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Texas Comptroller of Public  
Accounts  
**Glenn Hegar**



(<http://www.txsmartbuy.com>)

**Contracts**

**SPD Applications**

**Help (/help/)**



**0** items

## Contract Details: # 715-M2

<b>Number</b>	715-M2
<b>Description</b>	Publications, Audiovisual Materials, Books, Cataloging Services (Prepared Materials Only), Cataloging Services
<b>Category</b>	Managed
<b>Type</b>	Term
<b>Start Date</b>	8/25/2014
<b>End Date</b>	8/31/2018
<b>Purchase Category Code(Agencies Only)</b>	PCC C
<b>Optional Renewal Terms</b>	September 1, 2018 through August 31, 2019
<b>Purchase Orders</b>	<p>Customers will issue an internal purchase order that references this CPA Contract Number and current item description(s) and pricing as stated on this contract. The Contractor will not ship any products or provide related services until receipt of a Purchase Order generated by the State Agency, Higher Education or Cooperative member.</p> <p>The Categories Discount and Services Matrix contain the Contractor Web site link to obtain pricing to be utilized with the associated contract discounts, as applicable.</p>
<b>NIGP Code(s)</b>	715-04 715-46 715-10 715-55
<b>CPA Contract Management</b>	<p>Questions regarding contract management issues, price changes, amendments or other post-award concerns should be directed to:</p> <p>SPD Contract Management Office (SCMO) Texas Comptroller of Public Accounts (CPA) Phone: (512) 463-3034 option 3 Email: <a href="mailto:spd.cmo@cpa.texas.gov">spd.cmo@cpa.texas.gov</a> (<a href="mailto:spd.cmo@cpa.texas.gov">mailto:spd.cmo@cpa.texas.gov</a>)</p>

<b>Contract Items and Pricing</b>	<p>715-M2 Price Sheet (xls) (<a href="http://www.txsmartbuy.com/SSP Applications/NetSuite Inc. - Shopping/Custom ShopFlow/Documents/Contract Attachments/715-M2 Price Sheet_10-2017.xls">http://www.txsmartbuy.com/SSP Applications/NetSuite Inc. - Shopping/Custom ShopFlow/Documents/Contract Attachments/715-M2 Price Sheet_10-2017.xls</a>)</p> <p>Tab 1 = Category Discounts Tab 2 = Services Pricing Tab 3 = Services Descriptions</p> <p>A: Exclusions - The following items are not part of this contract:  1. Periodicals such as magazines, journals, etc.  2. Reference books not generally distributed through jobbers, i.e. encyclopedia, etc.  3. Lease plan books  4. Government Publications  5. Standing order titles (direct from publisher, including Gale, Bowker, Wilson Recorded Books, etc.)  6. Materials from specialized publishers or publishers who do not sell to the vendor (i.e. specialized genealogical publications, etc.)  7. Materials in specialized AV format (microfilm, etc.)</p> <p>B: Standards:  The binding for books to be utilized in libraries must be in compliance with ANSI/NISO/LBI Z39.78- 2000, ISSN: 1041-5653, as amended and published by National Information Standards Organization (NISO) developed by NISO and the Library Binding Institute (LBI).</p> <p>Available at the following link: <a href="http://www.lbibinders.org/assets/documents/LibraryBindingStandard.pdf">http://www.lbibinders.org/assets/documents/LibraryBindingStandard.pdf</a></p>
<b>Warranty Details</b>	<p>Review Contractors' Web site for detailed warranty and replacement policies.</p> <p>The contractor shall guarantee replacement of products due to defective materials during the initial contract period and any renewal options, as exercised.</p>
<b>Adding New Products to the Contract</b>	<p>Additional products or services of the same general category that are not already on the contract may be added by submitting an Open Market Requisition (<a href="https://comptroller.texas.gov/purchasing/forms/">https://comptroller.texas.gov/purchasing/forms/</a>) to the Statewide Contract Development section at <a href="mailto:open.market@cpa.texas.gov">open.market@cpa.texas.gov</a> (<a href="mailto:open.market@cpa.texas.gov">mailto:open.market@cpa.texas.gov</a>).</p>
<b>Expedited Payment Discount</b>	<p>Ingram Library Services: 1% 10 days</p>
<b>Delivery Delays by Contractor</b>	<p>If delay is foreseen, Contractor shall give written notice to the Customer and must keep Customer advised at all times of status of order.</p> <p>Default in promised Delivery Days After Receipt of Order (ARO) without accepted reasons or failure to meet specifications authorizes the Customer to purchase goods and services of this contract elsewhere and charge any increased costs for the goods and services, including the cost of re-soliciting, to the Contractor.</p> <p>Failure to pay a damage assessment is cause for contract cancellation and/or debarment or removal of the contractor, as applicable, from the State's Centralized Master Bidders List (CMBL).</p>
<b>Compliant Products by Contractor</b>	<p>Delivery does not occur until the Contractor delivers products, materials or services in full compliance with the specifications to Customer's F.O.B. destination, unless delivery is specifically accepted, in whole or in part, by the Customer. Providing products, materials or services which do not meet all specification requirements does not constitute delivery.</p> <p>Customer reserves the right to require new delivery or a refund in the event that materials or products not meeting specifications are discovered after payment has been made.</p>
<b>Purchase Order Cancellation</b>	<p>The Customer may request that a Contractor cancel a specific line item or an entire purchase order. There shall be no fees charged for cancellation of an item and/or order prior to shipment by the Contractor. A Purchase Order Change Notice should be processed and sent to Contractor.</p>
<b>Restocking Fee for Returned Products</b>	<p>The Customer may request that a Contractor accept return of products already delivered. If the return is required through no fault of the Contractor, the Contractor may request a reasonable restocking charge. The Customer may pay a restocking charge if the CPA or Customer determines that the charge is justifiable. As a guideline, such charges shall not exceed 10%.</p>
<b>Substitutions</b>	<p>During the Contract term, the Contractor shall not substitute a product or brand unless the Contractor has obtained prior written approval from the CPA Contract Manager in coordination with the Customer. The Contractor must have written confirmation from the CPA Contract Manager of the substitution before making delivery.</p>

<b>Contractor Performance</b>	<p>Statewide Procurement Division (SPD), administers a vendor performance program for use by all customers per Texas Government Code (TGC), §2262.055, and 34 Texas Administrative Code (TAC), §20.108. The Vendor Performance relies on the customer's participation in gathering information on vendor performance. State agency customers shall report vendor performance on purchases of \$25,000 or more from contracts administered by CPA, or any other purchase of \$25,000 or more made through delegated authority granted by CPA (TAC 20.108), or purchases exempt from CPA procurement rules and procedures. State agencies are additionally encouraged to report vendor performance on purchases under \$25,000.</p> <p>Vendor Performance shall be reported through the CPA VENDOR PERFORMANCE TRACKING SYSTEM. (<a href="http://www.window.state.tx.us/procurement/prog/vendor_performance/">http://www.window.state.tx.us/procurement/prog/vendor_performance/</a>)</p> <p>The purpose of the Vendor Performance Tracking System is to:</p> <ul style="list-style-type: none"> <li>• Identify vendors that have exceptional performance</li> <li>• Aid purchasers in making a best value determination based on vendor past performance</li> <li>• Protect the state from vendors with unethical business practices</li> <li>• Provide performance scores in four measurable categories for the CMBL vendors</li> <li>• Track vendor performance for delegated and exempt purchases</li> </ul>
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Contractors Information

<p><b>VID:</b> 11615973457</p> <p><b>Contractor:</b> Advanced Educational Products, Inc.</p> <p><b>Contact Name:</b> Erica Elkins-Aquila</p> <p><b>Email:</b> <a href="mailto:eelkins@aepbooks.com">eelkins@aepbooks.com</a></p> <p><b>Phone:</b> (800) 311-1522</p> <p><b>Address:</b> Advanced Educational Products 2495 Main St Suite 230 Buffalo New York 14214</p>
<p><b>VID:</b> 15617617293</p> <p><b>Contractor:</b> Baker &amp; Taylor, Inc</p> <p><b>Contact Name:</b> Customer Services</p> <p><b>Email:</b> <a href="mailto:clarice.stanton@baker-taylor.com">clarice.stanton@baker-taylor.com</a></p> <p><b>Phone:</b> (800) 775-1200</p> <p><b>Alternate Contact Name:</b> Jennifer Rhyne</p> <p><b>Alternate Email:</b> <a href="mailto:jennifer.rhyne@baker-taylor.com">jennifer.rhyne@baker-taylor.com</a></p> <p><b>Alternate Phone:</b> 1 (800) 775-7930 x3248</p> <p><b>Address:</b> 2550 West Tyvola Road Suite 300 Charlotte NC 28217</p>
<p><b>VID:</b> 12322487583</p> <p><b>Contractor:</b> Brodart Company</p> <p><b>Contact Name:</b> Linda Eckman</p> <p><b>Email:</b> <a href="mailto:linda.eckman@brodart.com">linda.eckman@brodart.com</a></p> <p><b>Phone:</b> (800) 233-8467</p> <p><b>Address:</b> 500 Arch Street Williamsport PA 17701</p>
<p><b>VID:</b> 14310578787</p> <p><b>Contractor:</b> Central Programs Inc. dba Gumdrop Books</p> <p><b>Contact Name:</b> Customer Service</p> <p><b>Email:</b> <a href="mailto:WECARE@GUMDROPBOOKS.COM">WECARE@GUMDROPBOOKS.COM</a></p> <p><b>Phone:</b> (800) 821-7199</p> <p><b>Address:</b> PO Box 505 Bethany MO 64424</p>

**VID:** 17428522449

**Contractor:** Complete Book & Media Supply, LLC

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**Email:** customerservice@completebook.com

**Phone:** (800) 986-1775

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**Alternate Email:** kendall@completebook.com

**Alternate Phone:** (800) 986-1775

**Address:** 1200 Toro Grande Drive Suite 200 Cedar Park TX 78613

**HUB Eligibility:** AS

**HUB Gender:** M

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**Contractor:** Davidson Titles, Inc

**Contact Name:** Susan Perry

**Email:** susan@davidsontitles.com

**Phone:** (800) 433-3903

**Address:** PO Box 3538 Jackson TN 38305

**VID:** 12013880609

**Contractor:** Findaway World, Llc

**Contact Name:** Customer Service

**Email:** customerservice@findawayworld.com

**Phone:** (877) 893-0808

**Alternate Contact Name:** Karen Peck

**Alternate Email:** kpeck@playaway.com

**Alternate Phone:** (877) 893-0808

**Address:** 31999 Aurora Rd Solon Ohio 44139

**VID:** 13710017263

**Contractor:** Hertzberg-New Method, Inc. dba Perma-Bound Books

**Contact Name:** Customer Service Representative

**Email:** tracyn@perma-bound.com

**Phone:** (800) 637-6581 x102

**Address:** 617 East Vandalia Road Jacksonville IL 62650-3599

**VID:** 16217466966

**Contractor:** Ingram Library Services, Inc

**Contact Name:** Christi Copous

**Email:** christi.copous@ingramcontent.com

**Phone:** (800) 937-5300 x35766

**Alternate Contact Name:** Customer Service

**Alternate Email:** ils.orders@ingramcontent.com

**Address:** One Ingram Blvd La Vergne TN 37086-1986

**VID:** 14308345058

**Contractor:** Midwest Library Service

**Contact Name:** Library Service Representative

**Email:** banta@midwestls.com

**Phone:** (800) 325-8833

**Alternate Contact Name:** Trish Banta

**Alternate Email:** banta@midwestls.com

**Alternate Phone:** (800) 325-8833

**Address:** 11443 Saint Charles Rock Rd Bridgeton Missouri 63044

**VID:** 13714996868

**Contractor:** Midwest Tape, L.L.C.

**Contact Name:** Customer Service Representative

**Email:** kwhite@midwesttapes.com

**Phone:** (800) 875-2785

**Alternate Email:** JTIMM@MIDWESTTAPES.COM

**Alternate Phone:** (800) 875-2785

**Address:** 6950 Hall Street Holland OH 43528

**VID:** 15932638958

**Contractor:** MT Library Services Inc. dba Junior Library Guild

**Contact Name:** Angela Christianson

**Email:** jlgbids@juniorlibraryguild.com

**Phone:** (800) 325-9558

**Alternate Contact Name:** Kristy Kelly

**Alternate Phone:** (800) 491-0174

**Address:** 7858 Industrial Pkwy Plain City Ohio 43064

**VID:** 13308819500

**Contractor:** Pacific Learning, Inc.

**Contact Name:** Charles Sandlin

**Email:** pacificbids@pacificlearning.com

**Phone:** (800) 279-0737

**Address:** Pacific Learning, Inc. 6262 Katella Ave Cypress California 90630-5204

**VID:** 13920538553

**Contractor:** Proquest, LLC

**Contact Name:** Christopher Kaul

**Email:** Christopher.Kaul@proquest.com

**Phone:** (800) 521-0600

**Address:** 789 East Eisenhower Parkway P.O. Box 1346 Ann Arbor, MI 48106-1346

**VID:** 10612263532

**Contractor:** Scholastic Library Publishing, Inc

**Contact Name:** Customer Service Representative

**Email:** slpservice@scholastic.com

**Phone:** (800) 621-1115 x4

**Alternate Email:** KBROWN@SCHOLASTICLIBRARY.COM

**Address:** 90 Old Sherman Turnpike Danbury CT 06816-0001

**VID:** 13518247294

**Contractor:** Taped Editions Dba Tei Landmark Audio

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**Phone:** (800) 850-1701

**Alternate Contact Name:** Judy May

**Alternate Email:** jmay@tapededitions.com

**Alternate Phone:** (317) 849-1700

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**VID:** 12020800392

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**Phone:** (800) 796-9152 x212

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**VID:** 14310187258

**Contractor:** The Booksource, Inc

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Texas Comptroller of Public Accounts  
**Glenn Hegar**

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- Contact Us (<http://comptroller.texas.gov/about/contact/>)

#### POLICIES

- Privacy and Security Policy (<https://comptroller.texas.gov/about/policies/privacy.php>)
- Accessibility Policy (<https://comptroller.texas.gov/about/policies/accessibility.php>)
- Link Policy (<https://comptroller.texas.gov/about/policies/links.php>)
- Texas.gov (<http://texas.gov>)
- Search from the Texas State Library (<https://www.tsl.texas.gov/trail/index.html>)
- Texas Homeland Security (<http://www.dhs.gov/geography/texas>)
- Texas Veterans Portal (<https://veterans.portal.texas.gov/>)
- Public Information Act (<https://comptroller.texas.gov/about/policies/public-information-act.php>)
- Texas Secretary of State (<http://www.sos.state.tx.us/>)
- HB855 Browser Statement

#### OTHER STATE SITES

- texas.gov (<https://www.texas.gov/>)
- Texas Records and Information Locator (TRAIL) (<http://www.tsl.state.tx.us/trail/>)
- State Link Policy  
(<http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/State%20Website%20Linking%20and%20Privacy%20Policy.pdf>)

- Texas Veterans Portal (<http://veterans.portal.texas.gov>)

# COMPTROLLER OF PUBLIC ACCOUNTS



## TEXAS PROCUREMENT AND SUPPORT SERVICES DIVISION

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### REQUEST FOR PROPOSALS

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#### **Publications, Audiovisual Materials, Books And Cataloging Services (Prepared Materials Only)**

**RFP No. 715-M2**

**NIGP CLASS ITEM(S)**

<b>715-04</b>	<b>715-10</b>	<b>715-46</b>	<b>715-55</b>
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**Proposal Due Date: May 9, 2014**

**Proposal Due Time: 4:00 pm (Central Time in Austin, Texas)**

**Posting Date: April 11, 2014**

**\*\*NOTE\*\*** This RFP is composed of two parts: (1) Part A, Special Instructions, and (2) Part B, General Instructions and Contract Terms and Conditions. In the event an instruction or term in Part A conflicts with an instruction or term in Part B, the instruction or term in Part A prevails, and any addenda or amendments to either Part A or Part B control over the original versions. The Definitions in Part B, Section B.1.2 apply to Part A. The RFP controls over any attachments or exhibits to the RFP, including any technical specifications.



# RESPONSE SUBMISSION CHECKLIST

## IMPORTANT:

**ALL INQUIRIES AND COMMUNICATIONS CONCERNING THIS RFP MUST BE ADDRESSED TO THE INDIVIDUAL AS LISTED IN [SECTION A.15.2](#) – POINT OF CONTACT.**

**COMMUNICATIONS WITH OTHER THAN THE POINT OF CONTACT MAY RESULT IN DISQUALIFICATION OF A RESPONSE.**

**Read all documentation and requirements contained within this RFP package.**

To be responsive and considered for evaluation and award, respondents must return the documentation required and requested in this RFP package. The documents must be completed and signed as required.

## **Reference [Section A.19](#) – Organization of the Proposal for Submission**

Responses received without the required documentation, as identified below, may be disqualified, except as noted.

- ☐ CONFIDENTIAL/PROPRIETARY INFORMATION
- ☐ EXECUTION OF PROPOSAL – ATTACHMENT A
- ☐ RESPONDENT CONTACT INFORMATION FORM – ATTACHMENT B
- ☐ PREFERENCES – ATTACHMENT C
- ☐ HUB SUBCONTRACTING PLAN (HSP) – Reference [Section A.16](#)

**There are no exceptions for the submission of the HSP, therefore, responses received without the completed and signed HSP, shall be rejected as a material failure to comply with the requirements of this RFP and will be disqualified.**

- ☐ MANDATORY PRICE SHEET (XML): Submit electronically in the original format.
- ☐ ASSUMPTIONS AND EXCEPTIONS
- ☐ THE CONFLICT OF INTEREST DISCLOSURE

## **Reference [Section A.20](#) for Submission Requirements**

**As indicated in the referenced section:**

**THE PRICE SHEET MUST BE SUBMITTED ELECTRONICALLY IN THE ORIGINAL FORMAT.**

Please read all instructions carefully for submitting electronically:

Use the following e-mail address to submit your response electronically **and it is recommended to begin the process well in advance of 4:00 pm on the due date:**

[TPASS.ebids@cpa.state.tx.us](mailto:TPASS.ebids@cpa.state.tx.us)

# PART A: SPECIAL INSTRUCTIONS

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## A.1 DEFINITIONS

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When capitalized, the following terms and acronyms have the meaning set forth below. All other terms have the meaning set forth in Webster’s II New College Dictionary.

TERM	DEFINITION
Contract	Any contract(s) resulting from this solicitation. <i><b>Note:</b> There is no guarantee that any contract will result from this solicitation.</i>
Contractor	The Respondent(s) awarded a Contract as a result of the RFP.
CPA	The Comptroller of Public Accounts, the state agency issuing this solicitation.
Customer	Those state and local entities that are required and permitted by law to purchase goods and services under contracts established by the CPA.
ESBD	The Electronic State Business Daily, which is available online at <a href="http://esbd.cpa.state.tx.us/">http://esbd.cpa.state.tx.us/</a> .
Gov't Code	The Texas Government Code.
Party / Parties	Either the CPA and Respondent separately or collectively.
Proposal	The response submitted by a vendor to the CPA as a result of this solicitation.
Respondent	Any person or vendor who submits a Proposal in response to this solicitation.
RFP	Request for Proposals, which is the type of solicitation embodied in this document.
TAC	The Texas Administrative Code, which is the publication for administrative rules.

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## A.2 DESCRIPTION

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The Texas Procurement and Support Services (TPASS), a division of the Texas Comptroller of Public Accounts (CPA) is seeking sealed proposals to establish a contract for publications, audiovisual materials, books and cataloging services (prepared materials only) and cataloging services.

The customers for the CPA term contracts are State of Texas Agencies; Higher Education and Cooperative Purchasing Members.

Information about the Cooperative Purchasing program and the member list can be accessed at: <http://www.window.state.tx.us/procurement/prog/coop/>

A listing of the State Agencies can be found at: <http://esbd.cpa.state.tx.us/agaddress/addresslist.cfm>

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## **A.3 TERM OF THE CONTRACT**

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The Contract shall commence upon the issuance of a Notice of Award by the CPA and shall automatically expire on August 31, 2015.

Four (4) one-year periods for renewal will be at the sole option of the CPA.

1<sup>st</sup> Renewal Option: September 1, 2015 through August 31, 2016

2<sup>nd</sup> Renewal Option: September 1, 2016 through August 31, 2017

3<sup>rd</sup> Renewal Option: September 1, 2017 through August 31, 2018

4<sup>th</sup> Renewal Option: September 1, 2018 through August 31, 2019

The Contract may be extended as needed, not to exceed a total of six (6) months.

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## **A.4 DISCOUNT AND PRICING STRUCTURE**

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Proposed prices/discounts offered to the State may be considered the Respondent's most favored Customer pricing; however, CPA reserves the right to negotiate pricing. In the event a Contractor offers or provides a decrease in price or increase in discount to its Customers for the same commodities or services, under the same terms and conditions, provided for the State of Texas pursuant to its contract, the Contractor shall provide the same decrease in price or increase in discount for the State of Texas. It is recommended that the Contractor provide said price decrease or discount increase voluntarily.

**For proposal purposes, please use the following to complete the Mandatory Price Sheet:**

Shipping shall be F.O.B. Destination. The proposed Discount from list per category and the price for cataloging services must include all shipping, handling/delivery fees and fuel surcharges.

No additional costs shall be incurred by the customer for shipping from separate warehouses.

### **A.4.1 Firm Discount for Categories**

Category discounts shall not decrease throughout the initial term and all renewal periods.

Discount increases will be accepted at any time throughout the contract periods.

Discounts must be proposed and based upon the publisher's list price and not the freight pass-through price.

### **A.4.2 Firm Price for Cataloging Services**

The unit price for cataloging services must remain firm for the initial period of the contract and may be adjusted at time of renewal.

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## **A.5 DISCOUNT AND PRICE ADJUSTMENTS**

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### **A.5.1 Discount Increases for Categories**

Price adjustments for cataloging services may be adjusted annually at time of renewal. Adjustment requests for other than at time of renewal shall be at the sole discretion of CPA.

Price adjustment requests must be submitted to CPA, TPASS Contract Management Office (TCMO) at least thirty (30) days prior to each renewal period. Contractor must also provide supporting documentation as justification for the request. Failure by the Contractor to provide supporting documentation will not be considered a properly submitted price adjustment request.

The TCMO reserves the right to accept, reject or negotiate increases within 15 calendar days after receipt of a properly submitted request. The contractor will receive written notification from TCMO documenting action taken, to include effective dates when appropriate.

If the price adjustment is rejected, the Contractor may request cancellation of such items from the Contract by giving the TCMO written notice. Cancellation will not go into effect for 15 calendar days after receipt of the written request.

Purchase orders dated prior and up to the official date of CPA approval and/or cancellation must be honored at the price reflected on the order.

The request can be sent by e-mail to: [tpass\\_cmo@cpa.state.tx.us](mailto:tpass_cmo@cpa.state.tx.us)

Or mail to:

Texas Comptroller of Public Accounts

Attn: TPASS Contract Management Office (TCMO)

PO Box 13186

Austin, TX 78711-3186

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## **A.6 EXCLUSIONS**

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The following items are not part of this contract:

- a. Periodicals such as magazines, journals, etc.
- b. Reference books not generally distributed through jobbers, i.e. encyclopedias, etc.
- c. Lease plan books
- d. Government publications
- e. Standing order titles direct from publisher, including Gale, Bowker, Wilson, Recorded Books, etc.
- f. Materials from specialized publishers or publishers who do not sell to the Respondent such as specialized genealogical publications, etc.
- g. Materials in specialized AV format such as microfilm, etc.

The Contractor must give immediate electronic or written notice to the customer of any title on any order that must be sent directly to the publisher.

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## **A.7 REQUIREMENTS FOR LIBRARY PUBLICATIONS**

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The binding for books to be utilized in libraries must be in compliance with ANSI/NISO/LBI Z39.78-2000, ISSN: 1041-5653, as amended and published by National Information Standards Organization (NISO) developed by NISO and the Library Binding Institute (LBI). Available at the following link:

<http://www.lbibinders.org/assets/documents/LibraryBindingStandard.pdf>

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## **A.8 PUBLICATION CATEGORIES**

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### **A.8.1 Category Line Items**

Reference the Mandatory Price Sheet for categories and services

Respondents may submit proposals for all or any one category.

#### **Standard Publisher's Editions**

- Line Item No. 1: Music/Audio Compacts Disc Pre-Recorded
- Line Item No. 2: Spoken Word/Audio Compact Disc Pre-Recorded; Abridged
- Line Item No. 3: Spoken Word/Audio Compact Disc Pre-Recorded; Un-Abridged
- Line Item No. 4: Spoken Word/Audio MP3 Format Pre-Recorded; Un-Abridged
- Line Item No. 5: Digital Audio Books
- Line Item No. 6: Digital Pre-Loaded; All-in-One Audio Books
- Line Item No. 7: Digital Pre-Loaded; All-in-One Audio Book Pack Kits - Includes player and book
- Line Item No. 8: Digital Pre-Loaded; All-in-One Video Books
- Line Item No. 9: Adult Trade; Fiction/Non-Fiction Hardcover or Paperback
- Line Item No. 10: Juvenile Trade; Fiction/Non-Fiction Hardcover or Paperback
- Line Item No. 11: Mass Market Paperback; Rack
- Line Item No. 12: Non-Trade Publications
- Line Item No. 13: Legal Publications
- Line Item No. 14: Audiovisual DVD Pre-Recorded; Feature/Non-Feature Films

#### **Durable and Reinforced Bound Books**

- Line Item No. 15: Adult Library Bound; Fiction/Non-Fiction
- Line Item No. 16: Juvenile Library Bound; Fiction/Non-Fiction

#### **Pre Bound Books**

Books that require reinforcement for use in a library:

- a. Paperback – Books originally published in paperback and given a reinforced hardcover binding and a laminated paper picture cover
- b. Hardback – Books given extra strong binding and picture cover

- Line Item No. 17: Pre-Bound Hardback; Fiction/Non-Fiction
- Line Item No. 18: Pre-Bound Paperback; Fiction/Non-Fiction

#### **Services**

- Line Item No. 19: Cataloging Services
- Line Item No. 20: On-line Ordering Initial/Renewal Start-up Service

### **A.8.2 Quantities:**

CPA does not guarantee a specific volume to be purchased throughout the term of the Contract. No minimum compensation to the Contractor is guaranteed.

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## A.9 CATALOGING

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### A.9.1 Cataloging Service:

Services will be provided at the request of the customer and will be coordinated and mutually agreed upon by both parties.

Respondents pricing for these services must include all incidental costs and be all inclusive, including inside delivery, unloading, shipping, fuel costs, insurance, etc. for the initial term of the contract and all subsequent renewal periods, as exercised.

a. **Contemporary:**

1. Mylar jacket for dust covers
2. Plastic adhesive for paperbacks
3. KAPCO®-like cover-ups.
4. Re-packaging of audio-visual formats
5. Security strip inserted
6. Barcode affixed to customer's specifications
7. Spine label with Dewey or local call number attached
8. Complete Machine Readable Cataloging (MARC) bibliographic record

b. **Trend:**

1. Mylar jacket for dust covers
2. Plastic adhesive for paperbacks
3. Re-packaging of audio-visual formats
4. RFID device programmed and attached
5. Spine label with Dewey or local call number attached
6. Complete MARC bibliographic record

c. **Minimal:** Complete MARC bibliographic record

### A.9.2 Cataloging Levels:

Respondents are requested to provide pricing in "*Monetary Values*" on the cataloging service line item numbers as indicated on Mandatory Price Sheet.

a. **Level 1: No Customized Service**

**Important Note:** Level 1 shall be considered "No Charge" and is not included on the Mandatory Price Sheet

b. **Level 2: Item Conversion Only**

No cataloging required. Requires the online linking of item level, copy specific information to existing appropriate bibliographic records. May involve adding an additional ISBN so that a paperback edition may be added to MARC record.

c. **Level 3: Copy Cataloging**

Contractor's catalogers will overlay a brief order record with a fully cataloged bibliographic record, using either OCLC or the Contractor's own bibliographic utility as the source of the record. Contractor will also perform item conversion.

d. **Level 4: Original Cataloging**

No cataloging record is found anywhere requiring Contractor's catalogers to create a record, assign name and subject heading and create a Dewey Decimal Classification (DDC) call number. Contractor will also perform item conversion.

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## **A.10 ELECTRONIC ORDERING**

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### **A.10.1 Electronic on-line ordering**

Respondents are requested to indicate availability of on-line ordering.

This service should include but not be limited to the following:

- a. Real time inventory counts
- b. Ability to build, manage, edit and archive selection lists or Book Carts and to export these lists in MARC format for import into local systems.
- c. Searching capabilities by:
  1. Title
  2. Author
  3. Dewey
  4. ISBN/ISSN
  5. Publisher
  6. Series
  7. Keyword
  8. Duplicate Check
  9. Subject
  10. Category
- d. Clear descriptions of publication availability
  1. Backordered( BO)
  2. Not Yet Published (NYP)
  3. Out of Print (OP)
  4. Out of Stock (OS)

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## **A.11 WARRANTY REPLACEMENT REQUIREMENTS**

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Proposed and delivered products shall be new, unused, of current production, and in first class condition, including containers suitable for shipment and storage, unless otherwise specified in the solicitation.

a. **Warranty/Guarantee**

1. The publication to be warranted against defects in workmanship and materials with repair or exchange options.
2. Initial warranty period is 60 days from the date of purchase.

b. **Returns or Replacement**

1. The contractor shall guarantee replacement of products due to defective materials during the initial contract period and any renewal options, as exercised.
2. The replacements must be processed and received by the customer within two (2) weeks of written notification.

c. **Return Policy/Procedure**



Respondents must provide with response their return policy/procedure.

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## **A.12 SHIPPING, DELIVERY AND PACKAGING**

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### **A.12.1 Identification of Shipments and Documentation:**

In addition to the complete destination address, each delivery must be clearly marked with the purchase order number. Each shipment must be accompanied by a packing slip.

### **A.12.2 Packaging and Labeling:**

All items shipped must be properly labeled, with weather resistant labeling, showing the brand name, package quantity, lot number (if applicable) and any other necessary identifying information.

**Maximum weight of each case shall not exceed 50 pounds.**

### **A.12.3 Delivery Schedule and Requirements:**

Customers may have specific, internal delivery rules and policies. These will be provided on each purchase order issued by the customer. The contractor(s) will be required to adhere to those requirements.

- a. Initial Shipment to be made from the materials in stock within ten (10) days After Receipt of Order (ARO).
- b. Multiple copies of any title are to be shipped together.
- c. Maximum weight of each case shall not exceed 50 pounds.

### **A.12.4 Hours of Delivery:**

Delivery shall be made during the hours of 8:00 am to 4:00 pm (Central Time). Respondent is encouraged to obtain Customer's hours of operation at time of order.

Prior approval by the customer is required for after-hours delivery. In the event of any approval by the Customer for after-hours delivery, Respondent may not invoice any additional charges for that delivery.

### **A.12.5 Delivery Delays:**

If delay is foreseen, Contractor shall give written notice to the Customer and must keep Customer advised of the status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the Customer to purchase goods and services of this RFP elsewhere and charge any increased costs for the goods and services, including the cost of re-soliciting, to the Contractor. Failure to pay a damage assessment is cause for Contract cancellation and/or debarment or removal of the Respondent from the State's Centralized Master Bidders List (CMBL).

### **A.12.6 Compliant Products:**

Providing products or materials which do not meet all specification requirements does not constitute delivery. Delivery does not occur until the Respondent delivers products or materials in full compliance with the specifications to Customer's F.O.B. destination, unless delivery is specifically accepted, in whole or in part, by the Customer. Customer reserves the right to require new delivery or a

refund in the event that materials or products not meeting specifications are discovered after payment has been made.

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## **A.13 RESTOCKING FEE:**

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The Customer may request that a Contractor accept return of merchandise already delivered or that a Contractor cancel an order prior to delivery. If the return is required through no fault of the Contractor, the Contractor may request a reasonable restocking charge. The Customer may pay a restocking charge if the CPA or Customer determines that the charge is justifiable. As a guideline, such charges shall not exceed 10%. There shall be no fees charged for cancellation of an order prior to shipment by the Contractor.

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## **A.14 FINANCIAL MATTERS**

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### **A.14.1 Invoices and Expedited Payment Discounts**

Reference Part B, General Instructions and Contract Terms and Conditions, Section B.5.3 Invoicing and Payment Requirements.

Payment terms for the State of Texas are typically 30 days. Please indicate the additional discount extended to each monthly invoice on Attachment B – Respondent Contact Information Form.

### **A.14.2 Customer Purchase Order**

Customers will issue internal purchase orders and only purchase orders issued referencing the number for the CPA Managed Contract are eligible for Contract pricing.

The Contractor agrees not to ship any materials until issuance of a Purchase Order by the authorized ordering entity (State Agency, Higher Education, or Cooperative members).

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## **A.15 PROPOSAL INFORMATION**

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### **A.15.1 Calendar of Events**

Respondents shall submit Proposals to the CPA in time for verification and confirmation that each Proposal is received and documented in accordance with the due date and time indicated in the schedule below.

The CPA reserves the right to revise this schedule or any portion of this RFP by published Addendum.

<b>Event</b>	<b>Date</b>
ESBD Posting Date	April 11, 2014
Deadline for Submitting Questions	April 23, 2014
Official Response to Questions	April 25, 2014 or as soon thereafter as practical
Answers to questions will be provided through an Addendum, posted on the ESBD and notification sent via e-mail.	
<b>PROPOSAL/RESPONSE DUE DATE/TIME</b>	
Date:	May 9, 2014
Time:	4:00 pm Central Time in Austin TX

Any amendment to this solicitation will be posted as an addendum on the ESBD. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a

Proposal. The Respondent's failure to periodically check the ESBD will in no way release the selected Contractor(s) from the requirements of "addenda or additional information" nor will any resulting additional costs to meet the requirements be allowed after award(s).

#### **A.15.2 Point of Contact**

Respondents shall direct all inquiries and communications concerning this RFP to the Point of Contact listed below.

*Respondents shall make no contact with other CPA or agency personnel regarding this RFP, except as permitted by the CPA Purchaser as listed below.*

***Failure to comply with these requirements and communications with other than the point of contact may result in disqualification of a response.***

**Note: This e-mail address is NOT to be used for submission of a response. Follow the instructions outlined in Sections A.14 and A.15 for proper submission.**

CPA Purchaser:

Melissa McIlroy, CTPM, CTCM

512-463-3174

E-mail: [melissa.mcilroy@cpa.state.tx.us](mailto:melissa.mcilroy@cpa.state.tx.us)

After award of this RFP's subsequent contract, all requests for Contract changes and all communications relating to the contract will be processed through the TPASS Contract Management Office.

#### **A.15.3 Documents and Attachments Included with this Part A of the RFP package.**

The RFP package also includes the following Documents and Attachments, which are posted separately on the ESBD.

<b>Documents and Attachments – Posted Separately on the ESBD</b>	
1.	XML Price Sheet Instructions
2.	Mandatory Price Sheet (to be returned in format requested)
3.	Part A: Special Instructions (This Document)
4.	Part B: General Instructions and Contract Terms and Conditions
5.	Execution of Proposal and Assurances (with Certification) – Attachment A Respondent Information Form – Attachment B Preferences – Attachment C HUB Subcontracting Plan (HSP)

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### **A.16 HUB SUBCONTRACTING PLAN – REFERENCE PART B; SECTION B.2.3**

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The HUB Subcontracting Plan (HSP) documentation must be completed, signed and returned with the proposal to be considered responsive. Responses received without the HSP, shall be rejected as a material failure to comply with the requirements of this RFP.

For assistance with the HSP, please contact:

CPA Purchaser:  
Melissa McIlroy, CTPM, CTCM  
512-463-3174  
E-mail: [melissa.mcilroy@cpa.state.tx.us](mailto:melissa.mcilroy@cpa.state.tx.us)  
Probable subcontracting opportunities:

NIGP Class/Item	Description
962-86	Transportation of Goods and Other Freight Services <b>IMPORTANT INFORMATION REGARDING FREIGHT SERVICES:</b> <ul style="list-style-type: none"><li>• <b>Third Party Shipping: Respondent shipping or delivering goods from their facility within the state of Texas using a third party, complete Method B (Attachment B), Good Faith Effort.</b></li><li>• <b>Method B requires HUBs to be provided seven (7) business days to respond.</b></li><li>• <b>The Good Faith Effort must be concluded and submitted with the proposal by or prior to the due date/time of this RFP.</b></li></ul> <b>Reference the detailed instructions within the HUB Subcontracting Plan.</b>
715-All	Publications, Audiovisual Materials, Books, Textbooks (Prepared Materials Only)
956-10	Cataloging Services
956-38	Library Services (Not Otherwise Classified)

This list should not be considered a mandatory or an exhaustive list. Other areas of subcontracting may be more appropriate given the Respondent's business structure and internal resources. Please see the attached HUB Subcontracting Plan for further instructions which require vendors to identify the specific areas intended for subcontracting.

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## A.17 EVALUATION OF PROPOSALS

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The CPA reserves the right to award contract(s) without any negotiations and reserves the right to not make awards.

**The Respondent is strongly encouraged to provide its best price in its Proposal** because the CPA makes absolutely no guarantee that there will be any opportunity to negotiate or provide alternative pricing at any point during the RFP process. The CPA may limit the number of proposals in the competitive range to consist of the greatest number of proposals that will permit an efficient competition among the respondents based in accordance with the proposed pricing and the required criteria specified in the RFP. CPA may seek additional information and solicit BAFOs only from those proposers determined to be in the competitive range.

### A.17.1 Evaluation

Each member evaluating proposals shall execute a confidentiality agreement (Non-Disclosure Affirmation) for this RFP.

Proposals will be evaluated by CPA employees and by other non-CPA employees who may be invited to assist as evaluators.

In determining the best value, CPA shall consider the following best value factors:

- (1) Price of the item, to include total cost of ownership, such as installation costs, life cycle costs, and warranty provisions.

- (2) Compliance with the stated specification(s) coupled with the quality and reliability of the goods and services, such as fitness for use that meets or exceeds Customers expectations, and the characteristics of the product or service that bear on its ability to meet the stated/implied needs.
- (3) Delivery timeframe from receipt of purchase order (ARO).
- (4) Indicators of probable performance under the Contract to include: past vendor performance, financial resources and ability to perform, experience or demonstrated capability and responsibility, references, and the vendor's ability to provide reliable maintenance agreements and support.
- (5) Other relevant factors, such as the vendor's anticipated economic impact to the state or a subdivision of the state, including potential tax revenue and employment, the effect of a purchase on agency productivity, and the cost of any employee training associated with the purchase.

CPA reserves the right to conduct studies and other investigations as necessary to evaluate any proposal. CPA reserves the right to waive any minor or immaterial response requirements noted in the submission process. Submission of proposals confers no legal rights upon any Respondent. The CPA will determine whether negotiations or Best and Final Offers are necessary and may invite selected Respondents to provide oral presentations of their proposals. Pursuant to Government Code §2155.087, the Chief Clerk of the CPA, in a public meeting, may consider award recommendations for contracts related to this solicitation.

Respondent(s) should be aware that sealed Proposals and information regarding sealed proposals cannot and will not be disclosed to the public prior to award of Contract(s).

Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §§2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:

- A score of less than 90% in the Vendor Performance System,
- Currently under a Corrective Action Plan through the CPA,
- Having repeated negative Vendor Performance Reports for the same reason,
- Having a record of repeated non-responsiveness to Vendor Performance issues
- Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.).

Contractor performance information is located on the CPA web site at:

[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/)

CPA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), CPA may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Such sources of vendor performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, CPA may initiate such examinations of vendor performance based upon media reports. Any such investigations shall be at the sole discretion of CPA, and any negative findings, as determined by CPA, may result in non-award to the Respondent.

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## **A.18 AWARD PROCESS**

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### **A.18.1 Award**

Comptroller shall award a Contract(s) to the Respondent(s) whose proposal is considered to be the best value to the state, as defined in §2155.074, Gov't Code.

The CPA may make its award to Respondent(s) based on any combination, including, but not limited to individual line item, commodity groups, all or none or a combination thereof that provides best value to the State.

### **A.18.2 Multiple Awards**

The CPA anticipates multiple term contracts may be awarded from this solicitation. The Respondent(s) providing the best value to the State for each NIGP group description may be chosen as the State's primary or "best value vendor" for that group. Additional Respondents may be awarded contracts at the sole discretion of CPA in order to provide product variety.

### **A.18.3 Substitutions**

During the Contract term, the Contractor shall not substitute a product or brand unless the Contractor has obtained prior written approval from the CPA Contract Manager in coordination with the Customer. The Contractor must have written confirmation from the CPA Contract Manager of the substitution before making delivery.

### **A.18.4 Adding New Commodities and/or Services to the Contract after Award**

Following the Contract award, additional commodities and/or services of the same general category that could have been encompassed in the award of this contract, and that are not already on the contract, may be added. A formal written request may be sent to successful Contractor (s) to provide a proposal on the additional commodities and/or services and shall submit proposals to the CPA as instructed. All prices are subject to negotiation with a Best and Final Offer ("BAFO"). CPA may accept or reject any or all proposals, and may issue a separate RFP for the products after rejecting some or all of the proposals. The commodities and/or services covered under this provision shall conform to the specifications and requirements as outlined in the request.

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## **A.19 ORGANIZATION OF THE PROPOSAL FOR SUBMISSION**

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The Proposal shall include all information required in this RFP and shall be in the format described herein. The Respondent is solely responsible for thoroughly understanding the RFP and its attachments, exhibits, and forms. Any questions concerning this RFP should be directed to the Point of Contact by the Deadline for Submitting Questions identified in Part A. The Respondent is cautioned to pay particular attention to the clarity and completeness of its Proposal. The Respondent is solely responsible for its Proposal and all documentation submitted.

The Respondent shall be as precise, accurate, and succinct as possible. The Respondent shall provide detailed descriptions of how they will fulfill each requirement. The clarity and completeness of a Proposal may be considered by the CPA evaluators.

**A. Confidential/Proprietary Information:**

If any material in the Proposal is considered by Respondent to be confidential or proprietary information, Respondent **must** clearly mark the applicable pages of their submission to indicate their claim of confidentiality. Additionally, Respondent must include a statement on company letterhead identifying all Proposal section(s) and page(s) which have been marked as confidential.

**B. Execution of Proposal – Attachment A**

Respondent's signature is required to acknowledge that they can meet all requirements as stated and failure to sign and submit this form with its Proposal may disqualify the Proposal.

**C. Respondent Contact Information Form – Attachment B**

All information on this form must be provided as requested.

**D. Preferences – Attachment C**

Respondents are encouraged to carefully review this attachment and complete as applicable.

**E. HUB Subcontracting Plan - Reference Section A.11**

The Respondent shall fill out the HUB Subcontracting Plan (HSP) and submit with the Proposal to be considered responsive. Responses received without the HSP, shall be rejected as a material failure to comply with the requirements of this RFP.

**F. Mandatory Price Sheet (XML)**

The Respondent shall complete the Pricing Sheet and return with response in the format requested.

**G. Assumptions and Exceptions**

The Respondent shall clearly state any assumptions it made in its Proposal. The Respondent shall also clearly identify any exceptions it takes to specific provisions of this RFP, noting the specific RFP section number. If there are no exceptions, the Respondent shall explicitly state that the Respondent takes no exception to any part of this RFP. Any exception may result in the Contract not being awarded to the Respondent.

**NOTE:** The CPA, as a state agency, is prevented by the Texas Constitution from indemnifying vendors. The Respondent is discouraged from including a term in its Proposal that requires the CPA to indemnify it. Such a term may result in the Proposal being deemed non-responsive.

On company letterhead or in Excel, the Respondent shall identify exceptions using the following format:

Section	Section Title	Exception	Proposed Language

**H. The Conflict of Interest Disclosure**

By signing the Execution of Proposal, the Respondent affirms that the execution of an agreement between Respondent and the State will not create a conflict of interest or cause an appearance of a conflict of interest. In its proposal, Respondent must disclose any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to Respondent's (and its proposed subcontractors') submission of a proposal and possible selection as contractor or its performance of the Contract. A description of some conflicts of interest may be found in Part B,

General Instructions and Contract Terms and Conditions, Section B.1.3, but this list should not be considered exhaustive or limiting.

If the circumstances certified by Respondent change or additional information is obtained subsequent to submission of proposals, by submitting a response Respondent agrees that it is under a continuing duty to supplement its response under this provision, and Respondent shall submit updated information as soon as reasonably possible upon learning of any change to their affirmation.

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## **A.20 SUBMITTING THE PROPOSAL TO THE CPA**

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The Proposal shall clearly state the Proposal Due Date and Time identified in [Section A.15.1](#) Calendar of Events and be titled: Proposal Submitted for RFP No. 715-M2 - Publications, Audiovisual Materials, Books and Cataloging Services (Prepared Materials Only)

### **THE PRICE SHEET MUST BE SUBMITTED ELECTRONICALLY IN THE ORIGINAL FORMAT.**

Please read all instructions carefully for submitting electronically:

Use the following e-mail address to submit your response electronically **and it is recommended to begin the process well in advance of 4:00 pm on the due date:**

[TPASS.ebids@cpa.state.tx.us](mailto:TPASS.ebids@cpa.state.tx.us)

**The e-mail subject line should contain the RFP number and title as indicated on the cover page.**

The respondent is solely responsible for ensuring that their complete electronic bid is sent to, and actually received by, CPA in a timely manner and at the proper destination server.

**IMPORTANT NOTE:** CPA recommends a limit on the attachments to 10MB each. This may result in the sending multiple e-mails to [TPASS.ebids@cpa.state.tx.us](mailto:TPASS.ebids@cpa.state.tx.us) for the submission of all documentation contained in a response.

**ALL DOCUMENTS SHOULD BE SUBMITTED IN MICROSOFT OFFICE FORMATS (WORD AND EXCEL) OR IN A FORM THAT MAY BE READ BY MICROSOFT OFFICE SOFTWARE. ANY DOCUMENTS WITH SIGNATURES SHALL BE SUBMITTED AS AN ADOBE PORTABLE DOCUMENT FORMAT (PDF) FILE. CPA IS NOT RESPONSIBLE FOR DOCUMENTS THAT CANNOT BE READ OR CONVERTED. UNREADABLE PROPOSALS MAY BE, IN CPA'S DISCRETION, REJECTED AS NONRESPONSIVE.**

Note: Please be aware that your Internet Service Provider may limit file sizes on your outgoing emails, so try to avoid graphics, pictures, letterheads, etc., which consume a lot of space. These typically include \*.tif/\*.tiff, \*.gif, & \*.bmp file extensions, but may include others, as well. CPA's firewall virus protection runs at all times, so during times of new active virus alerts, incoming traffic may be delayed while virus software scans emails with attachments.

**CPA takes no responsibility for electronic bids that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any CPA anti-virus or other security software.**

**To confirm receipt of all electronic submissions, contact 512-463-3377 or request a confirmation by e-mail.**



By Hard Copy Submission:

In lieu of electronic submission, CPA currently still accepts hard copy proposal. The Respondent must submit one (1) original signed paper copy.

CPA will no longer provide proof of delivery for proposals delivered by hand to the outside drop box or by courier; however, all proposals received by CPA will be documented with a date/time stamp for receipt documentation purposes.

The Proposal may be sent to the TPASS Bid Services at the following addresses:

By U.S. Mail:

Attn: TPASS Bid Services  
Texas Comptroller of Public Accounts  
P.O. Box 13186  
Austin, TX 78711-3186

By Hand Delivery to (8:00 am - 5:00 pm):

Attn: TPASS Bid Services  
\*Drop Box – located next to front outside door on San Jacinto Blvd.  
Central Services Building  
1711 San Jacinto Blvd.  
Austin, TX 78701

\*Note: The drop box is checked periodically during each day and 4:00 p.m. with proposals appropriately date/time stamped. Proposals placed in this box after 4:00 p.m. on the due date of responses will be considered non-responsive and will be returned to the Respondent un-opened.

By Overnight/Express Mail to (7:45 am - 4:45 pm):

Attn: TPASS Bid Services  
Room 174-A (CPA Mailroom, N.E. Back Dock)  
1711 San Jacinto Blvd.  
Austin, TX 78701

**NOTE: Facsimile Responses are *not allowed* without prior written approval from CPA.**

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## B.1 INTRODUCTION

### B.1.1 Authority to Contract

Pursuant to the authority and responsibility provided in §§2155.061, 2156.061, and 2156.121, Government Code, the Comptroller's office is authorized to procure statewide contracts using the sealed proposal method.

Pursuant to §§ 2155.202 – 2155.204, Government Code, statewide contracts procured by the Comptroller’s office may additionally be used by community mental health and mental retardation centers, the Texas Legislature and related legislative agencies, and local government entities pursuant to Subchapter D, Chapter 271, Local Government Code. Local government is defined by §271.081 of the Local Government Code to include a county, municipality, special district, school district, junior college district, a local workforce development board created under Section 2308.253, Government Code, or other legally constituted political subdivision of the state.

### B.1.2 Definitions

When capitalized, the following terms and acronyms have the meaning set forth below. All other terms have the meaning set forth in Webster’s II New College Dictionary.

TERM	DEFINITION
Contract	Any contract(s) resulting from this solicitation. <i><b>Note:</b> There is no guarantee that any contract will result from this solicitation.</i>
Contractor	The Respondent(s) awarded a Contract as a result of the RFP.
CPA	The Comptroller of Public Accounts, the state agency issuing this solicitation.
Customer	Those state and local entities that are required and permitted by law to purchase goods and services under contracts established by the CPA.
ESBD	The Electronic State Business Daily, which is available online at <a href="http://esbd.cpa.state.tx.us/">http://esbd.cpa.state.tx.us/</a> .
Gov't Code	The Texas Government Code.
Party / Parties	Either the CPA and Respondent separately or collectively.
Proposal	The response submitted by a vendor to the CPA as a result of this solicitation.
Respondent	Any person or vendor who submits a Proposal in response to this solicitation.
RFP	Request for Proposals, which is the type of solicitation embodied in this document.
TAC	The Texas Administrative Code, which is the publication for administrative rules.

### **B.1.3 Conflicts of Interest**

#### **B.1.3.1 Actual and Perceived Conflicts**

By submitting a Proposal, the Respondent represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in entering a Contract with the CPA. The Respondent also represents and warrants that entering a Contract with the CPA will not create the appearance of impropriety. In its Proposal, the Respondent shall disclose any existing or potential conflict of interest that it might have in contracting with the CPA. The requirement to disclose any actual or potential conflict of interest shall continue during the term of the contract, and shall survive until the end of the recordkeeping requirement in B.7.4. The CPA will decide, in its sole discretion, whether an actual or perceived conflict should result in Proposal disqualification or Contract termination.

#### **B.1.3.2 Current and Former CPA Employees**

In addition to the disclosures required above, the Respondent shall also disclose any of its personnel who are current or former officers or employees of the CPA or who are related, within the third degree by consanguinity (as defined by §573.023, Gov't Code) or within the second degree by affinity (as defined by §573.025, Gov't Code), to any current or former officers or employees of the CPA.

Respondents must comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees (see e.g., Texas Government Code Chapters 572 and 573). Such “revolving door” provisions generally restrict former agency heads from communicating with or appearing before the agency on certain matters for two years after leaving the agency. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employees’ official responsibility. Respondent, by signing this solicitation, certifies that it has complied with all applicable laws and regulations regarding former state employees.

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

### **B.1.4 Construction of this RFP and the Contract**

#### **B.1.4.1 Global Drafting Conventions**

The terms “include,” “includes,” and “including” are terms of inclusion and, where used in this Contract, are deemed to be followed by the words “without limitation.”

Unless explicitly stated otherwise, any references to “Sections,” “Articles,” “Exhibits,” or “Attachments” are deemed to be references to the Sections, Articles, Exhibits, and Attachments to this RFP and the Contract.

#### **B.1.4.2 Headings**

The Article and Section headings in this RFP and the Contract are for reference and convenience only and may not be considered in the interpretation of this RFP or the Contract.

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## **B.2 THE RFP PROCESS**

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### **B.2.1 Submitting Questions about the RFP**

The Respondent will have until the Deadline for Submitting Questions, identified in Part A, to submit in writing all questions regarding this RFP. Questions may only be sent to the Point of Contact. All questions shall, to the highest degree possible, cite the specific RFP section to which the question refers. The CPA will, at its discretion, answer the questions in a Question and Answer Document posted on the ESBD.

Only answers provided in writing by the CPA shall be considered official. Information in any form other than the materials constituting this RFP, the Question and Answer Document, and any RFP addendum shall not be binding on the CPA.

All questions submitted to the CPA must include the identity of the sender, the sender's title, company name, mailing address, telephone number, and facsimile number or e-mail address, as applicable.

**NOTE:** Minor questions for which the answer will not affect the interpretation of the RFP or change the contents of a Proposal (for example, a question regarding delivery of the sealed Proposal) may be answered orally or by e-mail by the CPA.

### **B.2.2 Addenda to the RFP**

Should an addition or correction to this RFP become necessary, an addendum relating the necessary information will be posted on the ESBD. The Respondent is responsible for periodically checking the ESBD for addenda or additional information relating to this RFP. The Respondent is required to acknowledge each addendum by returning a signed copy of the addendum with its Proposal.

### **B.2.3 Testing and Inspection**

The CPA and Customers may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFP and the Contract. The CPA may also test and inspect goods and services before they are purchased under the Contract.

Authorized CPA personnel shall have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, the CPA inspections will not disrupt the Respondent's daily operations. Tests shall be performed on samples submitted with the Proposal or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Respondent. In the event the goods tested fail to meet or exceed all conditions and requirements of the RFP and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Respondent or held for disposition at the Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state.

If material fails to meet specifications, the Respondent will be notified by fax / mail or e-mail. The Respondent will have ten (10) working days after receipt of the notification to remove the rejected material from state property. Material will be removed at the Respondent's expense. Material not removed in the allotted time period will be disposed by the Customer. The Respondent will be charged for all disposable expenses conducted by the Customers.

#### **B.2.4 Accuracy of the Proposal**

The Respondent's Proposal shall be true and correct and shall contain no cause for claim of omission or error. Proposals may be withdrawn in writing at any time prior to the submittal deadline.

#### **B.2.5 HUB Subcontracting Plan Requirements**

It is the policy of the CPA to promote and encourage contracting and subcontracting opportunities for State of Texas certified Historically Underutilized Businesses (HUBs) in all contracts in compliance with Chapter 2161, Gov't Code. Eligible Respondents are encouraged to become HUB certified. State of Texas HUB applications may be found at:

<http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>

Definitions for State of Texas HUB certifiable businesses can be found in 34 TAC Chapter 20, Subchapter B, which is available at:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=5&ti=34&pt=1&ch=20&sch=B&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=B&rl=Y)

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

Any probable subcontracting opportunities are identified in Part A. This list should not be considered a mandatory or an exhaustive list. Other areas of subcontracting may be more appropriate given the Respondent's business structure and internal resources. Please see the attached HUB Subcontracting Plan for further instructions which require vendors to identify the specific areas intended for subcontracting.

Search the State of Texas HUB Database for HUB vendors by the NIGP class and item at:

<http://www2.cpa.state.tx.us/cmbl/hubonly.html>

Additional minority and women owned business association resources are available for subcontracting notices at: <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>

Questions about the HUB Subcontracting Form, finding HUB vendors, or the State of Texas HUB Program, should be directed to the HUB Coordinator identified in Part A.

Additional information and training regarding how to complete a HUB Sub-Contracting Plan can be found on the CPA Website at the following link:

<http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

#### **B.2.6 Cost of Submitting the Proposal**

The CPA will not reimburse the Respondent for any cost related to its Proposal. The Respondent is responsible for any expense related to the preparation and submission of its Proposal.

## **B.2.7 Public Information Act Disclosures**

The CPA is a government agency subject to the Texas Public Information Act (PIA), Chapter 552, Gov't Code. The Proposal and other information submitted to the CPA by the Respondent are subject to release as public information. The Proposal and other submitted information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the specific exception to disclosure in the PIA. Merely making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable, and shall make the entire Proposal subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA.

If Respondent's proposal contains any information, which Respondent claims is confidential and not subject to release under the PIA, Respondent must prepare and deliver to CPA four CDs containing the following information:

1. Two CDs containing complete copies of all of Respondent's submissions pursuant to this RFO. These shall be marked "Complete Offer Documents, [Offeror's Name], CPA RFO . CONTAINS CONFIDENTIAL INFORMATION."
2. Two CDs, each containing copies of all of Respondent's submissions with all information claimed as confidential excised, blacked out or otherwise redacted. Each of these CDs shall also contain an Appendix which contains clear references to all redacted information including a general description of the redacted information. These CDs shall be marked "For Public Release: Redacted Version of [Offeror's Name], CPA RFO ."

The Respondent, by submitting a Proposal, shall thereby be irrevocably deemed to have fully indemnified and agreed to defend the CPA from any claim of infringement in the intellectual rights of Respondent or any third party for any materials appearing in the Proposal.

## **B.2.8 Irrevocability of the Proposal**

The Proposal is irrevocable for one hundred twenty (120) calendar days following the Proposal Opening Date and Time identified in Part A. This period may be extended at the CPA's request with the Respondent's written agreement.

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## **B.3 CONTRACT INFORMATION**

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### **B.3.1 Amending the Contract**

Any alterations, additions, or deletions in the Contract or any terms and conditions of the Contract shall be by written amendment executed by both Parties and put into effect with a Contract Amendment issued by the CPA. The Respondent shall not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.



### **B.3.2 Order of Precedence**

In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Signed Contract (or Notice of Award), Attachments to the Contract (or Notice of Award), Request for Proposals, and Respondent's Response to Request for Proposals.

### **B.3.3 Terminating the Contract**

#### **B.3.3.1 Convenience of the State of Texas**

The CPA reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if the CPA determines that such termination is in the best interest of the state. In the event of such a termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Customers shall be liable for payments for any goods or services ordered from the Respondent before the termination date.

#### **B.3.3.2 Cause/Default**

If the Respondent fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, the CPA may, upon written notice of default to the Respondent, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

The CPA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless the CPA notifies the Respondent in writing prior to the exercise of such remedy. The Respondent shall remain liable for all covenants and indemnities under the Contract. The Respondent shall be liable for all costs and expenses, including court costs, incurred by the CPA with respect to the enforcement of any of the remedies listed herein.

#### **B.3.3.3 Change in Federal or State Requirements**

If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either the CPA or the Respondent cannot reasonably fulfill the Contract and if the Parties can not agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under the Contract.

#### **B.3.3.4 TCPDP Purchasing Preference**

Pursuant to Texas Human Resources Code Chapter 122, state agencies shall purchase products and services meeting the agency's specifications offered by a Community Rehabilitation Program (CRP) certified by the Texas Council on Purchasing from People with Disabilities (TCPDP), or its Central Nonprofit Agency, Texas Industries for the Blind and Handicapped (TIBH). Should any item(s) awarded under any contract pursuant to this RFP become available from a CRP through TIBH or TCPDP during the term of the contract, the state may cease all

use of the awarded contract immediately upon the availability of such product or service, and may terminate the contract for some or all of such products or services awarded.

**B.3.3.5 Rights upon Termination or Expiration of Contract**

In the event that the Contract is terminated for any reason, or upon its expiration, the CPA and the Customers shall retain ownership of all associated work products and documentation obtained from the Respondent under the Contract.

**B.3.3.6 Survival of Terms**

Termination of the Contract for any reason shall not release the Respondent from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

**B.3.4 Contract Documentation**

The Contract will consist of the Notice of Award, Listing of Awarded Items, and any Contract Amendments thereto issued by the CPA; this RFP, together with any modifications made through Addenda thereto; and the successful Proposal, together with any clarifications thereto that are submitted at the request of the CPA. In the event of any conflict or contradiction between or among these documents, the Notice of Award, as modified by any Contract Amendments, shall control over the RFP and the Proposal. The RFP, as modified by any Addenda, shall control over the Proposal.

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## **B.4 CONTRACT MANAGEMENT**

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**B.4.1 Contract Managers**

**B.4.1.1 The CPA Contract Manager**

The CPA Contract Manager has the authority to:

- sign Controlled Correspondence
- serve as the day-to-day point of contact
- coordinate quality control reviews
- approve invoices
- coordinate meetings with the Respondent
- investigate complaints
- receive requests for substitutions or changes in goods or services awarded under the Contract
- initiate contract amendments
- accept, deny or negotiate pricing changes

**B.4.1.2 The Respondent's Contract Manager**

The Respondent shall identify its Contract Manager to the CPA in writing within 10 days of the issuance of the Purchase Order. Changes to the Respondent's Contract Manager shall hereafter be documented by the Respondent through Controlled Correspondence. The Respondent's Contract Manager has the authority to:

- make decisions regarding the deliverables required by the Contract
- sign Controlled Correspondence

- serve as the day-to-day point of contact
- coordinate quality control reviews
- coordinate meetings with the CPA
- investigate complaints

## **B.4.2 Controlled Correspondence**

In order to track and document requests for decisions and/or information pertaining to the Contract, and the subsequent response to those requests, the CPA and the Respondent shall use Controlled Correspondence. The CPA shall manage the Controlled Correspondence for the Contract. For each Controlled Correspondence document, the CPA shall assign a tracking number and the document shall be signed by the appropriate Party's Contract Manager.

Controlled Correspondence shall not be used to change pricing or alter the terms of the Contract. Controlled Correspondence shall not be the basis of a claim for equitable adjustment of pricing. Any changes that involve the pricing or the terms of the Contract must be by a properly executed Contract amendment. However, the Controlled Correspondence process may be used to document refinements and interpretations of the provisions of the Contract, to document the cost impacts of proposed changes, and to document CPA-approved changes to the Respondent's HUB subcontracting plan.

Controlled Correspondence documents shall be maintained by both Parties in on-going logs and shall become part of the normal status reporting process. Any communication not generated in accordance with such process shall not be binding upon the Parties and shall be of no effect.

## **B.4.3 Notices and Liaisons**

### **B.4.3.1 Delivery of Written Notices**

Any notice required or permitted to be given under the Contract by one Party to the other Party shall be in writing and shall be addressed to the receiving Party at the address hereinafter specified. The notice shall be deemed to have been given immediately if delivered in person to the recipient's address hereinafter specified. It shall be deemed to have been given on the date of certified receipt, if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving Party at the address hereinafter specified.

### **B.4.3.2 Notice to the Respondent**

Within 10 days of the issuance of the Purchase Order, the Respondent shall identify in writing to the CPA the address and contact person for all notices. If there is any change to this information during the term of the contract, the Respondent shall notify the CPA by Controlled Correspondence.

### **B.4.3.3 Notice to the CPA**

The CPA's address for all purposes under this Contract and for all notices hereunder shall be:

Director, TPASS Division  
 Comptroller of Public Accounts  
 P. O. Box 13186 (physical address: 1711 San Jacinto Blvd)  
 Austin, Texas 78711-3186 (physical: 78701)

With copies to (registered or certified mail with return receipt is not required for copies):

Deputy General Counsel for TPASS  
Comptroller of Public Accounts  
P. O. Box 13186 (physical address: 1711 San Jacinto Blvd)  
Austin, Texas 78711-3186 (physical: 78701)

#### **B.4.4 Subcontracting Approval**

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

The Respondent, in subcontracting for any performances specified herein, expressly understands and acknowledges that in entering into such subcontract(s), the CPA is in no manner liable to any subcontractor(s) of the Respondent. In no event shall this provision relieve the Respondent of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this RFP and Contract. The Respondent shall manage all quality and performance, project management, and schedules for subcontractors. The Respondent shall be held solely responsible and accountable for the completion of all work for which the Respondent has subcontracted.

#### **B.4.5 No Implied Authority**

Any authority delegated to the Respondent by the CPA is limited to the terms of the Contract. The Respondent shall not rely upon implied authority and specifically is not delegated authority under the Contract to: (1) make public policy; (2) promulgate, amend, or disregard CPA program policy; or (3) unilaterally communicate or negotiate, on behalf of the CPA, with any member of the U.S. Congress or any member of their staff, any member of the Texas Legislature or any member of their staff, or any federal or state agency.

#### **B.4.6 Cooperation with the CPA**

The Respondent must ensure that it cooperates with the CPA and other state or federal administrative agencies, at no charge to the CPA, for purposes relating to the administration of the Contract. The Respondent agrees to reasonably cooperate with and work with the CPA's contractors, subcontractors, and third party representatives as requested by the CPA.

#### **B.4.7 Dispute Resolution**

Chapter 2260 of the Texas Government Code prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, the CPA has adopted rules, codified at 34 TAC §§1.360-1.387. The Respondent shall comply with such rules, as revised from time to time.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve any claim for breach of contract asserted by the Respondent under the Contract. If the Respondent's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Respondent shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Respondent with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is the Respondent's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the CPA if the Parties are unable to resolve their disputes as described above.

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

For all other specific breach of contract claims or disputes under the Contract, the CPA and the Respondent shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the CPA and the Respondent within fifteen (15) days after written notice by one of them demanding mediation under this Section. The Respondent shall pay all costs of the mediation unless the CPA, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the CPA and the Respondent may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the CPA and the Respondent shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The CPA's participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the CPA of (1) any rights, privileges, defenses, remedies or immunities available to the CPA as an agency of the State of Texas or otherwise available to the CPA; (2) the CPA's termination rights; or (3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the CPA, the Respondent shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Respondent may suspend performance during the pendency of such claim or dispute if the Respondent has complied with all provisions of §2251.051, Gov't Code, and such suspension of performance is expressly applicable and authorized under that law.

#### **B.4.8 Fraud, Waste, and Abuse**

By submitting a Proposal to the RFP, the Respondent represents and warrants that it has read and understood and shall comply with CPA's Anti-Fraud Policy, found at: <http://www.window.state.tx.us/ssv/ethics.html>, as such Policy currently reads and as it is amended throughout the term of the Contract.

#### **B.4.9 Renegotiation of Price**

The CPA shall monitor market prices and prices paid by other states for substantially similar goods and services during the term of the Contract. If the CPA determines that substantially similar goods and services are selling for meaningfully lower prices than the prices established in the Contract, the CPA may initiate price renegotiations with the Respondent and amend the Contract to reflect a new, lower price, if agreed to by the Parties.

#### **B.4.10 Name Changes and Sales**

If the Respondent changes its name or is sold to another entity, it must notify the CPA through Controlled Correspondence. The Respondent, in its notice, shall describe the circumstances of the name change or sale, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for the Respondent, the Respondent shall identify the new personnel and provide resumes to the CPA, if resumes were originally required by the RFP. The CPA may request other information about the change and its impact on the Contract and the Respondent shall supply the requested information within five (5) working days of receipt of the request.

The CPA may terminate the Contract due to a sale of or change to the Respondent that materially alters the Respondent's ability to perform under the Contract. The CPA has the sole discretion to determine if termination is appropriate.

#### **B.4.11 News Releases**

The CPA does not endorse any vendor, commodity, or service. News releases pertaining to this transaction and/or advertisements, publications, declarations and any other pronouncements by the Respondent using any means or media mentioning the State of Texas or the CPA must be approved in writing by the CPA prior to public dissemination. Respondent may not send out unsolicited electronic mail or facsimile transmissions to CPA and/or customer entities without prior written approval of the CPA Contract Manager, regardless of whether the proposed communication specifically references the awarded contract.

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### **B.5 FINANCIAL INFORMATION**

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#### **B.5.1 Appropriations**

All obligations of the CPA and Customers are subject to the availability of legislative appropriations and, for Customers expending federal funds, to the availability of the federal funds applicable to the Contract. The Respondent acknowledges that the ability of the CPA and the Customers to make payments under the Contract is contingent upon the continued availability of funds. The Respondent further acknowledges that funds may not be specifically appropriated for the Contract and the CPA's or Customers' continual ability to make payments under the Contract is contingent upon the funding levels appropriated for each particular appropriation period. The CPA and the Customers will use all reasonable efforts to ensure that such funds are available. The Respondent agrees that if future levels of funding for the CPA or a Customer are not sufficient to continue operations without any operational

reductions, the CPA or the Customer, in its discretion, may terminate the Contract or a pending order under the Contract, either in whole or in part. In the event of such termination, the CPA or the Customer will not be considered to be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. The CPA and the Customer shall make best efforts to provide reasonable written advance notice to the Respondent of any such Contract or order termination. In the event of such a termination, the Respondent shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on that particular order if an order is being terminated, or the Contract, if the Contract is being terminated. The CPA or the Customer shall be liable for payments limited only to the portion of work the CPA or the Customer authorized in writing and which the Respondent has completed, delivered to the CPA or Customer, and which has been accepted by the CPA or Customer. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

### **B.5.2 Audit Requirements**

Pursuant to §2262.003, Gov't Code, the State Auditor's Office, or successor agency, may conduct an audit or investigation of the Respondent or any other entity or person receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds by the Respondent or any other entity or person directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. The Contract may be amended unilaterally by the CPA to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of §2262.003. **The Respondent shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Respondent and the requirement to cooperate is included in any subcontract it awards.**

Customers who order under the Contract using federal or grant funds may have additional audit requirements that are required by law or regulation. Those additional requirements will be included on the purchase order for that particular order.

### **B.5.3 Invoicing and Payment Requirements**

In order to receive payment under the Contract, the Respondent must submit an original invoice to the Customer placing the order, which will be designated in the purchase order as the "Bill To" address. To be a proper invoice that may be accepted and paid, the invoice must include the following information and/or attachments:

- (1) Name and address of the Respondent.
- (2) The Respondent's Texas Identification Number (TIN).
- (3) The Respondent's invoice remittance address.
- (4) The purchase order number authorizing the delivery of products or services.

- (5) A description of what the Respondent delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Respondent must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Respondent's information.

If an invoice does not meet this Section's requirements, the state will send the Respondent written notice with the improper invoice within 21 calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information the Respondent needs to correct the invoice.

**NOTE:** For purposes of this Section and Sections B.5.4 and B.5.5, the CPA shall only be receiving and paying invoices when the CPA has placed an order with the Respondent for CPA needs. Otherwise, the orders will be for the Customers, as defined in Section B.1.2.

#### **B.5.4 Disputed Invoices**

As stated above, the Respondent will receive notice of an error in an invoice submitted for payment by not later than the 21st day after the date the invoice was received by the state. If an invoice dispute is resolved in favor of the Respondent, the Respondent is entitled to receive interest on the unpaid balance of the invoice, beginning on the date the invoice became overdue, pursuant to §2251.021, Gov't Code. If a dispute is resolved in favor of the CPA or a Customer, the Respondent shall submit a corrected invoice that must be paid in accordance with §2251.021. The unpaid balance accrues interest if the corrected invoice is not paid by the appropriate date.

#### **B.5.5 Time and Manner of Payment**

Pursuant to Texas Government Code Chapter 2251, Payment by the CPA or a state entity Customer is overdue on the 31st day after the later of: (1) the date the CPA or Customer receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the CPA or Customer receives the invoice for the goods or service.

Payment by a political subdivision Customer whose governing body meets only once a month or less frequently is overdue on the 46th day after the later event of: (1) the date the Customer receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Customer receives the invoice for the goods or service.

#### **B.5.6 Antitrust and Assignment of Claims**

Pursuant to Texas Government Code §2155.005, the Respondent affirms that the Respondent and any person, firm, corporation, partnership, or institution represented by the Respondent, and any person or entity representing the Respondent (1) have not violated the antitrust laws of Texas (Tex.Bus. & Com.Code §15.01, *et seq.*) or the United States (15 U.S.C. §1 *et seq.*); and (2) have not, directly or indirectly, communicated Respondent's Proposal for the Contract, or any pertinent portion thereof, to any competitor or any other person engaged in such line of business.



The Respondent hereby assigns to the State of Texas all of Respondent's rights, title and interest in and to all claims and causes of action Respondent may have under the antitrust laws of Texas or the United States for overcharges associated with the Contract.

#### **B.5.7 Debts and Delinquencies**

As required by §2252.903, Gov't Code, the Respondent agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

#### **B.5.8 Liability for and Payment of Taxes**

The CPA and certain Customers are exempt from State Sales tax and Federal Excise tax. Customers will furnish Tax Exemption Certificate(s) to the Respondent upon request. The Respondent shall pay all taxes resulting from the RFP and Contract including but not limited to any federal, state or local income, sales, excise or property taxes. The CPA and the Customers shall not be liable to reimburse the Respondent for the payment of such taxes incurred by the Respondent in acquiring any goods or services as a part of any work called for in this RFP and the Respondent's invoice shall not include any amount for such taxes, as long as the Customer has provided the requested Tax Exemption Certificates.

#### **B.5.9 Method of Purchase and Vesting Ownership**

All goods or services purchased pursuant to the Contract shall be purchased using an outright purchase. Upon installation, acceptance, and payment, the Customer shall receive title to any personal property delivered pursuant to the purchase, except as otherwise agreed to in the Contract.

#### **B.5.10 No Debt Against the State**

The Contract shall not be construed as creating any debt by or on behalf of the State of Texas.

#### **B.5.11 Refunds**

If the CPA determines that it or a Customer has overpaid the Respondent under the Contract, the Respondent shall refund that amount to the CPA or Customer, depending on the entity that overpaid. The CPA or Customer may offset and deduct the amount of the overpayment from any amount owing, as a reimbursement, but unpaid to the Respondent. The Respondent shall refund any overpayment within 30 calendar days of receipt of the notice of the overpayment.

If any reimbursement, or a portion of a reimbursement, is disallowed as a result of an audit finding that the Respondent failed to follow the requirements for the Contract, then the Respondent agrees that the CPA or Customer may recoup the disallowed amount from funds payable under the Contract, to the extent the disallowed amount was incurred by the CPA or Customer. If an audit identifies a disallowed amount after the expiration date of the Contract, the CPA or Customer shall send the Respondent notice of the audit results and specifically identify the amount that must be refunded by the Respondent. The Respondent shall refund the disallowed amount within 30 calendar days of receipt of the notice.

### **B.5.12 Travel**

Any travel or per diem required by the Respondent to perform its obligations under the Contract will be at the Respondent's expense. All travel and per diem that the state requests in addition to what the Contract requires the Respondent to provide at the Respondent's expense will be paid in accordance with State of Texas Travel Allowance Guide.

### **B.5.13 Direct Deposit**

The Texas Comptroller of Public Accounts encourages vendors to receive payment by direct deposit. To receive future payments by direct deposit, vendors should download and fill out the New Setup Direct Deposit/Advance Payment Notification, Form 74-207 available at [www.txdirectdeposit.org](http://www.txdirectdeposit.org).

Vendors may request Advance Payment Notification by fax or e-mail. This feature includes notification one business day before the deposit posts to the vendor's bank account. It also provides the amount of the deposit and which agency it came from. Vendors may also receive remittance information with the notification.

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## **B.6 CONFIDENTIALITY AND SECURITY**

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The Respondent should not receive any sensitive or confidential information under the Contract. Any information the Respondent compiles or creates as a result of the Contract must be maintained and protected in accordance with any federal, state, or local laws and regulations that apply. The Respondent shall establish a method to secure the confidentiality of records and other information relating to clients in accordance with applicable federal and state laws, rules, and regulations.

The obligations of the Contractor under this Security and Confidentiality Article shall survive this Contract and shall be included in all subcontracts.

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## **B.7 TERMS AND CONDITIONS**

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### **B.7.1 Affirmations**

Submitting a Proposal with a false statement is a material breach of contract and shall void the Proposal or the Contract, and the Respondent shall be removed from all bid lists. By signature thereon affixed, the Respondent thereby certifies that:

B.7.1.1 The Respondent has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted response. Violation of this requirement may result in the termination of the Contract at the discretion of the CPA.

B.7.1.2 The CPA is subject to the provisions of the Texas Public Information Act. Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to the CPA under this Contract constituting a record under

the Act is received by the CPA, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. The Respondent authorizes the CPA to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Respondent has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be excepted from public disclosure under the Act. If the CPA does not have a good faith belief that information may be subject to an exception to disclosure, the CPA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of the Respondent to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. The Respondent waives any claim against and releases from liability the CPA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Respondent and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

B.7.1.3 The Respondent shall promptly notify the CPA in the event that any representations and warranties provided in this Contract are no longer true and correct. The Respondent acknowledges that all of its representations and warranties contained in any part of its Proposal and this Contract are material and have been relied upon by the CPA in selecting the Respondent for the award of the Contract. Further, the Respondent warrants and represents that all of its statements and representations made to the CPA prior to being awarded the Contract, and those made during the negotiation of this Contract, are material, true and correct.

## **B.7.2 Civil Rights**

The Respondent agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Respondent shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

## **B.7.3 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion**

CPA is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal

government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

#### **B.7.4 Records Retention**

The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

#### **B.7.5 Environmental Protection**

The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

#### **B.7.6 Prohibition on Lobbying**

The Respondent shall comply with the provisions of a federal law known generally as the Lobbying Disclosure Act, 2 U.S.C. §1601 *et seq.* By submitting a Proposal, the Respondent certifies that it shall not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. §1352. It also certifies that the Respondent shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL.

#### **B.7.7 Copyrights and Publications**

The Respondent understands and agrees that, where activities supported by the Contract produce original books, manuals, films, or other original material (hereinafter referred to as “the works”), the Respondent may copyright the works subject to the reservation by the CPA and affected Customers of a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state and/or political subdivision purposes:

- the copyright in the works developed under the Contract, and
- any rights of copyright to which the Respondent purchases ownership with funding from the Contract.

The Respondent may publish, at its expense, the results of Contract performance with prior CPA review and approval of that publication. Any publication (written, visual, or sound) shall include acknowledgment of the support received from the CPA and Customers. One (1) copy of any such publication must be provided to the CPA. The CPA reserves the right to require additional copies before or after the initial review. All copies shall be provided free of charge to the CPA.

## **B.7.8 Certifications**

### **B.7.8.1 Child Support Obligations**

Under §231.006, Texas Family Code, (relating to child support) the Respondent, by submitting its Proposal, certifies that it is not ineligible to receive a payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

### **B.7.8.2 Texas Corporate Franchise Tax Certification**

The Respondent, by submitting its Proposal, certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

### **B.7.8.3 Certification Concerning Dealings with Public Servants**

The Respondent, by submitting its Proposal, certifies that it has not given and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this transaction.

### **B.7.8.4 Certification Concerning Financial Participation**

Pursuant to §2155.004, Gov't Code, the Respondent certifies that the individual or business entity named in its Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

### **B.7.8.5 Certification Concerning Hurricane Relief**

Sections 2155.006 and 2261.053, Government Code, prohibit the CPA from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005. Under §2155.006, Gov't Code, the Respondent certifies that the individual or business entity named in its Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

## **B.7.9 Independent Contractor**

The Contract shall not render the Respondent an employee, officer, or agent of the CPA for any purpose. The Respondent is and shall remain an independent contractor in relationship to the CPA. The CPA shall not be responsible for withholding taxes from payments made under the Contract. The Respondent shall have no claim against the CPA for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

## **B.7.10 No Assignment by Contractor**

The Respondent shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the CPA.

#### **B.7.11 Indemnification and Liability**

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

**THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR CPA FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CPA OR ITS EMPLOYEES.**

#### **B.7.12 Respondent Liability for Damage to Government Property**

The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the CPA Contract Manager in writing of any such damage within one (1) calendar day.

#### **B.7.13 Force Majeure**

The CPA, any Customer, and the Respondent shall not be responsible for delays in performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the CPA, Customer or the Respondent.

In the event of an occurrence under this Section, the CPA, Customer or Respondent (parties) will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The party shall immediately notify the other party by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

#### **B.7.14 Buy Texas**

In accordance with §2155.4441, Gov't Code, the Respondent shall, in performing any services under the Contract, purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside Texas.

## **B.7.15 Miscellaneous Terms and Conditions**

### **B.7.15.1 Permits**

The Respondent shall be responsible, at the Respondent's expense, for obtaining any and all permits or licenses required by city, county, state, or federal rules, regulations, law, or codes that pertain to the Contract.

### **B.7.15.2 Electrical Items**

All electrical items provided by the Respondent to the CPA or a Customer under the Contract must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.

### **B.7.15.3 Executive Head**

Pursuant to §669.003, Gov't Code, the CPA may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. Bidder certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with executive head of a state agency. By submitting a Proposal, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years.

### **B.7.15.4 Terminated Contracts**

By submitting a Proposal, the Respondent certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If the Respondent does have such a terminated contract, the Respondent shall identify each and provide an explanation for the termination.

## **B.7.16 Non-Waiver of Rights**

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

## **B.7.17 No Waiver of Sovereign Immunity**

The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the CPA or the State of Texas of any immunities from suit or from liability that the CPA or the state may have by operation of law.

## **B.7.18 Severability**

If any provision of the Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

### **B.7.19 Applicable Law and Venue**

The Respondent agrees that the Contract in all respects shall be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. The Respondent also agrees that the exclusive venue and jurisdiction of any legal action or suit concerning the CPA under this Contract is, and that any such legal action or suit shall be brought, in a court of competent jurisdiction in Travis County, Texas.

### **B.7.20 Compliance with Laws; Dealing with Public Servants**

The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; (iii) §2155.003, Gov't Code, which prohibits the chief clerk or any other employee of the CPA from having an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state or accept from any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract. Except where otherwise expressly required by applicable laws and regulations, CPA shall not be responsible for monitoring Respondent's compliance with any laws or regulations. If Respondent performs any work knowing or having reason to know that it is contrary to laws or regulations, Respondent shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom.

### **B.7.21 Insurance and Other Security**

The Respondent represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required to ensure proper fulfillment of the Contract and its liabilities thereunder. The Respondent shall insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same. Such insurance shall comply with Texas statutory requirements and also cover any cargo being delivered to Customers.

The Respondent represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an "A" rating from Best, and are authorized to provide the coverage. The Respondent shall furnish proof of insurance upon request of a Customer or the CPA.

### **B.7.22 Deceptive Trade Practices; Unfair Business Practices**

The Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that the Respondent has not been found to be liable for such practices in such proceedings. The Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.



### **B.7.23 Immigration**

The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") enacted on September 30, 1996.

### **B.7.24 Change Management**

The Respondent agrees that the key personnel assigned to the Contract shall remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by the Respondent or unless the CPA agrees to a change in the key personnel.

### **B.7.25 Federal, State, and Local Requirements**

Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Respondent shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

### **B.7.26 No Liability Upon Termination**

If this Contract is terminated for any reason, CPA and the State of Texas shall not be liable to Respondent for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Respondent may be entitled to the remedies provided in Government Code, Chapter 2260.

### **B.7.27 Felony Criminal Convictions**

Respondent represents and warrants that Respondent has not and Respondent's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised CPA as to the facts and circumstances surrounding the conviction. If awarded the contract, Respondent has a continuing duty to amend, supplement or correct this representation and warranty not later than ten (10) days after discovering additional information relating to felony criminal convictions of Respondent or any of its employees. Respondent shall not allow any employee convicted of a felony criminal offense to perform tasks related to the contract without such disclosure and express permission from CPA.

### **B.7.28 Drug Free Workplace**

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

### **B.7.29 Vendor Performance**

In accordance with Texas Government Code, 2155.074 and 2155.75, vendor performance may be used as a factor in the award.

### **B.7.30 Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institutions of Higher Education Purchases Only)**

(1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(2) Respondent shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Respondents not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.



**Texas Procurement and Support Services (TPASS)  
ADDENDUM**

<b>RFP NO:</b>	715-M2	<b>ADDENDUM NO.:</b>	1
<b>RFP Proposal Due Date/Time:</b>	May 9, 2014 at 4:00 pm (Central Time in Austin, TX)		
<b>TPASS PURCHASER:</b>	Melissa McIlroy CTPM, CTCM		

**PURPOSE OF ADDENDUM: Questions and Answers**

**Q: Execution of Proposal:** No individual holds 25% ownership or more, though a small group of partnerships and trusts do. Do we need to provide names for those entities?

**A:** Pursuant to Tx. Family Code §231.006(c), responses must include names and Social Security Numbers of **each person** with at least 25% ownership of the business entity submitting the response. If **any person** meets the 25% ownership criteria, failure to provide the required information will result in disqualification of the bid.

**Q: HUB - State of Texas Vendor ID:** Does Section A of the Hub Subcontracting Opportunity Notification need to be completed if our organization will not be subcontracting any portion of the contract?

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

**Q: HSP Good Faith Effort:** Does Section B-3 of the HSP Good Faith Effort need to be completed if our organization will not be subcontracting any portion of the contract?

**A: Please read the HSP: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)**

**Q: Pricing Sheet - Line 20:** – The categories for service pricing are unfamiliar. Do we need to reply to Line 20?

**A: Respondents may bid on a single a few or all categories.**

**Q: Pricing:** Can libraries receive/are they eligible for larger discounts than what is noted on the bid, if we are offering special promotions or programs?

**A: Contractors shall provide the same discount to all customers per category.** Proposed prices/discounts offered to the State may be considered the Respondent's most favored Customer pricing; however, CPA reserves the right to negotiate pricing. In the event a Contractor offers or provides a decrease in price or increase in discount to its Customers for the same commodities or services, under the same terms and conditions, provided for the State of Texas pursuant to its contract, the Contractor shall provide the same decrease in price or increase in discount for the State of Texas. It is recommended that the Contractor provide said price decrease or discount increase voluntarily.

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	C O M B S		

**Q:** On the bid form (“pricing sheet”) I see noted for each line’s response “Reference Part A.6.3.” I am having trouble locating this. Unless I’m in the wrong spot, A.6 is “Exclusions” and I do not see a number “3” noted under this section. Please clarify for me. Thanks.

**A: A.8 PUBLICATION CATEGORIES Sec A.8.1 Category Line Items**

**Q:** I’d like to clarify with you if we can do this bid: We have supplemental instructional materials which includes some books—can we bid? I wasn’t sure if the books are for library. Also, when looking at the HUB forms, we are not a corporation, we are a limited partnership—do we still fill those forms out? Thank you for your time.

**A:** I am not able to advise you on participation in the proposal process. We invite all interested parties to take part in the process. However if you bid you must send in all documents required:

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

**Price Sheet Clarification on all line item numbers:**

**From: Reference Part A.6.3**

**To: Reference Part A.8.1**

**THIS ADDENDUM SHALL BE ATTACHED TO AND FORM A PART OF THE REFERENCED RFP AND ANY RESULTING AWARDED CONTRACT**

**RESPONDENT SHOULD ACKNOWLEDGE RECEIPT OF THIS ADDENDUM, BY SIGNING AND RETURNING WITH RESPONSE, OTHERWISE THE PROPOSAL MAY NOT BE GIVEN CONSIDERATION.**

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RESPONDENT COMPANY NAME

---

REPRESENTATIVE SIGNATURE

---

PRINTED NAME

S U S A N

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**Texas Procurement and Support Services (TPASS)  
ADDENDUM**

<b>RFP NO:</b>	715-M2	<b>ADDENDUM NO.:</b>	2
<b>RFP Proposal Due Date/Time:</b>	<b>May 16, 2014 at 4:00 pm (Central Time in Austin, TX)</b>		
<b>TPASS PURCHASER:</b>	Melissa McIlroy CTPM, CTCM		

**PURPOSE OF ADDENDUM: BID OPENING EXTENSION**

CHANGE BID OPENING DATE FROM:

<b>RFP Proposal Due Date/Time:</b>	<b>May 9, 2014 at 4:00 pm (Central Time in Austin, TX)</b>
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TO:

<b>RFP Proposal Due Date/Time:</b>	<b>May 16, 2014 at 4:00 pm (Central Time in Austin, TX)</b>
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**THE MANDATORY PRICE SHEET HAS BEEN REVISED AND PLACED ON THE ESBD:  
PACKAGE 2**

IF ANY RESPONDENTS HAVE SUBMITTED PROPOSALS **YOU MAY RE-SUBMIT THE PRICE SHEET NO LATER THAN THE REVISED BID OPNEING DATE.**

**CLARIFICATIONS:**

**A.8 PUBLICATION CATEGORIES**

**Standard Publisher's Editions**

**A.8.1 CHANGE FROM:**

Line Item No. 9: Adult Trade; Fiction/Non-Fiction Hardcover or Paperback

Line Item No. 10: Juvenile Trade; Fiction/Non-Fiction Hardcover or Paperback

Line Item No. 12: Non-Trade Publications

TO:

Line Item No. 9: Adult Trade; Fiction/Non-Fiction Hardbound

Line Item No. 10: Adult Trade; Fiction/Non-Fiction Paperback

Line Item No. 11: Juvenile Trade; Fiction/Non-Fiction Hardbound

Line Item No. 12: Juvenile Trade; Fiction/Non-Fiction Paperback

Line Item No. 14: Non-Trade Publications Hardbound

Line Item No. 15: Non-Trade Publications Paperback

ADDED Line Item No. 27: University Press

**CHANGE FROM:**

**Services**

Line Item No. 19: Cataloging Services

Line Item No. 20: On-line Ordering Initial/Renewal Start-up Service

**TO:**

Line Item No. 21: On-line Ordering Initial/Renewal Start-up Service

Line Item No. 22: Hardbound Cataloging Services

Line Item No. 23: Paperback Cataloging Services

Line Item No. 24: DVD/CD Cataloging Services

Line Item No. 25: MP3 Cataloging Services

Line Item No. 26: Digital Audio/Video Cataloging Services

**A.9.1 Cataloging Service:**

**CHANGE FROM:**

Services will be provided at the request of the customer and will be coordinated and mutually agreed upon by both parties.

Respondents pricing for these services must include all incidental costs and be all inclusive, including inside delivery, unloading, shipping, fuel costs, insurance, etc. for the initial term of the contract and all subsequent renewal periods, as exercised.

**TO:**

Services will be provided at the request of the customer and will be coordinated and mutually agreed upon by both parties.

Respondents pricing for these services must include all incidental costs and be all inclusive, including inside delivery, unloading, shipping, fuel costs, insurance, etc. for the initial term of the contract and all subsequent renewal periods, as exercised.

Respondents may offer a **range** in pricing on the Mandatory Price Sheet.

## Questions and Answers

**Q1:** E-Books are not listed as a category. Would the State please consider adding this product to the scope of the contract and to the Bid Form?

**A1:** E-Books Category Discount may be considered after further research has been conducted.

**Q.2 A.9 CATALOGING**

a. Contemporary: Please describe the difference between 2) Plastic Adhesive for Paperbacks and 3) KAPCO-like cover-up.

**Change From:**

**A2: A9: Contemporary:**

2. Plastic adhesive for paperbacks
3. KAPCO®-like cover-ups. Re-packaging of audio-visual formats

**Change TO:**

a. **Contemporary:**

2. **Flexible** adhesive cover for paperbacks
3. **Inflexible** adhesive cover-ups

**Q3: General:** Are there any participation or usage fees associated with this contract? Fees charged to the Vendor? Fees charged to the participating agencies/libraries?

**A3:** No this is a CPA Managed Contract without any associated fees.

**Q4:** Does the State anticipate award to multiple vendors? Is there a limit on the number of awarded vendor positions?

**A4: A.18.2 Multiple Awards**

*The CPA anticipates multiple term contracts may be awarded from this solicitation. The Respondent(s) providing the best value to the State for each NIGP group description may be chosen as the State's primary or "best value vendor" for that group. Additional Respondents may be awarded contracts at the sole discretion of CPA in order to provide product variety.*

**THIS ADDENDUM SHALL BE ATTACHED TO AND FORM A PART OF THE REFERENCED RFP AND ANY RESULTING AWARDED CONTRACT**

**RESPONDENT SHOULD ACKNOWLEDGE RECEIPT OF THIS ADDENDUM, BY SIGNING AND RETURNING WITH RESPONSE, OTHERWISE THE PROPOSAL MAY NOT BE GIVEN CONSIDERATION.**

\_\_\_\_\_  
RESPONDENT COMPANY NAME

\_\_\_\_\_  
REPRESENTATIVE SIGNATURE

\_\_\_\_\_  
PRINTED NAME