time it submits its proposal to University (ref. **Section 3.2** of this RFQ.) The three (3) originals of the HSP must be submitted under separate cover and in a separate envelope (the "HSP Envelope"). Professional must ensure that the top outside surface of its HSP Envelope clearly shows and makes visible:

2.5.3.1 the RFQ No. (ref. **Section 1.3** of this RFQ) and the Submittal Deadline (ref. **Section 2.1** of this RFQ), both located in the lower left hand corner of the top surface of the envelope,

2.5.3.2 the name and the return address of Professional, and

2.5.3.3 the phrase "HUB Subcontracting Plan".

Any proposal submitted in response to this RFQ that is not accompanied by a separate HSP Envelope meeting the above requirements will be rejected by University and returned to Professional unopened as that proposal will be considered non-responsive due to material failure to comply with advertised specifications. Furthermore, University will open a Professional's HSP Envelope prior to opening the proposal submitted by Professional, in order to ensure that Professional has submitted the number of completed and signed originals of Professional's HUB Subcontracting Plan ("HSP") that are required by this RFQ. A Professional's failure to submit the number of completed and signed originals of the HSP that are required by this RFQ will result in University's rejection of the proposal submitted by that Professional as non-responsive due to material failure to comply with advertised specifications; such a proposal will be returned to Professional unopened. (Ref. **Section 1.5 of Appendix One** to this RFQ.) **Note:**

The requirement that Professional provide three originals of the HSP under this **Section 2.5.3** is separate from and does not affect Professional's obligation to provide University with the number of copies of its proposal as specified in **Section 3.1** of this RFQ.

2.6 Pre-Proposal Conference

University will hold a pre-proposal audio conference at **1 p.m., Central Prevailing Time on Wednesday, March 13, 2013**, 1-877-226-9790, attendee code 125679. The pre-proposal audio conference will allow all Professionals an opportunity to ask University's representatives relevant questions and clarify provisions of this RFQ.

SECTION 3**SUBMISSION OF PROPOSAL****3.1 Number of Copies**

Professional must submit a total of seven (7) complete and identical copies of its *entire* proposal. An *original* signature by an authorized officer of Professional must appear on the Execution of Offer (ref. **Section 2 of APPENDIX ONE**) of at least one (1) copy of the submitted proposal. The copy of Professional's proposal bearing an original signature should contain the mark "original" on the front cover of the proposal.

3.2 Submission

Proposals must be received by University on or before the Submittal Deadline (ref. **Section 2.1** of this RFQ) and should be delivered to:

Jenny Murphy
Director of Accounting & Purchasing Services
220 West 7th Street
Room 1.110
Austin, TX 78701

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of sixty (60) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

3.4 Terms and Conditions

3.4.1 Professional must comply with the requirements and specifications contained in this RFQ, including the Agreement (ref. **APPENDIX TWO**), the Notice to Professional (ref. **Section 2** of this RFQ), Proposal Requirements (ref. **APPENDIX ONE**) and the Specifications and Additional Questions (ref. **Section 5** of this RFQ). If there is a conflict among the provisions in this RFQ, the provision requiring Professional to supply the better quality or greater quantity of services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

- 3.4.1.1. Specifications and Additional Questions (ref. **Section 5** of this RFQ);
- 3.4.1.2. Agreement (ref. **APPENDIX TWO**);
- 3.4.1.3. Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4. Notice to Professionals (ref. **Section 2** of this RFQ).

3.5 Submittal Checklist

Professional is instructed to complete, sign, and return the following documents as a part of its proposal. If Professional fails to return each of the following items with its proposal, then University may reject the proposal:

- 3.5.1 Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**)
- 3.5.2 Signed and Completed Pricing and Delivery Schedule (ref. **Section 6** of this RFQ)
- 3.5.3 Responses to Professional's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**)
- 3.5.4 Signed and Completed Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**)
- 3.5.5 Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. **Section 5** of this RFQ)
- 3.5.6 Signed and completed originals of the HUB Subcontracting Plan (ref. **Section 2.5** of this RFQ and **APPENDIX THREE**).

SECTION 4**GENERAL TERMS AND CONDITIONS**

The terms and conditions contained in the attached Agreement (ref. **APPENDIX TWO**) or, in the sole discretion of University, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any agreement that results from this RFQ. If Professional takes exception to any terms or conditions set forth in the Agreement, Professional will submit a list of the exceptions as part of its proposal in accordance with **Section 5.3.1** of this RFQ. Professional's exceptions will be reviewed by University and may result in disqualification of Professional's proposal as non-responsive to this RFQ. If Professional's exceptions do not result in disqualification of Professional's proposal, then University may consider Professional's exceptions when University evaluates Professional's proposal.

SECTION 5**SPECIFICATIONS AND ADDITIONAL QUESTIONS****5.1 General**

The minimum requirements and the specifications for the Services, as well as certain requests for information to be provided by Professional as part of its proposal, are set forth below:

5.2 Each Proposal must include information that clearly indicates that Proposer meets each of the following minimum qualification requirements:

- 5.2.1 Proposer shall have at least five (5) years prior experience in intellectual property license compliance review
- 5.2.2 Proposer shall have worked with at least one (1) other major University or major corporation in an advisory, consulting or compliance review role in intellectual property or technology licensing matters
- 5.2.3 Proposer shall demonstrate its competence and experience providing intellectual property compliance review services.

5.3 Additional Questions Specific to this RFQ

Professional must submit the following information as part of Professional's proposal:

- 5.3.1 If Professional takes exception to any terms or conditions set forth in the Agreement (ref. **APPENDIX TWO**), Professional will submit a list of the exceptions.

5.4 Scope of Work

Successful Professional will provide the following services to University:

- 5.4.1 Evaluate the accuracy and completeness of licensing payments (and other applicable payments) reported by UT System intellectual property licensees;
- 5.4.2 Assess the compliance by licensees with selected terms and conditions of the license agreements; and
- 5.4.3 Document the findings and observations of 1 and 2 above.

5.5 Additional Scope of Work to be performed at the option of UT System OTC

At the written request of the UT System, Successful Professional will provide one or more of the following services to University:

- 5.5.1 Evaluate and/or create a royalty examination plan or process for UT System or for a UT System member institution;
- 5.5.2 Develop and draft provisions relating to royalty examination for use in UT System license agreement templates;

- 5.5.3 Review and provide counsel and advice relating to royalty examination issues, policies and guidelines;
- 5.5.4 Document all procedures, processes, terms and conditions of subsections 1, 2 or 3 above; and
- 5.5.5 Provide other services relating to royalty examination and other related areas that may be needed from time to time.

SECTION 6

PRICING AND DELIVERY SCHEDULE

Proposal of: _____
(Professional Company Name)

To: The University of Texas System

Ref.: Compliance Review Services related to Licensees of Intellectual Property Owned by
The Board of Regents of The University of Texas System

RFQ No.: OGC 20130327

Having carefully examined all the specifications and requirements of this RFQ and any attachments hereto, the undersigned proposes to furnish the Services upon the terms quoted below:

6.1 Pricing for Services Offered

6.2 Delivery Schedule of Events and Time Periods

6.3 University's Payment Terms

University's standard payment terms for services are "Net 30 days." Indicate below the prompt payment discount that Professional will provide to University:

Prompt Payment Discount: _____% _____ days/net 30 days.

Respectfully submitted,

Professional: _____

By: _____
(Authorized Signature for Professional)

Name: _____

Title: _____

Date: _____

**APPENDIX ONE
PROPOSAL REQUIREMENTS**

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SECTION 1

GENERAL INFORMATION**1.1 Purpose**

University is soliciting competitive sealed proposals from Professionals having suitable qualifications and experience providing services in accordance with the terms, conditions and requirements set forth in this RFQ. This RFQ provides sufficient information for interested parties to prepare and submit proposals for consideration by University.

By submitting a proposal, Professional certifies that it understands this RFQ and has full knowledge of the scope, nature, quality, and quantity of the services to be performed, the detailed requirements of the services to be provided, and the conditions under which such services are to be performed. Professional also certifies that it understands that all costs relating to preparing a response to this RFQ will be the sole responsibility of Professional.

PROFESSIONAL IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFQ CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

1.2 Inquiries and Interpretations

University may in its sole discretion respond in writing to written inquiries concerning this RFQ and mail its response as an Addendum to all parties recorded by University as having received a copy of this RFQ. Only University's responses that are made by formal written Addenda will be binding on University. Any verbal responses, written interpretations or clarifications other than Addenda to this RFQ will be without legal effect. All Addenda issued by University prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFQ for all purposes.

Professionals are required to acknowledge receipt of each Addendum as specified in this Section. Professional must acknowledge all Addenda by completing, signing and returning the Addenda Checklist (ref. **Section 4 of APPENDIX ONE**). The Addenda Checklist must be received by University prior to the Submittal Deadline and should accompany Professional's proposal.

Any interested party that receives this RFQ by means other than directly from University is responsible for notifying University that it has received an RFQ package, and should provide its name, address, telephone number and FAX number to University, so that if University issues Addenda to this RFQ or provides written answers to questions, that information can be provided to such party.

1.3 Public Information

University considers all information, documentation and other materials requested to be submitted in response to this RFQ to be of a non-confidential and non-proprietary nature and therefore subject to public disclosure under the *Texas Public Information Act (Government Code, Chapter 552.001, et seq.)* after the award of an Agreement.

Professional is hereby notified that University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

1.4 Type of Agreement

Professional who is selected by University in accordance with the requirements and specifications set forth in this RFQ ("**successful Professional**") will be required to enter into a contract with University in a form substantially similar to the Agreement between University and Contractor (the "**Agreement**") attached to this RFQ as **APPENDIX TWO** and incorporated for all purposes.

1.5 Proposal Evaluation Process

University will select the successful Professional by using the competitive sealed proposal process described in this Section. University will open the HSP Envelope submitted by a Professional prior to opening Professional's proposal in order to ensure that Professional has submitted the number of completed and signed originals of Professional's HUB Subcontracting Plan ("HSP") that are required by this RFQ (ref. **Section 2.5.3** of the RFQ.) All proposals submitted by the Submittal Deadline accompanied by the number of completed and signed originals of the HSP that are required by this RFQ will be opened publicly to identify the name of each Professional submitting a proposal. Any proposals that are not submitted by the Submittal Date or that are not accompanied by the number of completed and signed originals of the HSP that are required by this RFQ will be rejected by University as non-responsive due to material failure to comply with advertised specifications. After the opening of the proposals and upon completion of the initial review and evaluation of the proposals, University may invite one or more selected Professionals to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of the successful Professional.

University may make the selection of the successful Professional on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of the successful Professional on the basis of negotiation with any of Professionals. In conducting such negotiations, University will avoid disclosing the contents of competing proposals.

University is not obligated to select Professional offering the most attractive economic terms.

University reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFQ with one or more Professionals, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of University. Professional is hereby notified that University will maintain in its files concerning this RFQ a written record of the basis upon which a selection, if any, is made by University.

1.6 Professional's Acceptance of Evaluation Methodology

By submitting a proposal, Professional acknowledges (1) Professional's acceptance of [a] the Proposal Evaluation Process (ref. **Section 1.5 of APPENDIX ONE**), [b] the Criteria for Selection (ref. **2.3** of this RFQ), [c] the Specifications and Additional Questions (ref. **Section 5** of this RFQ), [d] the terms and conditions of the Agreement (ref. **APPENDIX TWO**), and [e] all other requirements and specifications set forth in this RFQ; and (2) Professional's recognition that some subjective judgments must be made by University during this RFQ process.

1.7 Solicitation for Proposal and Proposal Preparation Costs

Professional understands and agrees that (1) this RFQ is a solicitation for proposals and University has made no representation written or oral that one or more agreements with University will be awarded under this RFQ; (2) University issues this RFQ predicated on University's anticipated requirements for the Services, and University has made no representation, written or oral, that any particular scope of services will actually be required by University; and (3) Professional will bear, as its sole risk and responsibility, any cost that arises from Professional's preparation of a proposal in response to this RFQ.

1.8 Proposal Requirements and General Instructions

1.8.1 Professional should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.

1.8.2 Proposals and any other information submitted by Professional in response to this RFQ will become the property of University.

1.8.3 University will not provide compensation to Professional for any expenses incurred by Professional for proposal preparation or for demonstrations or oral presentations that may be made by Professional. Professional submits its proposal at its own risk and expense.

1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFQ in any way; or (iii) contain irregularities of any kind, are subject to disqualification by University, at University's sole discretion.

1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Professional's ability to meet the requirements and specifications of this RFQ. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFQ.

1.8.6 University makes no warranty or guarantee that an award will be made as a result of this RFQ. University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFQ or the Agreement when deemed to be in University's best interest. University reserves the right to seek clarification from any Professional concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to University, at University's sole discretion. Representations made by Professional within its proposal will be binding on Professional.

1.8.7 Any proposal that fails to comply with the requirements contained in this RFQ may be rejected by University, in University's sole discretion.

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

Proposals must include responses to the questions and requests for additional information in Specifications and Additional Questions (ref. **Section 5** of this RFQ). Professional should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Professional should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Professional should explain the reason when responding N/A or N/R.

1.9.2 Execution of Offer

Professional must complete, sign and return the attached Execution of Offer (ref. **Section 2 of APPENDIX ONE**) as part of its proposal. The Execution of Offer must be signed by a representative of Professional duly authorized to bind Professional to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by University, in its sole discretion.

1.9.3 Pricing and Delivery Schedule

Professional must complete and return the Pricing and Delivery Schedule (ref. **Section 6** of this RFQ), as part of its proposal. In the Pricing and Delivery Schedule, Professional should describe in detail (a) the total fees for the entire scope of the Services; and (b) the method by which the fees are calculated. The fees must inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

University will not recognize or accept any charges or fees to perform the Services that are not specifically stated in the Pricing and Delivery Schedule.

In the Pricing and Delivery Schedule, Professional should describe each significant phase in the process of providing the Services to University, and the time period within which Professional proposes to be able to complete each such phase.

1.9.4 Professional's General Questionnaire

Proposals must include responses to the questions in Professional's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**). Professional should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Professional should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Professional should explain the reason when responding N/A or N/R.

1.9.5 Addenda Checklist

Professional should acknowledge all Addenda to this RFQ (if any) by completing, signing and returning the Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**) as part of its proposal. Any proposal received without a completed and signed Addenda Checklist may be rejected by University, in its sole discretion.

1.9.6 Submission

Professional should submit all proposal materials enclosed in a sealed envelope, box, or container. The RFQ No. (ref. **Section 1.3** of this RFQ) and the Submittal Deadline (ref. **Section 2.1** of this RFQ) should be clearly shown in the lower left-hand corner on the top surface of the container. In addition, the name and the return address of Professional should be clearly visible.

Professional must also submit the number of originals of the HUB Subcontracting Plan ("HSP") as required by this RFQ (ref. **Section 2.5** of the RFQ.)

Upon Professional's request and at Professional's expense, University will return to a Professional its proposal received after the Submittal Deadline if the proposal is properly identified. University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the number of completed and signed originals of the HSP that are required by this RFQ.

University will not accept proposals submitted by telephone, proposals submitted by Facsimile ("FAX") transmission, or proposals submitted by electronic transmission (i.e., e-mail) in response to this RFQ.

Except as otherwise provided in this RFQ, no proposal may be changed, amended, or modified after it has been submitted to University. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without University's consent, which will be based on Professional's submittal of a written explanation and documentation evidencing a reason acceptable to University, in University's sole discretion.

By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) and submitting a proposal, Professional certifies that any terms, conditions, or documents attached to or referenced in its proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFQ and (b) do not place any requirements on University that are not set forth in this RFQ or in the Appendices to this RFQ. Professional further certifies that the submission of a proposal is Professional's good faith intent to enter into the Agreement with University as specified herein and that such intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Professional's proposal.

1.9.7 Page Size, Binders, and Dividers

Proposals must be typed on letter-size (8-1/2" x 11") paper, and must be submitted in a binder. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections within a proposal should be divided by tabs for ease of reference.

1.9.8 Table of Contents

Proposals must include a Table of Contents with page number references. The Table of Contents must contain sufficient detail and be organized according to the same format as presented in this RFQ, to allow easy reference to the sections of the proposal as well as to any separate attachments (which should be identified in the main Table of Contents). If a Professional includes supplemental information or non-required attachments

with its proposal, this material should be clearly identified in the Table of Contents and organized as a separate section of the proposal.

1.9.9 Pagination

All pages of the proposal should be numbered sequentially in Arabic numerals (1, 2, 3, etc.). Attachments should be numbered or referenced separately.

SECTION 2

EXECUTION OF OFFER

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

- 2.1 By signature hereon, Professional represents and warrants the following:
- 2.1.1 Professional acknowledges and agrees that (1) this RFQ is a solicitation for a proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Professional in response to this RFQ will not create a contract between University and Professional; (3) University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFQ; and (4) Professional will bear, as its sole risk and responsibility, any cost arising from Professional's preparation of a response to this RFQ.
 - 2.1.2 Professional is a reputable company that is lawfully and regularly engaged in providing the Services.
 - 2.1.3 Professional has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.
 - 2.1.4 Professional is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
 - 2.1.5 Professional understands (i) the requirements and specifications set forth in this RFQ and (ii) the terms and conditions set forth in the Agreement under which Professional will be required to operate.
 - 2.1.6 If selected by University, Professional will not delegate any of its duties or responsibilities under this RFQ or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
 - 2.1.7 If selected by University, Professional will maintain any insurance coverage as required by the Agreement during the term thereof.
 - 2.1.8 All statements, information and representations prepared and submitted in response to this RFQ are current, complete, true and accurate. Professional acknowledges that University will rely on such statements, information and representations in selecting the successful Professional. If selected by University, Professional will notify University immediately of any material change in any matters with regard to which Professional has made a statement or representation or provided information.
 - 2.1.9 PROFESSIONAL WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, THE UNIVERSITY OF TEXAS SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROFESSIONAL OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROFESSIONAL IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFQ.
 - 2.1.10 Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Professional under any contract or agreement resulting from this RFQ may be applied directly to any debt or delinquency that Professional 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.
- 2.2 By signature hereon, Professional offers and agrees to furnish the Services to University and comply with all terms, conditions, requirements and specifications set forth in this RFQ.
- 2.3 By signature hereon, Professional affirms that it has not given or offered to give, nor does Professional intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its submitted proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting contracts, and Professional may be removed from all proposal lists at University.
- 2.4 By signature hereon, Professional certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Tax Code*, or that Professional is exempt from the payment of those taxes, or that Professional is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting contract or agreement.
- 2.5 By signature hereon, Professional hereby certifies that neither Professional nor any firm, corporation, partnership or institution represented by Professional, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et seq., *Business and Commerce Code*, or the Federal antitrust

laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

2.6 By signature hereon, Professional certifies that the individual signing this document and the documents made a part of this RFQ, is authorized to sign such documents on behalf of Professional and to bind Professional under any agreements and other contractual arrangements that may result from the submission of Professional's proposal.

2.7 By signature hereon, Professional certifies as follows:

"Under Section 231.006, *Family Code*, relating to child support, Professional certifies that the individual or business entity named in Professional's proposal is not ineligible to receive the specified contract award and acknowledges that any agreements or other contractual arrangements resulting from this RFQ may be terminated if this certification is inaccurate."

2.8 By signature hereon, Professional certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Professional that is a sole proprietorship, the officers or directors of any Professional that is a corporation, the partners of any Professional that is a partnership, the joint venturers of any Professional that is a joint venture or the members or managers of any Professional that is a limited liability company, on one hand, and an employee of any component of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to University in writing; (ii) Professional has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline; (iii) no person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Professional's proposal or any contract resulting from this RFP (ref. Section 669.003, *Government Code*). All disclosures by Professional in connection with this certification will be subject to administrative review and approval before University enters into a contract or agreement with Professional.

2.9 By signature hereon, Professional certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

2.10 By signature hereon, Professional represents and warrants that all products and services offered to University in response to this RFQ meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the *Texas Hazard Communication Act*, Chapter 502, *Health and Safety Code*, and all related regulations in effect or proposed as of the date of this RFQ.

2.11 Professional will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this Execution of Offer. All such disclosures will be subject to administrative review and approval prior to the time University makes an award or enters into any contract or agreement with Professional.

2.12 Professional should complete the following information:

If Professional is a Corporation, then State of Incorporation: _____

If Professional is a Corporation then Professional's Corporate Charter Number: _____

RFQ No.: OGC 20130327

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Submitted and Certified By:

(Professional Organization's Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(Date Signed)

(Professional's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

SECTION 3

PROFESSIONAL'S GENERAL QUESTIONNAIRE

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Proposals must include responses to the questions contained in this Professional's General Questionnaire. Professional should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Professional should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Professional will explain the reason when responding N/A or N/R.

3.1 Professional Profile

3.1.1 Legal name of Professional company:

Address of principal place of business:

Address of office that would be providing service under the Agreement:

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

NOTE: If Professional is a subsidiary, University prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.

3.1.2 State whether Professional will provide a copy of its financial statements for the past two (2) years, if requested by University.

3.1.3 Professional will provide a financial rating of Professional entity and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Professional.

3.1.4 Is Professional currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, Professional will explain the expected impact, both in organizational and directional terms.

3.1.5 Professional will provide any details of all past or pending litigation or claims filed against Professional that would affect its performance under an Agreement with University (if any).

3.1.6 Is Professional currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, Professional will specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.

3.1.7 Professional will provide a customer reference list of no less than three (3) organizations with which Professional currently has contracts and/or to which Professional has previously provided services (within the past five (5) years) of a type and scope similar to those required by University's RFQ. Professional will include in its customer reference list the customer's company name, contact person, telephone number, project description, length of business relationship, and background of services provided by Professional.

- 3.1.8 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Professional and any employee of University? If yes, Professional will explain.
- 3.1.9 Professional will provide the name and Social Security Number for each person having at least 25% ownership interest in Professional. This disclosure is mandatory pursuant to Section 231.006, *Family Code*, and will be used for the purpose of determining whether an owner of Professional with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the *Texas Public Information Act*, Chapter 552, *Government Code*, and other applicable law.

3.2 Approach to Project Services

- 3.2.1 Professional will provide a statement of Professional's service approach and will describe any unique benefits to University from doing business with Professional. Professional will briefly describe its approach for each of the required services identified in **Section 5.4** Scope of Work of this RFQ.
- 3.2.2 Professional will provide an estimate of the earliest starting date for services following execution of an Agreement.
- 3.2.3 Professional will submit a work plan with key dates and milestones. The work plan should include:
- 3.2.3.1 Identification of tasks to be performed;
 - 3.2.3.2 Time frames to perform the identified tasks;
 - 3.2.3.3 Project management methodology;
 - 3.2.3.4 Implementation strategy; and
 - 3.2.3.5 The expected time frame in which the services would be implemented.
- 3.2.4 Professional will describe the types of reports or other written documents Professional will provide (if any) and the frequency of reporting, if more frequent than required in the RFQ. Professional will include samples of reports and documents if appropriate.

3.3 General Requirements

- 3.3.1 Professional will provide summary resumes for its proposed key personnel who will be providing services under the Agreement with University, including their specific experiences with similar service projects, and number of years of employment with Professional.
- 3.3.2 Professional will describe any difficulties it anticipates in performing its duties under the Agreement with University and how Professional plans to manage these difficulties. Professional will describe the assistance it will require from University.

3.4 Service Support

Professional will describe its service support philosophy, how is it implemented, and how Professional measures its success in maintaining this philosophy.

3.5 Quality Assurance

Professional will describe its quality assurance program, its quality requirements, and how they are measured.

3.6 Miscellaneous

- 3.6.1 Professional will provide a list of any additional services or benefits not otherwise identified in this RFQ that Professional would propose to provide to University. Additional services or benefits must be directly related to the services solicited under this RFQ.
- 3.6.2 Professional will provide details describing any unique or special services or benefits offered or advantages to be gained by University from doing business with Professional. Additional services or benefits must be directly related to the services solicited under this RFQ.
- 3.6.3 Does Professional have a contingency plan or disaster recovery plan in the event of a disaster? If so, then Professional will provide a copy of the plan.

SECTION 4

ADDENDA CHECKLIST

Proposal of: _____
(Professional Company Name)

To: The University of Texas System

Ref.: Compliance Review Services related to the Licensees of Intellectual Property owned by The University of Texas System Board of Regents.

RFQ No.: OGC 20130327

Ladies and Gentlemen:

The undersigned Professional hereby acknowledges receipt of the following Addenda to the captioned RFQ (initial if applicable).

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____

Respectfully submitted,

Professional: _____

By: _____
(Authorized Signature for Professional)

Name: _____

Title: _____

Date: _____

APPENDIX TWO

AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

This Agreement between University and Contractor ("**Agreement**") is made and entered into effective as of _____, 20____ (the "**Effective Date**"), by and between **The University of Texas** _____, an agency and institution of higher education established under the laws of the State of Texas ("**University**"), and _____, a _____ ("**Contractor**") University and Contractor hereby agree as follows:

1. **Scope of Work.**

- 1.1 Contractor will perform the scope of the work ("**Work**") set forth in **Exhibit A**, Scope of Work, attached and incorporated for all purposes, to the satisfaction of University and in accordance with the schedule ("**Schedule**") for the Work set forth in **Exhibit B**, Schedule, attached and incorporated for all purposes. Time is of the essence in connection with this Agreement. University will have no obligation to accept late performance or waive timely performance by Contractor.
- 1.2 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local, laws, statutes, regulations and ordinances ("**Applicable Laws**"), for the performance of the Work.

2. **Time for Commencement and Completion.**

The term of this Agreement will begin on the Effective Date and expire on _____, 20____. University will have the option to renew this Agreement for _____ (____) additional _____ (____) year terms.

3. **Contractor's Obligations.**

- 3.1 Contractor will perform the Work in compliance with all Applicable Laws Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 3.2 Contractor represents, warrants and agrees that (a) it will use its best efforts to perform the Work in a good and workmanlike manner and in accordance with the highest standards of Contractor's profession or business, and (b) all of the Work to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances.

- 3.3 Contractor will call to University's attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 3.4 Contractor warrants and agrees that the Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will at no time be in any way diminished by reason of any approval by University nor will Contractor be released from any liability by reason of any approval by University, it being agreed that University at all times is relying upon Contractor's skill and knowledge in performing the Work.
- 3.5 Contractor will, at its own cost, correct all material defects in the Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in the Work within a reasonable time, then University may correct the defective Work at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that University may have at law or in equity.
- 3.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of the Work to be duly registered and/or licensed under all Applicable Laws. Contractor will assign to the Project a designated representative who will be responsible for the administration and coordination of the Work. Contractor will furnish efficient business administration and coordination and perform the Work in an expeditious and economical manner consistent with the interests of University.
- 3.7 Contractor represents that if (i) it is a corporation, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 3.8 Contractor represents and warrants that neither the execution and delivery of this Agreement by Contractor nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision [i] if a corporation, of Contractor's articles of incorporation or by-laws, [ii] if a limited liability company, of its articles of organization or regulations, or [iii] if a partnership, of any partnership

agreement by which Contractor is bound; (b) result in the violation of any provision of any agreement by which Contractor is bound; or (c) to the best of Contractor's knowledge and belief, conflict with any order or decree of any court or other body or authority having jurisdiction.

- 3.9 Contractor represents and warrants that all of Contractor's Personnel contributing to the Work Material (ref. **Section 7**) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of University) of the Work Material and each element thereof produced by the Personnel while performing services pursuant to this Agreement and (ii) make all assignments necessary to effectuate such ownership. "**Personnel**" means any and all persons associated with Contractor who provide any work or work product pursuant to this Agreement, including officers, managers, supervisors, full-time employees, part-time employees, and independent contractors.
- 3.10 Contractor represents and warrants that: (i) the Work will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor for the benefit of University; (ii) University will receive free, good and clear title to all Work Material developed under this Agreement; (iii) the Work Material and the intellectual property rights protecting the Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges or other restrictions; (iv) the Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of the Work Material will not violate the rights of any third parties in the Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.

3.11 Premises Rules.

If this Agreement requires Contractor's presence on University's premises or in University's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable University rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

4. The Contract Amount.

- 4.1 University will pay Contractor for the performance of the Work as more particularly set forth in **Exhibit C**, Payment for Services, attached and incorporated for all purposes.
- 4.2 The Contract Amount includes all applicable federal, state or local sales or use taxes payable as a result of the execution or performance of this Agreement.

- 4.3 University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Work in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* (“**TAC**”) Section 3.322.

5. Payment Terms.

- 5.1 At least ten (10) days before the end of each calendar month during the term of this Agreement, Contractor will submit to University an invoice covering the services performed for University to that date, in compliance with **Exhibit C**, Payment for Services. Each invoice will be accompanied by documentation that University may reasonably request to support the invoice amount. University will, within twenty-one (21) days from the date it receives an invoice and supporting documentation, approve or disapprove the amount reflected in the invoice. If University approves the amount or any portion of the amount, University will promptly pay (each a “**Progress Payment**”) to Contractor the amount approved so long as Contractor is not in default under this Agreement. If University disapproves any invoice amount, University will give Contractor specific reasons for its disapproval in writing.
- 5.2 Within ten (10) days after final completion of the Work and acceptance of the Work by University or as soon thereafter as possible, Contractor will submit a final invoice (“**Final Invoice**”) setting forth all amounts due and remaining unpaid to Contractor. Upon approval of the Final Invoice by University, University will pay (“**Final Payment**”) to Contractor the amount due under the Final Invoice.
- 5.3 Notwithstanding any provision of this Agreement to the contrary, University will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if Contractor is in default under this Agreement.
- 5.4 The cumulative amount of all Progress Payments and the Final Payment (defined below) will not exceed the Contract Amount as more particularly set forth in **Exhibit C**, Payment for Services.
- 5.5 No payment made by University will (a) be construed to be final acceptance or approval of that part of the Work to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement.
- 5.6 The acceptance of Final Payment by Contractor will constitute a waiver of all claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of the Final Invoice for payment.
- 5.7 University will have the right to verify the details set forth in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action.
- 5.8 Section 51.012, *Texas Education Code*, authorizes University to make any payment through electronic funds transfer methods. Contractor agrees to receive

payments from University through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, University will confirm Contractor's banking information. Any changes to Contractor's banking information must be communicated to University in writing at least thirty (30) days in advance of the effective date of the change in accordance with **Section 12.14**.

- 5.9 Notwithstanding any other provision of this Agreement, University is entitled to a **"Prompt Payment Discount"** of [REDACTED]% off of each payment that University submits within [REDACTED] days after University's receipt of Contractor's invoice for that payment.

6. **Ownership and Use of Work Material.**

- 6.1 All drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with the Work (collectively, **"Work Material"**), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.
- 6.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to the Work Material.
- 6.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use the Work Material for the completion of the Work or otherwise. University may, at all times, retain the originals of the Work Material. The Work Material will not be used by any person other than University on other projects unless expressly authorized by University in writing.
- 6.4 The Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.
- 6.5 All title and interest in the Work Material will vest in University and will be deemed to be a work made for hire and made in the course of the Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University or Work Material may not be considered works made for hire, Contractor hereby irrevocably assigns, conveys and transfers to University and its successors, licensees and assigns, all rights, title and interest worldwide in and to the Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in the Work Material which cannot be assigned,

Contractor agrees to waive enforcement worldwide of the rights against University, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University with the right to sublicense. These rights are assignable by University.

7. Default and Termination.

- 7.1 In the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement (“**default**”), the other party may terminate this Agreement upon fifteen (15) days’ written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the fifteen-day period.
- 7.2 University may, without cause, terminate this Agreement at any time upon giving seven (7) days’ advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for the Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.
- 7.3 Termination under **Sections 8.1** or **8.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 7.4 If Contractor fails to cure any default within fifteen (15) days after receiving written notice of the default, University will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement, any and all reasonable expenses incurred in connection with University’s curative actions.

8. Indemnification

- 8.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND THE UNIVERSITY OF TEXAS SYSTEM, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY “**INDEMNITEES**”) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS’ FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY “**CLAIMS**”) BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY,

OR RESULTING FROM CONTRACTOR'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

8.2 IN ADDITION, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

9. Relationship of the Parties.

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 University. Contractor will not bind nor attempt to bind University 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 workers' compensation insurance.

10. Insurance.

10.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance in the form, with companies admitted to do business in the State of Texas and having an A.M. Best Rating of A-:VII or better, and in amounts (unless otherwise specified), as University may require:

10.1.1 Workers Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation and other rights in favor of University;

10.1.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 100,000
Medical Expenses (any one person)	\$ 10,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

Policy will include independent contractor’s liability, covering, but not limited to, the liability assumed under the indemnification provision of this contract, fully insuring Contractor’s (or Subcontractor’s) liability for bodily injury (including death) and property damage.

10.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage;

10.1.4 Professional Liability Insurance with limits of not less than \$1,000,000 per claim.

10.1.5 Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000, and (i) providing coverage in excess of the coverages of, and (ii) “following form” subject to the same provisions as, the underlying policies required in Section 11.1.1 Employers Liability Insurance, Section 11.1.2 Commercial General Liability Insurance, and Section 11.1.4 Commercial Auto Liability Insurance.

10.2 Contractor will deliver to University:

10.2.1 Evidence satisfactory to University in its sole discretion, evidencing the existence of all insurance after the execution and delivery of this Agreement and prior to the performance or continued performance of any services to be performed by Contractor under this Agreement.

Additional evidence, satisfactory to University in its sole discretion, of the continued existence of all insurance not less than thirty (30) days prior to the expiration of any insurance. Insurance policies, with the exception of Workers’ Compensation and Employer’s Liability, will be endorsed and name University as an Additional Insured. All policies will be endorsed to provide a waiver of subrogation in favor of University. All policies with the exception of Workers’ Compensation and Employer’s Liability will be

endorsed to provide primary and non-contributory coverage. No policy will be canceled until after thirty (30) days' unconditional written notice to University.

Contractor will be responsible for providing to University immediate notice of its receipt of a notice of cancellation, termination, material change, or non-renewal relating to any insurance policy required herein. This requirement may be satisfied by providing a copy of the notice received by the Contractor to the University within two business days or by endorsement of the policy to require notice to the University to be provided by the insurer.

10.3 The insurance policies required in this Agreement will be kept in force for the periods specified below:

10.3.1 Commercial General Liability Insurance Business Automobile Liability Insurance; Professional Liability; and Umbrella/Excess Liability Insurance will be kept in force until receipt of Final Payment by University to Contractor; and

10.3.2 Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until the Work has been fully performed and accepted by University in writing.

11. Miscellaneous.

11.1 **Assignment and Subcontracting.** Except as specifically provided in **Exhibit E**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Applicable Laws, including Chapter 2161, *Texas Government Code*, and 34 TAC Chapter 20, §§20.101 – 20.108. The benefits and burdens of this Agreement are assignable by University.

11.2 **Texas Family Code Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

11.3 **Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code ("**Chapter 171**"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, 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.

- 11.4 **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 the debt or delinquency is paid in full.
- 11.5 **Loss of Funding.** University performance of its duties and obligations under this 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 The University of Texas System (the “**Board**”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
- 11.6 **Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both University and Contractor.
- 11.7 **Force Majeure.** Neither party hereto 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 acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (“**force majeure occurrence**”).
- 11.8 **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.
- 11.9 **Governing Law.** Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
- 11.10 **Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

11.11 **Confidentiality and Safeguarding of University Records; Press Releases; Public Information. Confidentiality and Safeguarding of University Records; Press Releases; Public Information.** Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, “**University Records**”). However, it is expressly agreed that University will not provide to Contractor, and Contractor will never seek to access, any University Records that contain personally identifiable information regarding any individual that is not available to any requestor under the *Texas Public Information Act*, Chapter 552, Texas Government Code, including “directory information” of any student who has opted to prohibit the release of their “directory information” as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“**FERPA**”) and its implementing regulations. Contractor represents, warrants, and agrees that it will: (1) hold all University Records that it does access pursuant to this Agreement in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws, and (4) comply with the University’s rules, policies, and procedures regarding access to and use of University’s computer systems. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

11.11.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor’s discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.

11.11.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor’s intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.

11.11.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or

agent to comply with the same restrictions and obligations as are imposed on Contractor by this **Section 12.11**.

- 11.11.4 **Press Releases.** Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.
- 11.11.5 **Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act*, Chapter 552, *Texas Government Code*.
- 11.11.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.
- 11.11.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 11.12 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- 11.13 **Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments will be available to University or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Project, unless University otherwise instructs Contractor in writing.

11.14 **Notices.** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to University: _____

Attention: _____

with copy to: _____

Attention: _____

If to Contractor: _____

Attention: _____

or other person or address as may be given in writing by either party to the other in accordance with this Section.

Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to University pursuant to Section 2251.054, *Texas Government Code*, then Contractor will send that notice to University as follows:

Fax: _____
Email: _____
Attention: _____

with copy to: _____

Fax: _____
Email: _____
Attention: _____

- 1.
- 2. or other person or address as may be given in writing by University to Contractor in accordance with this Section.

11.15 **Severability.** In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

11.16 **State Auditor’s Office.** Contractor understands that acceptance of funds under this 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), 73.115(c) and 74.008(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with subcontractors.

11.17 **Limitation of Liability.** EXCEPT FOR UNIVERSITY’S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UNIVERSITY WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UNIVERSITY, OR THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE CLAIMING UNDER UNIVERSITY HAS OR WILL HAVE ANY PERSONAL LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

11.18 **Survival of Provisions.** No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination, including **Sections 6.7, 9, 12.5, 12.9, 12.10, 12.11, 12.13, 12.16, 12.17, 12.19 and 12.21.**

11.19 **Breach of Contract Claims.**

11.19.1 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 Laws, the dispute resolution process provided for in Chapter 2260 will be used,

as further described herein, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

- 11.19.1.1 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 will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by subchapter B of Chapter 2260, to University in accordance with the notice provisions in this Agreement. Contractor's notice will 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 contract provision that University 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 University, or another officer of University as may be designated from time to time by University by written notice to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.
- 11.19.1.2 If the parties are unable to resolve their disputes under **Section 12.19.1.1**, 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 University.
- 11.19.1.3 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, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.

- 11.19.2 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, thereafter enacted or subsequently amended.
- 11.19.3 University and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.
- 11.20 **Undocumented Workers.** The *Immigration and Nationality Act* (8 *United States Code* 1324a) ("**Immigration Act**") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("**I-9 Form**") as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, University may terminate this Agreement in accordance with **Section 8**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.
- 11.21 **Limitations.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "**LIMITATIONS**"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

- 11.22 **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at <http://www.utsystem.edu/policy/policies/int160.html>, University's Standards of Conduct Guide available at, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, provisions described by University's Standards of Conduct Guide, 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.
- 11.23 **Historically Underutilized Business Subcontracting Plan.** Contractor agrees to use good faith efforts to subcontract the Work in accordance with the Historically Underutilized Business Subcontracting Plan ("HSP") (ref. **Exhibit E**). Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, "TPSS"). Submission of compliance reports will be required as a condition for payment under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108. University may also revoke this Agreement for breach and make a claim against Contractor.
- 11.23.1 **Changes to the HSP.** If at any time during the term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 12.6** to replace the HSP with the revised subcontracting plan.
- 11.23.2 **Expansion of the Work.** If University expands the scope of the Work through a change order or any other amendment, University will determine if the additional Work contains probable subcontracting opportunities *not* identified in the initial solicitation for the Work. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34

TAC Section 20.14 before (a) this Agreement may be amended to include the additional Work; or (b) Contractor may perform the additional Work. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of this Agreement under **Section 8** and will be subject to any remedial actions provided by Applicable Laws, including Chapter 2161, *Texas Government Code* and 34 TAC Section 20.14. University may report nonperformance under this Agreement to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108.

- 11.24 **Responsibility for Individuals Performing Work; Criminal Background Checks.** Each individual who is assigned to perform the Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Work under this Agreement. Prior to commencing the Work, Contractor will (1) provide University with a list ("**List**") of all individuals who may be assigned to perform the Work on University's premises and (2) have an appropriate criminal background screening performed on all the individuals on the List. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform the Work on University's premises.

Prior to commencing performance of the Work under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an updated certification letter each time there is a change in the individuals on the List

- 11.25 **Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance.** Contractor certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. A breach of this certification is a violation of the Equal Opportunity clause. The term "**segregated facilities**" means any waiting rooms, work areas, rest rooms and wash rooms, entertainment areas, and transportation or housing facilities provided for

employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Contractor further agrees that, except where it has contracts prior to the award with subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Contractor will retain the certifications for each one of its subcontractors in Contractor's files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Contractor understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

- 11.26 **Debarment.** Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States ("U.S.") federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.epls.gov/>) issued by the U.S. General Services Administration. "Principals" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to University if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when University executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to University, University may terminate this Agreement for default by Contractor.
- 11.27 **Office of Inspector General Certification.** Contractor acknowledges that University is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Contractor to work on site at University's premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("OIG") to work on site at

University's premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at University's premises or facilities. Contractor acknowledges that University will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at University's premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: http://www.oig.hhs.gov/fraud/exclusions/exclusions_list.asp

- 11.28 **Access to Documents.** To the extent applicable to this Agreement, in accordance with Section 1861(v)(1)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.
- 11.29 **Affirmative Action.** A written copy of Contractor's Civil Rights "**Affirmative Action Compliance Program**" is attached as **Exhibit _____** to this Agreement and incorporated for all purposes, or if Contractor is not required to have such a written program, the reason Contractor is not subject to such requirement is attached as **Exhibit _____** to this Agreement and incorporated for all purposes.
- 11.30 **OSHA Compliance.** To the extent applicable to the services to be performed under this Agreement, Contractor represents and warrants, that all articles and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-598) and its regulations in effect or proposed as of the date of this Agreement.

University and Contractor have executed and delivered this Agreement to be effective as of the Effective Date.

UNIVERSITY:

CONTRACTOR:

THE UNIVERSITY OF TEXAS SYSTEM

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attest: _____
Corporate Secretary

Attach:

- EXHIBIT A – Scope of Work**
- EXHIBIT B – Schedule**
- EXHIBIT C – Payment for Services**
- EXHIBIT D – HUB Subcontracting Plan**

EXHIBIT A

SCOPE OF WORK

EXHIBIT B
SCHEDULE

EXHIBIT C

PAYMENT FOR SERVICES

SERVICE FEES:

Notwithstanding the foregoing, the cumulative amount of Service Fees remitted by University to Contractor will not exceed \$_____ (“**Fee Cap**”) without the prior written approval of University. In addition, total fees for each Phase of the Work will not exceed the following specified amounts without the prior written approval of University:

If University submits, in advance, a written request for additional services not contemplated or reasonably inferred by this Agreement, Contractor will be paid for actual hours incurred by Contractor’s personnel directly and solely in support of the additional services at the Rates set forth above.

EXPENSES AND DISBURSEMENTS: Contractor will be reimbursed without mark-up for reasonable expenses (including meals, rental car or mileage, coach class airfare, and lodging) validly incurred directly and solely in support of the Project and approved by University in advance. Provided, however, Contractor agrees and acknowledges that Contractor will be subject to the then-current Travel Reimbursement Rates promulgated by the Comptroller of Public Accounts for the State of Texas at <https://fm.x.cpa.state.tx.us/fm/travel/travelrates.php> with regard to meals, mileage, rental car, airfare, lodging and all other expenses related to travel. Except as provided in this Agreement, Contractor agrees and acknowledges that Contractor will not be reimbursed by University for expenses that are prohibited or that exceed the allowable amounts set forth in the then-current Travel Reimbursement Rates. As a condition precedent to receiving reimbursement for expenses and disbursements, Contractor will submit to University receipts, invoices, and other documentation as requested University.

Notwithstanding the foregoing, reimbursement for expenses and disbursements will not exceed a maximum of \$_____ (“**Expense Cap**”) without the prior written approval of University.

The Fee Cap and the Expense Cap are sometimes collectively referred to as the “**Contract Amount.**”

EXHIBIT D

HUB SUBCONTRACTING PLAN

**Pre-Proposal Conference Call
Notes/General information
Wednesday, March 13, 2013, 1pm Central Prevailing Time**

RFQ: OGC 20130327

Theresa Shick opened the conference call and turned it over to Kyle Hayes.

Mr. Hayes discussed the administrative aspects of the RFQ

- Submittal deadline is Wednesday, March 27th at 2pm Central Prevailing time
 - Submittals need to be directed to Jenny Murphy, Director of Accounting and Purchasing
- Submit seven (7) copies, an *original* signature on one (1) marked 'original' on front of proposal
- Send all questions via email to Theresa Shick at tshick@utsystem.edu
- Deadline for questions is Tuesday, March 19th
- All questions and answers will be added to the "Questions and Answers" document from Pre-Proposal conference call and posted to the Marketplace.

Stephanie Park discusses the HUB Subcontracting Plan

- Check Sheet "Professional Services Overview sheet effective 091411.pdf" will be posted to the Marketplace
- If you choose the self-performance option, write the self-performance justification in the space provided in Section 3. Do not reference Sections of your proposal to answer this question.
- Place HUB Subcontracting Plan in a separate envelope which will be reviewed prior to acceptance of proposal
- Ms. Park's contact information is included on the Check Sheet
 - You can contact Ms. Park via email or phone with HUB Subcontracting Plan questions only.
 - Ms. Park offered to review your Hub Subcontracting Plan prior to the proposal deadline to ensure that the proposal is not disqualified based on an inadequate HUB Subcontracting Plan.

Questions:

1. What is the requirement for the 'original' signed copy and additional copies? Does each copy have to originally signed after the proposals are bound?
 - a. Answer: No. The signature page can be signed prior to copies being made and binding completed but one copy should be submitted with an original signature.
2. Does a specific HUB Subcontracting Plan add or detract from the overall merits of the RFQ?
 - a. Answer: No. Specifics listed on the HUB Subcontracting Plan are not used as a criteria for selection.
 - b. Satisfactorily completing a HUB Subcontracting Plan is a policy of UT System and the State of Texas to allow all HUB vendors to be able to submit a proposal (<http://www.utsystem.edu/bor/procedures/policy/policies/uts137.html>).
3. What is the approximate number of compliance reviews expected under the Scope of Work?
 - a. Answer: From total number of active license agreements within UT System (approximately 1200), there will be an evaluation of which to prioritize for review. After that determination, there may be 6-12 licenses per year to evaluate, under the current expectations and after discussion with the campus Offices of Technology Commercialization.
 - b. Additional answer: There may be a request for review of System policies and practices to ensure we are optimizing diligence in our license administration and in the terms and requirements of our licenses.

Purpose of RFQ is to enter into non-exclusive agreements with one or more vendors who may be selected to review specific licenses based on criteria necessitated by the specific license compliance review needs.

Questions and Answers

RQF: OGC 20130327

Questions received in emails before the March 19th deadline

1. Section 3 “Professional’s General Questionnaire” and Section 5 “Specifications and Additional Questions” request information in a question-and-answer format. Much of the requested information, such as Section 3.2 “Approach to Project Services” and Section 5.4 “Scope of Work”, is addressed in detail in the main body of our proposal. Do these sections still need to be included in this question and answer format? Alternatively is it acceptable to refer the reader the appropriate section or page number of the proposal in these instances?
 - a. Cross-references to sections/page numbers in the proposal is acceptable
2. Section 3.4 of the “Professional’s General Questionnaire” asks the submitter to describe its Service Support philosophy. Could you clarify how this term is defined by the University?
 - a. Proposer should summarize how it maximizes client satisfaction with the services it is asked to provide, including supporting the client in achieving its goals.
3. Section 6 “Pricing and Delivery” requests pricing specific to this RFQ, including total fees and the method by which fees are calculated. Given that there is no specific projects identified as of yet, would an estimate of typical project fees for one of these compliance reviews be acceptable? If so, would also you need a rate schedule by level?
 - a. Both an estimate of typical project fees and a rate schedule by level would be preferred. The estimate of expected cost range should be for a “quick desk review” and a “full review” including and excluding an onsite visit.
4. Contractor anticipates submitting an exceptions document to various terms contained in the RFP. Such exceptions would request modifications to contract provisions in accordance with customary practices for similar services provided by larger professional services firms for similarly situated entities. What criteria will the University use to determine when exceptions taken will result in disqualification of the proposal?
 - a. Modifications in accordance with customary practices would not result in disqualification. Modifications that are contrary to statutory requirements or beyond the ability of UT System as a state agency to agree to could lead to disqualification if represented to be non-negotiable.

Pre-Proposal Conference Call
Wednesday, March 13, 2013, 1pm Central Prevailing Time

Questions from now until Tuesday March 19th should be directed to tshick@utsystem.edu, only through email.

1. What is the requirement for the 'original' signed copy and additional copies? Does each copy have to originally signed after the proposals are bound?
 - a. Answer: No. The signature page can be signed prior to copies being made and binding completed but one copy should be submitted with an original signature.
2. Does a specific HUB Subcontracting Plan add or detract from the overall merits of the RFQ?
 - a. Answer: No. Specifics listed on the HUB Subcontracting Plan are not used as a criteria for selection.
 - b. Satisfactorily completing a HUB Subcontracting Plan is a policy of UT System and the State of Texas to allow all HUB vendors to be able to submit a proposal (<http://www.utsystem.edu/bor/procedures/policy/policies/uts137.html>).
3. What is the approximate number of compliance reviews expected under the Scope of Work?
 - a. Answer: From total number of active license agreements within UT System (approximately 1200), there will be an evaluation of which to prioritize for review. After that determination, there may be 6-12 licenses per year to evaluate, under the current expectations and after discussion with the campus Offices of Technology Commercialization.
 - b. Additional answer: There may be a request for review of System policies and practices to ensure we are optimizing diligence in our license administration and in the terms and requirements of our licenses.

Purpose of RFQ is to enter into non-exclusive agreements with one or more vendors who may be selected to review specific licenses based on criteria necessitated by the specific license compliance review needs..

THE UNIVERSITY OF TEXAS SYSTEM ADMINISTRATION
September 2012

**POLICY ON UTILIZATION
HISTORICALLY UNDERUTILIZED BUSINESSES
PROFESSIONAL SERVICES**



**The University of Texas System
Office of HUB Development
Policy on Utilization of Historically Underutilized Businesses (HUBs)**

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**The University of Texas System
Office of HUB Development**

**POLICY ON UTILIZATION OF
HISTORICALLY UNDERUTILIZED BUSINESSES (HUBs)**

Introduction

In accordance with the Texas Government Code, Sections 2161.181-182 and Title 34, Section 20.13 of the Texas Administrative Code (TAC), The Board of Regents of the University of Texas System, acting through the Office of HUB Development shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction services, including professional and consulting services; and commodities contracts. The HUB Rules promulgated by the Texas Comptroller of Public Accounts (the “Texas Comptroller”), set forth in 34 TAC Sections 20.10-20.28, encourage the use of HUBs by implementing these policies through race-, ethnic- and gender-neutral means.

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the following goals as specified in the State of Texas Disparity Study:

- **11.2% for heavy construction other than building contracts;**
- **21.1% for all building construction, including general contractors and operative builders contracts;**
- **32.7% for all special trade construction contracts;**
- **23.6% for professional services contracts**
- **24.6% for all other services contracts, and**
- **21% for commodities contracts.**

The University of Texas System shall make a good faith effort to meet or exceed these goals to assist HUBs in receiving a portion of the total contract value of all contracts that U. T. System expects to award in a fiscal year. The University of Texas System may achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F.

NOTE:

In accordance with 34 TAC §20.13 (d) (1)(D)(iii), the goals above are the State of Texas HUB goals. For purposes of this procurement, the University of Texas System goals listed in the Special Instructions on page 11 will apply.

SUMMARY OF REQUIREMENTS
Historically Underutilized Business (HUBs) Subcontracting Plan

It is the policy of The University of Texas System and each of its component institutions, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUBs) in all contracts. Accordingly, The University of Texas System has adopted “**EXHIBIT H, Policy on Utilization of Historically Underutilized Businesses**”. The Policy applies to all contracts with an expected value of \$100,000 or more. The Board of Regents of The University of Texas System is the contracting authority.

1. In all contracts for professional services, contracting services, and/or commodities with an expected value of \$100,000 or more, The University of Texas System (“U. T. System” or the “University”) will indicate in the purchase solicitation (e.g. RFQ, RFP, or CSP) whether or not U. T. System has determined that subcontracting opportunities are probable in connection with the contract. A HUB Subcontracting Plan is a required element of the architect, contractor or vendor Response to the purchase solicitation. The HUB Subcontracting Plan shall be developed and administered in accordance with the Policy. **Failure to submit a required HUB Subcontracting Plan will result in rejection of the Response.**
2. If subcontracting opportunities are probable, U. T. System will declare such probability in its invitations for bids, requests for proposals, or other purchase solicitation documents, and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
 - a. When subcontracting opportunities are probable, and the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller identifying subcontractors [34 TAC §20.14 (d) (1)(A)(B)(C)(D) (i)(ii)(iii)(2)(3)(A)(B)(C)(D)(E)(F)(4)(A)(B)].**
 - b. When subcontracting opportunities are probable, but the Respondent can perform such opportunities with its employees and resources, the Respondent’s HUB Subcontracting Plan shall include **the Self Performance HUB Subcontracting Plan, Section 3 – Self Performance Justification as the HUB Subcontracting Plan (HSP). [34 TAC §20.14 (d)(5)(A)(B)(C)(D)].**
3. If subcontracting opportunities are not probable, U. T. System will declare such probability in its invitations for bids, requests for proposals, or other purchase solicitation documents and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
 - a. When subcontracting opportunities are not probable, and the Respondent proposes to perform all of the work with its employees and resources, the Respondent shall submit a HUB Subcontracting Plan that includes **the Self Performance HUB Subcontracting Plan, Section 3 – Self Performance Justification as the HUB Subcontracting Plan (HSP).**
 - b. When subcontracting opportunities are not probable, but the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors.
4. Respondents shall follow, but are not limited to, procedures listed in the Policy when developing a HUB Subcontracting Plan.
5. **Competitive Sealed Proposals (CSPs)** Respondents shall submit a HUB Subcontracting Plan (packaged separately) twenty-four (24) hours following the Response submission date and time or as prescribed by the project manager.
6. In making a determination whether a good faith effort has been made in the development of the required HUB Subcontracting Plan, U. T. System shall follow the procedures listed in the Policy. If accepted by the University, the HUB Subcontracting Plan shall become a provision of the Respondent's contract with the University of Texas System. **Revisions necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort.** Any revisions after the submission of the HUB Subcontracting Plan shall be approved by the HUB Coordinator.

7. **D/B and CM @ Risk Responses:** Respondents to a “design build” or “construction manager-at-risk” purchase solicitation shall include the Letter of HUB Commitment in their Response attesting that the Respondent has read and understands the Policy on Historically Underutilized Businesses (HUBs), and a HUB Subcontracting Plan for all preconstruction and construction services includes **HUB Subcontracting Plan as prescribed by the Texas Comptroller specific to construction services identifying first, second and third tier subcontractors.** Respondents proposing to perform Part I services with their own resources and employees shall submit, as part of their HSP, **the Self Performance Justification.**
8. **D/B and CM @ Risk HUB Contract Requirements:** Contractors engaged under design-build and construction manager-at-risk contracts shall submit a HUB Subcontracting Plan for all Construction Phase Services, and, must further comply with the requirements of this Policy by developing and submitting a HUB Subcontracting Plan for each bid package issued in buying out the guaranteed maximum or lump sum price of the Project. The HUB Subcontracting Plans shall identify first, second and third tier subcontractors.
9. The University of Texas System shall reject any Response that does not include a fully completed HUB Subcontracting Plan, as required. **An incomplete HUB Subcontracting Plan is considered a material failure to comply with the solicitation for proposals.**
10. **Changes to the HUB Subcontracting Plan.** Once a Respondent’s HUB Subcontracting Plan is accepted by U. T. System and becomes a provision of the contract between Respondent and U. T. System, the Respondent can only change that HUB Subcontracting Plan if (a) the Respondent complies with 34 TAC Section 20.14; (b) the Respondent provides its proposed changes to U. T. System for review; (c) U. T. System (including U. T. System’s HUB Coordinator) approves Respondent’s proposed changes to its HUB Subcontracting Plan; and (d) U. T. System and the Respondent amend their contract (via a writing signed by authorized officials of both parties) in order to replace the contract’s existing HUB Subcontracting Plan with a revised HUB Subcontracting Plan containing the changes approved by U. T. System.
11. **Expansion of Work.** If, after entering into a contract with a Respondent as a result of a purchase solicitation subject to the Policy, U. T. System wishes to expand the scope of work that the Respondent will perform under that contract through a change order or any other contract amendment (the “Additional Work”), U. T. System will determine if the Additional Work contains probable subcontracting opportunities not identified in the initial purchase solicitation for that contract. If U. T. System determines that probable subcontracting opportunities exist for the Additional Work, then the Respondent must submit to U. T. System an amended HUB Subcontracting Plan covering those opportunities that complies with the provisions of 34 TAC Section 20.14. Such an amended HUB Subcontracting Plan must be approved by U. T. System (including U. T. System’s HUB Coordinator) before (a) the contract may be amended by U. T. System and the Respondent to include the Additional Work and the amended HUB Subcontracting Plan and (b) the Respondent performs the Additional Work. If a Respondent subcontracts any of the additional subcontracting opportunities identified by U. T. System for any Additional Work (i) without complying with 34 TAC Section 20.14 or (ii) before U. T. System and that Respondent amend their contract to include a revised HUB Subcontracting Plan that authorizes such subcontracting, then the Respondent will be deemed to be in breach of its contract with U. T. System. As a result of such breach, U. T. System will be entitled to terminate its contract with the Respondent, and the Respondent will be subject to any remedial actions provided by Texas law, including those set forth in Chapter 2161, Texas Government Code, and 34 TAC Section 20.14. University may report a Respondent’s nonperformance under a contract between that Respondent and U. T. System to the Texas Comptroller in accordance with 34 TAC Sections 20.101 through 20.108.
12. A Response may state that the Respondent intends to perform all the subcontracting opportunities with its own employees and resources in accordance with the Policy. However, if such a Respondent enters into a contract with U. T. System as a result of such a Response but later desires to subcontract any part of the work set forth in that contract, before the Respondent subcontracts such work it must first change its HUB Subcontracting Plan in accordance with the provisions of Section 10 above .

13. The University of Texas System shall require a professional services firm, contractor or vendor to whom a contract has been awarded to report the identity and the amount paid to its subcontractors on a monthly basis using a **HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (PAR)** as a condition for payment.
14. If the University of Texas System determines that the successful Respondent failed to implement an approved HUB Subcontracting Plan in good faith, U. T. System, in addition to any other remedies, may report nonperformance to the Texas Comptroller in accordance with 34 TAC, Section 20.14, (g)(1) related remedies of nonperformance to professional services firms, contractor, and vender implementation of the HUB Subcontracting Plan.
15. In the event of any conflict between this “Summary of Requirements” and the remainder of the HUB Policy, the remainder of the HUB Policy will control.
16. These requirements, including the attachments referred to above, may be downloaded over the Internet from <http://www.utsystem.edu/hub/hubforms.html>. For additional information contact Office of HUB Development, The University of Texas System Administration, 512/499-4530.

**Professional Services HSP
Summary of Attachments Required from Respondents**

	Letter of Transmittal Page 8	Letter of HUB Commitment Page 9	HUB Subcontracting Plan (HSP) Pages 11-18	Progress Assessment Report (PAR) Page 19
1. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE PROBABLE.				
1. A. Respondent Proposes Subconsultants: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable</u> .	X		X	
1. B. Respondent Proposes Self-Performance: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable</u> , but the Respondent can perform such opportunities with its employees and resources.	X		X	
2. UT SYSTEM DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE NOT PROBABLE.				
2. A. Respondent Proposes Self-Performance: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> , but the Respondent can perform such opportunities with its employees and resources.	X		X	
2. B. Respondent Proposes Subconsultants: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> but the Respondent proposes to subcontract any part of the work.	X		X	
3. Indefinite Duration/Indefinite Quantity Contracts: Submit with initial qualifications. Attachments required from Respondent prior to contract execution for each contract associated with a solicitation for miscellaneous services.		X	X	
4. Changes in the HUB Subcontracting Plan After Award: Attachments required from the Respondent to whom a contract has been awarded if it desires to make changes to the approved HUB Subcontracting Plan.			X	
5. Reporting: Progress Assessment Report (PAR) required with all payment requests. The submittal of this attachment is a condition of payment.				X

(RESPONDENT'S BUSINESS LETTERHEAD)

Date

Mr. Hopeton Hay
 Director, HUB and Federal Small Business Program
 The University of Texas System
 702 Colorado, Ste. 6.600
 Austin, Texas 78701

Re: Historically Underutilized Business Plan for (Project Title)
 Project Number ___ - ___

Dear Mr. Hay,

In accordance with the requirements outlined in the specification section "HUB Participation Program," I am pleased to forward this HUB Subcontracting Plan as an integral part of our response in connection with your invitation for Request for Qualifications referencing the above project.

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). I also understand the State of Texas Annual Procurement Goal according to 34 Texas Administrative Code Section 20.13, and the goal as stated in the Agency Special Instructions section of the HUB Subcontracting Plan, page 11.

Subcontractors	# of Subcontractors	Total Subcontract \$ Value	Total Estimated %	% Minority Owned	% Woman Owned
HUB					
Non-HUB					
TOTAL					

I understand the above HUB percentages must represent Texas Comptroller HUB certification standards. For each of the listed HUB firms, I have attached a Texas Comptroller HUB Certification document.

Should we discover additional subcontractors claiming Historically Underutilized Business status during the course of this contract we will notify you of the same. In addition, if for some reason a HUB is unable to fulfill its contract with us, we will notify you immediately in order to take the appropriate steps to amend this contractual obligation.

Sincerely,

(Project Executive)

cc: Project Manager

(BUSINESS LETTERHEAD)

Date

Mr. Hopeton Hay
Director, HUB and Federal Small Business Program
The University of Texas System
702 Colorado, Ste. 6.600
Austin, TX 78701

Re: Historically Underutilized Business Plan for (Project Title)
Project Number ____ - ____

Dear Mr. Hay:

In accordance with the requirements outlined in the specification section "HUB Participation Program," I am pleased to forward this HUB Subcontracting Plan as an integral part of our proposal in connection with your invitation for request for proposals, referencing Project Number _____.

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs).

Good Faith Effort will be documented by a two (2) part HUB Subcontracting Plan (HSP) process. Part one (1) of the HSP submission will reflect self-performance with the appropriate sections completed per the instruction in Option One of the HSP Quick checklist located on page 10 of The University of Texas Exhibit H Policy on Utilization of Historically Underutilized Businesses (HUBs) for Professional Services

As the scope of work/project is defined under this ID/IQ contract, part two (2) of the process will require a revised HUB Subcontracting Plan (HSP) and the good Faith Effort will be documented per instructions in Attachment B (pages 16-17) and Option Four of the Quick Check List. The revised HUB Subcontracting Plan will be submitted to the HUB Coordinator prior to execution of each contract process. Documentation of subconsulted work will be provided with each pay request.

Sincerely,

Contractor's Name

cc: Project Manager

UT SYSTEM HUB SUBCONTRACTING PLAN (HSP) QUICK CHECKLIST FOR PROFESSIONAL SERVICES

Option One -

If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources, complete the following sections:

- Section 1 – Respondent and Requisition Information
- Section 2 a. – No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
- Section 3 – Self Performing Justification – please provide explanation in box (Section 3)
- Section 4 – Affirmation

Option Two -

If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:

- Section 1 – Respondent and Requisition Information
- Section 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
- Section 2 c. – Yes
- Section 4 – Affirmation
- GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- Attach copies of HUB certification documents

Option Three -

If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- Section 1 – Respondent and Requisition Information
- Section 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- Section 2 c. – No
- Section 2 d. – Yes
- Section 4 – Affirmation
- GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- Attach copies of the HUB certification documents

Option Four -

If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors (or only to Non-HUB vendors), and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you have a continuous contract* in place for five (5) years or less does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete the following:

- Section 1 – Respondent and Requisition Information
- Section 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors
- Section 2 c. – No
- Section 2 d. – No
- Section 4 – Affirmation
- GFE Method B (Attachment B) – Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- Attach copies of HUB certification documents

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



HUB SUBCONTRACTING PLAN (HSP)

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

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

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders contracts,
- 32.7 percent for all special trade construction contracts,
- 23.6 percent for professional services contracts,
- 24.6 percent for all other services contracts, and
- 21 percent for commodities contracts.

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.13(d)(1)(D)(iii), the goals below are the applicable goals for the University of Texas System Administration only.

HUB Goal – 23.6%

- Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the bid, proposal or other expression of interest to be considered NON-responsive.
- Respondents who intend to Self-Perform all of their work shall submit an HSP for Self Performance (pages 11-14).
- HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (PAR) shall be submitted with each request for payment as a condition of payment.
- Please note that phone logs are no longer acceptable proof of the good faith effort. Only fax, email and certified letter are acceptable.

SECTION 1 RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: _____ State of Texas VID #: _____
 Point of Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____

b. Is your company a State of Texas certified HUB? - Yes - No

c. Requisition #: _____ Bid Open Date: _____

(mm/dd/yyyy)

SECTION 2 SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

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

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

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs .
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>)

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

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

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract* in place with for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

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

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

SECTION 3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- Yes (If *Yes*, in the space provided below **list the specific page(s)/section(s)** of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No (If *No*, in the space provided below **explain how** your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

Provide explanation here

SECTION 4 AFFIRMATION

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

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

Signature Printed Name Title Date (mm/dd/yyyy)

REMINDER: ➤ If you responded "*Yes*" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

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

HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: _____	Requisition #: _____
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IMPORTANT: If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-B.doc>

SECTION B-1 SUBCONTRACTING OPPORTUNITY

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

Item #: _____ Description: _____

SECTION B-2 MENTOR PROTÉGÉ PROGRAM

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

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

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

SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

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

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

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID #	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more minority or women trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to minority or women trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>
- d. List two (2) minority or women trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Minority/Women Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

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

Enter your company's name here: _____	Requisition #: _____
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SECTION B-4 SUBCONTRACTOR SELECTION

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

Item #: _____ Description: _____

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas certified HUB	VID # <small>(Required if Texas certified HUB)</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

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

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



HUB Subcontracting Opportunity Notification Form

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

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting its bid response to the contracting agency.

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

Section A	PRIME CONTRACTOR'S INFORMATION
Company Name: _____	State of Texas VID #: _____
Point-of-Contact: _____	Phone #: _____
E-mail Address: _____	Fax #: _____

Section B	CONTRACTING STATE AGENCY AND REQUISITION INFORMATION
Agency Name: _____	
Point-of-Contact: _____	Phone #: _____
Requisition #: _____	Bid Open Date: _____ <small>(mm/dd/yyyy)</small>

Section C	SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION
1. Potential Subcontractor's Bid Response Due Date:	<p>If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than <input type="text" value="Select"/> Central Time on: _____ Date (mm/dd/yyyy)</p> <p><small>In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to two (2) or more minority or women trade organizations or development centers at least seven (7) working days prior to submitting our bid response to the contracting agency.</small></p> <p><small>(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven</small></p>
2. Subcontracting Opportunity Scope of Work:	
3. Required Qualifications: <input type="checkbox"/> - Not Applicable	
4. Bonding/Insurance Requirements: <input type="checkbox"/> - Not Applicable	
5. Location to review plans/specifications: <input type="checkbox"/> - Not Applicable	

UT System Administration Historically Underutilized Subcontracting Plans (HSP) Professional Services

All Texas State agencies and institutions of higher education (universities) are required to make a good faith effort to include minority and/or women owned businesses in their procurement opportunities. The State of Texas uses the term Historically Underutilized Businesses (HUB) to distinguish State certified minority and/or women owned businesses.

Procurement Goal- Professional Services – 23.6%

Statement of Probability

- Sub-consulting Opportunities are **probable** in connection with this solicitation

Choose **ONLY ONE** of the options below and follow the directions below the appropriate section.

Option 1 - Complete a Self-Performing HSP as follows:

Section 1

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

Section 2A

- Mark the 'NO', I will not be sub-consulting any portion of the contract, and I will be fulfilling the entire contract with my own resources. Continue to Section 3.

Section 3

- Mark the "NO" box and in the space provided indicate how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.

_____ has the resources to complete all scopes of this RFP with our own equipment, supplies, materials and personnel. If sub-contracting opportunities are identified at a future date, we will immediately contact the project manager and HUB Coordinator and commit to perform a Good Faith Effort through solicitation of HUB firms and submit an amended HUB Subcontracting Plan.

Section 4

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.

Option 2 – Complete if all sub-consulting opportunities are performed by **ONLY HUB vendors.**

Section 1

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

Section 2A

- Mark the 'YES', I will be sub-contracting portions of the contract.

Section 2B

- List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to HUB vendors.

Section 2C

- Mark "YES".

Section 4

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.

Good-Faith Effort (Attachment A)

Section A-1

- Complete this attachment for each sub-consulting opportunity listed in Section 2B.

Section A2

- List the sub-consultants you selected to perform this subcontracting opportunity listed above in Section A-1. Please include their VID #, State of Texas HUB certificate, the appropriate \$ amount. And the contract percentage.

Option 3 – Complete if sub-consulting opportunities by both HUB and non-HUB vendors meet or exceed the HUB goals stated above.**Section 1**

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

Section 2A

- Mark the ‘YES’, I will be subcontracting portions of the contract.

Section 2B

- List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to HUB vendors and Non HUB vendors

Section 2C

- Mark “NO”.

Section 2D

- Mark “YES”.

Section 4

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.

Good-Faith Effort (Attachment A)

- Complete this attachment for each sub-consulting opportunity listed in Section 2B.

Section A1

- List the name of the sub-consulting opportunity listed on the corresponding line in Section 2B.

Section A2

- List the sub-consultants you selected to perform this subcontracting opportunity listed above in Section A-1. Please include their VID #, State of Texas HUB certificate, the appropriate \$ amount. And the contract percentage.

Option 4 - Complete a Sub-Contracting HSP as follows:**Section 1**

- Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

Section 2A

- Mark the ‘YES’, I will be subcontracting portions of the contract.

Section 2B

- List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to HUB vendors and Non HUB vendors

Section 2C

- Mark “NO”.

Section 2D

- Mark "NO".

Section 4

- Sign the form. Include your e-mail address and contact phone number should UT System HUB have any questions.

Good-Faith Effort (Attachment B)

- Complete this attachment for each sub-consulting opportunity listed in Section 2B.

Section B1

- List the name of the sub-consulting opportunity listed on the corresponding line in Section 2B.

Section B3

- Subsection (b) - List 3 three HUBs you notified regarding the portion of work indicated in Section B1. **NOTE: Attach addressed and dated supporting documentation in the form of letters, fax transmittals, e-mails etc. demonstrating evidence of the Good Faith Effort performed. Please note that you must give the subcontractor 7 working days to respond to your request. Holidays and skeleton crew days do not count as working days.**

Subsection (d) – Indicate the names of two minority or women's organization you contacted. **NOTE: Include copies of correspondence as well as the date the notice is sent and indicate if the notice was accepted or rejected.** A list of minority organizations is attached to the HSP document. In addition, the minority organizations at the link below, have expressed their willingness to accept notices of subcontracting opportunities from vendors to distribute to their minority and woman-owned business members. <http://www.cpa.state.tx.us/procurement/prog/hub/mwb-links-1/>

Section B4

- List the sub-consultant you selected to perform the portion of the work indicated in Section 3. Include the expected percentage of work to be subcontracted, the dollar value and whether company selected is a HUB. If company selected is not a HUB, provide written justification of your selection process in Section B4, sub-section b.

HUB Sub-consulting Plan Required Documents

- Respondents shall submit:
 - UT System Letter of Transmittal
 - HUB Sub-consulting Plan

Changes to the Plan

- Once the HUB Plan has been submitted any changes to the HSP must be approved in writing by UT System **prior** to any work commencing. Once the contract has been awarded the HSP is considered part of the contract. Violations to the Plan can be deemed by UT System as a breach of the contract.

Reporting – After Award

- Prime contractor payment requests shall include:
Prime Contractor Progress Assessment Report – A condition of payment

Responses that do not include an HSP will be rejected as a material failure to comply with advertised specifications in accordance with the request for qualifications.

For any questions regarding completion of the HSP contact:

Stephanie Park
UT System
Office of Hub Development
(512)-499-4378
spark@utsystem.edu