

Texas Comptroller of Public Accounts

Glenn Hegar, Comptroller



Request for Offers Unitized Investment Accounting and Reporting System

RFO No. 930-26-0237WF

November 21, 2024

Anticipated Schedule of Events

November 21, 2024	Issuance of RFO
December 16, 2024	Deadline for Submission of Questions (2:00 p.m., CT)
January 15, 2025	Release of Official Responses to Questions (or as soon thereafter as practical)
February 14, 2025	Deadline for Submission of Offers (2:00 p.m. CT) <u>Late Offers will not be considered</u>
May 1, 2025	Presentations from Top-Ranked Respondents (if presentations requested by CPA, dates and times to be scheduled)
September 1, 2025	Services Commencement Date (or as soon thereafter as practical)

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I. Summary

1. **Type of Solicitation:** Request for Offers (RFO)
2. **Issuing Office:**
Texas Comptroller of Public Accounts (CPA)
Procurement Section
Room 300, Attn: RFO No. 930-26-0237WF
111 E. 17th Street
Austin, Texas 78774

OR
Texas Comptroller of Public Accounts
Procurement Section
Attn: RFO No. 930-26-0237WF
P.O. Box 12050
Austin, Texas 78711-2050
3. **Additional Requirements/Qualifications:** N/A
4. **Responses to RFO:** Sealed Competitive Offers
5. **Deadline for Offers:** In Issuing Office No Later Than:
February 14, 2025; 2:00 p.m., Central Time (CT)
6. **Initial Contract Term:** **September 1, 2025 – August 31, 2027**
7. **CPA Optional Contract Terms:**
September 1, 2027 through August 31, 2028
September 1, 2028 through August 31, 2029
September 1, 2029 through August 31, 2030
September 1, 2030 through August 31, 2031
8. **CPA Contact Person for this RFO:** Wendy Foley, CTPM, CTCD
Email: wendy.foley@cpa.texas.gov
9. **Offers Submitted by Email:** Required; See Section III, Part A
10. **Offers Submitted by Fax:** Not Accepted
11. **Pre-Offer Conference:** N/A
12. **Pre-Offer Inspection:** N/A
13. **Letters of Intent to Submit an Offer:** N/A
14. **RFO Addenda:** Notices of changes to items directly impacting the original RFO or solicitation process will be posted on the *Electronic State Business Daily* (ESBD) located at: <http://www.txsmartbuy.com/esbd>. CPA will post any amendment to this solicitation on the ESBD as an RFO Addendum. It is the responsibility of an interested party to check the ESBD for updates to this RFO before submitting an Offer. Each Respondent is solely responsible for verifying CPA's receipt of its questions, if applicable, and its Offer by the deadlines specified in this RFO.
15. **Questions and Answers:** Questions regarding this RFO must be in writing and must be submitted to the CPA Contact Person specified in Part 8, no later than **December 16, 2024; 2:00 p.m. CT. Telephone inquiries will not be accepted.** Questions may be submitted by email to the email address specified in Part 8. CPA intends to post answers to the questions received on the ESBD on **January 15, 2025, or as soon thereafter as practical.**

16. Respondent Presentations:

CPA may request that Top-Scoring Respondents present an overview of the services and a demonstration of the software proposed in their Offers. The presentations will be performed on or about **May 1, 2025**. Presentation location (e.g., videoconference, onsite, etc.), date(s) and time(s) to be arranged. In its sole discretion, CPA will determine the number of Top-Scoring Respondents.

17. Evaluation of Offers. Offers will be evaluated under the Best Value Standard (Section 2157.003 of the Texas Government Code):

<u>Criteria</u>	<u>Weight</u>
Respondent's Past Performance, Qualifications & Experience	30%
Compliance with CPA Specifications	40%
Cost	<u>30%</u>
Total:	100%

As applicable, the factors listed in Sections 2155.074, 2155.075, 2156.007, and 2157.003 of the Texas Government Code shall also be considered in making an award.

18. Electronic Offers Only. Due to changed building access restrictions, Respondents will not be permitted to hand deliver Offers to the Issuing Office. Respondents are required to submit Offers electronically via email in accordance with Section III, Part A.

19. Contact with CPA Staff: Upon issuance of this RFO, employees and representatives of CPA, other than the CPA Contact Person identified in Part 8, will not discuss the contents of this RFO with any Respondent or its representatives. **Failure of a Respondent or any of its representatives to observe this restriction may result in disqualification of any related Offer.** This restriction does not preclude discussions between the parties to conduct business unrelated to this procurement or to obtain assistance completing Historically Underutilized Business (HUB) forms required by this RFO.

II. Specifications

A. Introduction

The Texas Comptroller of Public Accounts (CPA), an agency of the State of Texas, issues this Request for Offers (RFO) to solicit Offers from qualified vendors for a software system that will provide a cloud based solution to the accounting, financial reporting, and investment performance reporting needs for the externally managed portions of the assets that the Trust Company manages for its clients as described in this Section II and in this RFO (Services). CPA's objective is to obtain the Services that represent the best value for CPA and the State of Texas, according to the terms and conditions of this RFO.

CPA anticipates making a contract award to one (1) Successful Respondent for the Services. CPA reserves the right not to award a Contract for the performance of all or part of the Services. This RFO is not exclusive and CPA reserves the right to issue additional solicitations regarding the Services or similar services at any time. All Respondents are encouraged to offer their best pricing at all times.

All costs associated with the Services must be included in the Respondent's Offer. Offers that do not meet all of the requirements or contain all of the required documentation specified in this RFO may be rejected as non-responsive.

B. Background

The Texas Treasury Safekeeping Trust Company (Trust Company) is a special-purpose trust company created by the 1987 Texas Legislature for the purpose of providing custody, investment management, and related services for state and certain local funds. By statute, the Texas Comptroller of Public Accounts is the sole officer, director, and shareholder of the Trust Company.

Trust Company manages approximately \$160 billion in funds for approximately thirty-three (33) State of Texas (State) and local governmental clients. Due to the nature of the relationship between the Trust Company and the Comptroller, references to "Comptroller" within this RFO may include functions, duties, and responsibilities of the Trust Company, and references to the "Trust Company" may include functions, duties, and responsibilities of the Comptroller.

As a result of the RFO, Trust Company plans to select a qualified software system vendor whose system will utilize a Software as a Service (SaaS) cloud-based model to provide a solution to the accounting, financial reporting, and investment performance reporting needs (Solution) for the four major funds that the Trust Company manages as described below. Successful Respondent must provide full transparency into fees. Proposals must include a Total Cost of Ownership model inclusive of all variable and fixed costs and Respondents must commit to remain within that cost model over the term of the agreement.

B.1. Funding Categories Managed by Trust Company

The following is a brief description of the four major fund categories that the Trust Company manages as part of its externally managed investment portfolios (which has an approximate value of \$28 billion):

(1) Endowment Pool

Comptroller, through the Trust Company, currently manages or administers the following funds totaling approximately \$5.5 billion in assets. The vast majority of the Endowment Pool assets are invested in private markets funds (for such asset classes as hedge fund, private debt, private equity, and real estate) and the Endowment Pool is composed of multiple investment pools of various vintages and strategies. The assets of the investment pools are allocated to the underlying Funds in various ownership ratios (unitized). The number of private market funds/investments that Trust Company currently owns is close to 450. The asset allocation of these funds is shown in Table 1:

Table 1

Asset Allocation (as of 12/31/2023)			
Asset Class	Strategy	Market Value (in millions)	% of Total
Fixed Income		\$1,473.8	26.8%
	Global Fixed Income (incl. cash)	\$256.5	

	Alternative Fixed Income	\$707.3	
	Private Debt	\$510.0	
Equity		\$2,770.5	50.5%
	Global Public Equity	\$1,010.4	
	Hedged Equity	\$776.8	
	Private Equity	\$983.3	
Real Assets		\$897.9	16.4%
	Stable Value Real Estate	\$534.3	
	Enhanced Real Estate	\$363.6	
Strategic All Asset & Overlays		\$348.6	6.3%
	All Asset Strategies	\$57.1	
	Overlay Strategies	\$291.5	
Total		\$5,490.8	100.0%

The Endowment Pool is currently comprised of funds from the following sources, but may change depending on legislative directives:

1. **Tobacco Settlement Funds (Texas Government Code §403.1041, 403.1065, 403.1066) and (Texas Education Code §63.201, 63.202, 63.301, 63.302)**
2. **Permanent Endowment Fund for the Rural Communities Health Care Investment Program (Texas Government Code § 487.558)**
3. **Texas Preservation Trust Fund (Texas Government Code §442.015)**
4. **Permanent Fund Supporting Military and Veterans Exemptions (Texas Education Code §54.3411, 54.341)**
5. **Texas Financial Education Endowment (Texas Finance Code §14.113)**
6. **Texas Permanent Fund Supporting Graduate Medical Education (Texas Education Code §58A)**
7. **Historical Infrastructure Sustainability Trust Fund (Texas Government Code §442.0151)**
8. **Texas State Buildings Preservation Endowment Fund (Texas Government Code §443.0103)**

(2) State Water Infrastructure Fund for Texas

The Trust Company holds, manages, and invests approximately \$1.7 billion in State Water Infrastructure Fund for Texas ("SWIFT") funds on behalf of the Texas Water Development Board in accordance with Section 15.433 of the Texas Water Code. The Texas Water Development Board will utilize the SWIFT to implement the State water plan. The asset allocation of the State Water Infrastructure Fund is shown in Table 2.

Table 2

Asset Allocation (as of 12/31/2023)			
Asset Class	Strategy	Market Value (in millions)	% of Total
Fixed Income		\$889.6	51.1%
	Cash	\$139.4	
	Global Fixed Income	\$323.9	
	Alternative Fixed Income	\$257.6	
	Private Debt	\$308.2	
Equity		\$538.1	30.9%
	Global Public Equity	\$142.6	
	Hedged Equity	\$395.5	
Real Assets		\$225.0	12.9%
	Real Estate	\$225.0	

Strategic All Asset & Overlays		\$ 89.6	5.1%
	All Asset Strategies	\$89.6	
Total		\$1,742.3	100.0%

(3) Texas Economic Stabilization Investment Fund

The Trust Company holds and invests the Texas Economic Stabilization Investment Fund for the Comptroller in accordance with Section 404.0241 and Section 404.024(j) of the Texas Government Code. The Fund, consisting of approximately \$17.3 billion in assets, has as its two primary performance objectives: 1) maintaining purchase power; and 2) delivering returns in excess of short-term cash equivalents. The asset allocation of the Texas Economic Stabilization Investment Fund is shown in Table 3.

Table 3

Asset Allocation (as of 12/31/2023)			
Asset Class	Strategy	Market Value (in millions)	% of Total
Cash	Stable Value, AAA Rated	\$2,678.1	15.5%
Global Fixed Income		\$12,533.7	72.4%
	Absolute Return		
	Unconstrained Rates & Credit		
Alternative Fixed Income	Long/Short Relative Value & Multi-Strategy	\$1,555.1	9.0%
Private Debt	Private Credit	\$0.0	0.0%
Global Equity	Directional	\$544.1	3.1%
Private Equity	Buyout & Secondaries	\$0.0	0.0%
Real Assets	Diversified Real Estate & Infrastructure	\$0.0	0.0%
Total		\$17,311.0	100.0%

(4) Texas University Fund

The Texas University Fund (“TUF”) was newly created by the 88th Texas Legislature, Regular Session, and became effective January 1, 2024, after voter approval of the constitutional amendments establishing the TUF and certain constitutionally dedicated appropriations from the state’s Economic Stabilization Fund. The constitutionally authorized trust fund is a dedicated and independent source of funds for qualifying general academic teaching institutions. The TUF was created to enable these institutions to achieve national prominence as major research universities. The Trust Company must invest this fund in accordance with the prudent investor standard. The creation of the TUF and its requirements are set forth in Section 20, Article VII, Texas Constitution and Sections 62.141-152 of the Texas Education Code. The TUF enabling legislation also redesignates the predecessor National Research University Fund (“NRUF”), of which a legacy portion is currently invested by the Trust Company in the Endowment Fund Portfolio, as part of the TUF. Table 4 represents the strategic asset allocation targets:

Table 4

Strategic Asset Allocation Targets		
Strategy	Sub-Strategy	Allocation Target
Consistency		20%
	Cash Equivalents	2%
	Rates-Driven Fixed Income	8%
	Credit-Driven Fixed Income	4%
	Absolute Return Hedge Funds	6%
Growth		65%
	Global Public Equity	35%
	Directional Hedged Equity	5%
	Private Equity	20%

	Private Debt	5%
Real Return		15%
	Core Real Estate	6%
	Opportunistic Real Estate	3%
	Infrastructure & Natural Resources	6%
Total		100.0%

B.2. Current Operating Environment

- a) The Finance Division of the Trust Company is responsible for accounting and financial reporting of the external investment portfolios the Trust Company manages. The Trust Company also uses a custodian for the custodial, accounting, and investment performance reporting purposes. The custodian plays the role of the Trust Company's book of record for the investment transaction and balances of external investment portfolios.
- b) The Trust Company obtains information about investment transactions and account balances (by external manager/fund) from the custodian on a daily basis and uses this information to allocate value to each of the 13 different endowments (e.g., using the dollar-based unitized approach which is similar to how mutual funds operate and is tracked using a net asset valuation of investments as well as the ownership of each investment by different endowments).
- c) The custodian also tracks the value of each endowment based on the unitized ownership share of each investment pool (Plan Accounting) and reviews against information provided by the Trust Company's Investment Accounting team on a monthly basis. Thus, the custodian's endowment values are reconciled with the endowment values maintained by the Trust Company.
- d) Based on these asset values, the custodian prepares monthly investment returns for each endowment as well as total Endowment Fund. The other portfolios (i.e., SWIFT and TESTIF and TUF portfolios), which were established subsequent to the Endowment Fund, consist of similar investments as those in the Endowment portfolio, except that TESTIF invests in more liquid, short-term securities. Since each of these other funds is a single endowment, there is currently no need for allocating and tracking ownership percentages but there is a need to accommodate a cross portfolio unitization in the future.
- e) Daily reconciliation with the custodian of all investment holdings and transactions is performed using multiple Excel spreadsheets and PDF files by the Investment Accounting team and variances are communicated with the custodian for resolution.
- f) At month end, the accounting books will be closed after the Investment Accounting team completes its month-end reconciliation between the custodian's records and the Investment Accounting team's Excel files.
- g) After accounting books of the portfolios are closed for the months, financial statements for different portfolios and individual endowments are prepared in Excel spreadsheets and notifies the custodian to close the books in their system to generate the Plan Accounting.
- h) Then accounting information flows into the performance system at the custodian so that monthly investment performance reports can be prepared by the custodian. As part of the monthly closing process, financial statements are prepared, and monthly management fees are calculated.
- i) Monthly financial statements are distributed to Trust Company customers and the General Accounting and Reporting team sends fee invoices to the customers.
- j) Summary-level information about endowment fund transactions is posted into the Trust Company's general ledger accounting system (i.e., MIP Fund Accounting) and the General Accounting and Reporting team performs monthly reconciliation between MIP Fund Accounting and the Excel spreadsheets prepared by the Investment Accounting team. Upon receipt of the Plan Accounting reports from State Street, the Director of Investment Accounting validates the data back to the Excel worksheets to ensure all accounts are in the balance at the Endowment level.
- k) For each transaction (purchase, capital call, capital distribution, cash transfer, expense payment, etc.), a trade ticket is entered into the custodian's electronic transfer system (i.e., eCFM). Trade tickets are reviewed for accuracy and must be approved by two authorized Trust Company employees – approved in the electronic transfer system. Trades are entered, either by the custodian or approved Trust Company employee.
- l) The Trust Company then reviews and approves the trade in the electronic transfer system and the completed trade ticket is saved in the Trust Company's record management system. The Investment Accounting team member makes sure the trade has been settled in the custodian and reconciled to the trade ticket.
- m) Investment manager performance is recorded in the custodian's performance module and an Investment Performance Analyst within the Finance Division monitors and reviews information to ensure that the information provided by the custodian's performance team is complete and accurate.

- n) The Trust Company Investment Performance Analyst utilizes Excel spreadsheets as part of his monitoring of investment performance reports prepared by the custodian. Investment performance is further monitored and reviewed by an external consultant as well as Trust Company internal staff (portfolio managers and risk management staff). Investment performance is reported to the governing board on a quarterly basis.
- o) The Trust Company's internal staff manages and monitors the accounting and financial process for determining the fair value measurements and disclosures and reviews the asset valuation and income recognition methods as well as the presentation and disclosure of the fair value measurements.

C. Definitions and Acronyms

- **Award Date.** The Award Date is the earlier of the date an authorized representative of CPA (1) issues a Purchase Order ("PO") or (2) signs a formal, written agreement.
- **CPA Contract Manager.** The end-user division contact responsible for day-to-day contact with Successful Respondent; contact details to be provided by CPA after the Award Date and/or in the Contract.
- **Contract.** The agreement, if any, described in Section II, Part E (Contract Resulting from this Solicitation/Order of Priority).
- **Offer.** A response to this RFO.
- **Respondent.** Any person or entity that submits an Offer to this RFO.
- **Successful Respondent.** The Respondent awarded a Contract.

D. Scope of Services

D.1. General

- a) Respondents must offer a cloud based comprehensive endowment fund accounting and reporting system that enables the Trust Company to meet its daily reconciliation and accounting as well as periodic and ad hoc financial reporting and investment performance reporting needs for the four major funds that the Trust Company manages.
- b) The Solution must be able to electronically obtain or store data from general partners of private markets funds, including without limitation, capital commitments, capital calls, capital distributions, partnership fees and expenses, cash movements, monthly or quarterly capital account statements, audited financial statements, and K-1s.
- c) The Solution must have capabilities to electronically interface with the Trust Company's custodian's system so that data can be compared and reconciled between the two systems to ensure accurate and timely accounting and reporting.
- d) The Solution must have capabilities to implement the unitized accounting for Endowment portfolio and/or cross portfolios.
- e) As part of this system procurement project, Trust Company will require implementation services to convert the existing data and transfer the data into the new system, including setup of the data tables to ensure that daily operations can continue to be successfully performed without interruption. The Trust Company will require select historical data on each fund/investment be converted into the new system so that historical financial reports and investment performance can be produced. It is expected that this will be an interactive process that will require close collaboration between Respondent's project staff and Trust Company staff.
- f) The Trust Company requires a minimum three months of parallel testing of the new system along with the existing system before the new system "goes live" to ensure that the new system is producing equivalent results to the existing systems and processes.
- g) Training for each user of the new system will be required. Initial training should be on site prior to or during the parallel testing period while subsequent training can be performed online. Respondents must include a training plan for all necessary Trust Company staff. Costs associated with training sessions should be included in the Proposal.
- h) In addition to the training, Respondents will present the ongoing support options they offer. Respondents should incorporate a detailed description of the support services offered by the Respondent, as well as costs associated with such services.

D.2. Respondent Minimum Qualifications

Proposals that do not meet the following mandatory requirements will be rejected as non-responsive and disqualified:

- a) Respondent must have an annual gross revenue minimum of \$50 million in each of the most recent three years and must share audited financial statements for those years.
- b) Respondent must have a minimum of three years of demonstrated Solution deployment history with an active client base.
- c) Respondent's client base must include a minimum of five North American buy side clients with over \$5 billion Assets Under Management (AUM) with three of those clients provided as references in the proposal.
- d) Respondent must demonstrate a minimum of three years of experience with a portfolio as complex as Trust Company's. Respondent must demonstrate experience with accounts similar in scope, size, and asset mix to that of the Trust Company's.
- e) Respondent's proposed system must integrate with the Trust Company's existing technology environment and other platforms/systems that are being procured through this solicitation.
- f) Respondent must be the principal software vendor, not its reseller. The Trust Company will not accept systems that delegate responsibilities to sub-contractors for implementation and/or client support. A Respondent may not use a subcontractor on this Contract without first receiving written approval from the Trust Company regarding the proposed subcontractor.

D.3. Roles and Responsibilities

- a) The proposed system must perform to the highest industry standards and the Contractor is responsible for providing the following services: implementation, activation, ongoing support of a fully-functioning system, including integration with any third-party or Trust Company-designated systems or applications.
- b) The Trust Company expects the Contractor to provide key personnel, including but not limited to, business and technology subject matter advisors, experienced implementation resources, and a project manager to manage all work products and monitor overall performance against the agreed-upon project plan.
- c) The Trust Company shall look solely to the Successful Respondent for performance of the Contract. Successful Respondent shall provide the requested Services under the direction of the Trust Company. Successful Respondent shall be the sole point of Contract responsibility. Successful Respondent shall be liable, both individually and severally, for the performance of all obligations under the awarded Contract and shall not be relieved of the non-performance of any subcontractor.
- d) The Trust Company will retain the authority to ensure that the system performs as described by the successful Respondent and complies with the contract terms. Trust Company's desired service commencement date for the system awarded through this solicitation is the beginning of Q1, fiscal year 2026 (i.e., September 1, 2025).
- e) The Contractor agrees to the following:
 - i) Adhere to target due dates for Deliverables as defined in the Implementation Plan. The agreed upon Implementation Plan will be incorporated into the Contract.
 - ii) Provide the Trust Company with written notice of any known or potential issues with service performance within a predefined period of Contractor becoming aware of any such issues, usually within 12 hours, unless the situation merits notification sooner.
 - iii) Provide the Trust Company with an action plan to resolve any known or potential service performance issues and status updates as required by the Trust Company.
 - iv) Timely respond to Trust Company staff questions within one business day.
 - v) Adhere to Milestones, including but not limited to, the following items listed below. These Milestones will be tied to agreed upon Service Level Agreements and Payment Schedules that will be incorporated into the Contract:
 - (1) Trust Company SaaS Environment Enablement
 - (2) Data and Business Process Review
 - (3) Trust Company System Configuration and User Access
 - (4) Data Conversion
 - (5) Third-Party Connectivity
 - (6) System Integration Testing (SIT)
 - (7) User Acceptance Testing (UA)
 - (8) Business and Technology Training
 - (9) Production Parallel
 - (10) Go Live

- vi) Following termination of the Services, Contractor shall, for no additional compensation, aid in the timely and secure transition of Trust Company data to Trust Company's designated successor service provider in a secure agreed file format usable without the outsourced information system or cloud service.

D.4. Functional Requirements

The primary goal for procuring an Endowment Fund Accounting and Reporting System is to obtain an automated system that will enable a highly efficient and accurate execution of investment accounting, financial reporting, and performance reporting of the externally-managed funds that the Trust Company manages (i.e., Endowment, SWIFT, TESTIF and TUF). This automated system must meet the following service requirements:

D.4.1. Accounting Service Requirements:

- a) Successful Respondent's SaaS Solution must provide the following, but is not limited to:
 - i) Be able to account for and reconcile fund investment transactions initiated by either the Trust Company or the general partners of the private market funds in which the Trust Company invests, including a new endowment or account setup, endowment closing, cash or investment holdings transfers between endowments, cash rebalancing, cash contributions from (and distributions to) individual endowment organizations, capital commitments, capital calls, capital distributions, partnership expenses, management fees, and carried interest.
 - ii) Must have capabilities to automatically collect and capture data coming from limited partnership investment funds, including monthly and quarterly capital account statements, preferably through automated data feeds coming directly from the majority of the General Partners (GPs) of private equity, private debt, and real estate fund investments.
 - iii) Must maintain the integrity of data once the system captures the investment transactions and holdings information.
 - iv) Be able to obtain and update appropriate values of investment holdings according to the agreed-upon pricing sources in a timely manner.
 - v) Must recognize any income from investment holdings as well as any gains/losses from investment transactions in accordance with the generally accepted accounting principles (GAAP).
 - vi) Be able to interface with the custodian's systems to obtain complete data and perform timely reconciliations of investment holdings and transactions between two systems.
 - vii) The system must support the following security types: domestic equities, international equities, foreign exchange (FX), fixed income securities, repurchase agreements (repos), futures (exchange-traded and OTC), total return swaps (OTC), hedge funds, private equity, private debt, real estate, and infrastructure funds.

D.4.2. Unitized Investment Pool Accounting Requirements:

- a) Successful Respondent's SaaS Solution must provide the following, but is not limited to:
 - i) Must have capabilities to set up a unitized accounting module to account for both public markets securities and private markets fund investments, preferably during the initial system implementation phase.
 - ii) Must be able to track and report each fund's or endowment's interest in investment pools both based on the proportional ownership basis (i.e., dollar-based unitization method) and on the basis of units or shares (i.e., unit-based unitization method) at least on a monthly basis.
 - iii) Must accurately account for cashflow activities from endowment clients, including new account opening, account closing, additional contributions, and distributions, based on the current unit value of the investment pool.
 - iv) Must be able to accurately account for investment transactions executed by the investments/funds included in the unitized investment pools, including buys, sells, capital commitments, capital calls, capital distributions, earnings distributions, and management and incentive fee deductions, based on each endowment's/fund's shares (units) in the pool.
 - v) Must have experience in converting clients to unitized accounting framework across multiple investment portfolios, including private markets fund investments.
- b) Optional Features:
 - i) Solution may enable more flexible and precise asset allocation decisions by investment staff as well as offering diverse investment choices for clients.

D.4.3. Financial Reporting Service Requirements:

- a) Successful Respondent's SaaS Solution must provide the following, but is not limited to:
 - i) Must come with a built-in standard financial reporting menu that also allows for flexible customized reporting options (e.g., for ad hoc reporting).
 - ii) Must have capabilities to generate financial reports (including the statement of net assets and the statement of changes in net assets) for both at the total Endowment Fund level and at the individual endowment level.

- iii) Must provide the ability to look through individual line items presented in the financial reports to show the details of each line item to the lowest transaction level.
- iv) Must maintain the integrity of data for financial reporting purposes once the accounting books have been closed for the certain time period.
- v) Must have the ability to generate financial reporting in accordance with relevant industry financial reporting standards such as Governmental Accounting Standards Board (GASB) statements.
- b) Optional Features:
 - i) Solution may provide the ability to generate customized reports for executive management or the governing board.

D.4.4. Investment Performance Reporting Service Requirements:

- a) Successful Respondent's SaaS Solution must provide the following, but is not limited to:
 - i) Must come with a built-in standard investment performance reporting menu that also allows for flexible customized reporting options (e.g., for ad hoc reporting).
 - ii) Must be capable of generating investment performance reports at all levels, including at the four major Fund Level, individual endowment level of the Endowment Fund, asset class level, strategy level, portfolio level, manager level, and individual investment fund level.
 - iii) Must be flexible enough to produce investment performance reports based on different methods, including time-weighted, dollar-weighted, total return (IRR), gross, net, etc.
 - iv) Must be able to generate investment performance reports based on accounting book of record (ABOR) and investor book of record (IBOR).
 - v) Must be able to interface with the external performance service provider's or consultant's systems to reconcile data to ensure accurate reporting of investment returns.
 - vi) Must be able to electronically interface with third party index service providers to report appropriate benchmark performance for Trust Company asset classes and strategies.
 - vii) Must be able to prepare investment performance in accordance with Global Investment Performance Standards (GIPS).

D.4.5. Accounting Book of Record:

Successful Respondent's SaaS Solution must provide the following, but is not limited to:

- i) Must have effective date to control backdated trades in closed accounting periods in both sub-ledger and G/L for transactions, valuations and accounting adjusting journal entries.
- ii) Must support GAAP regulatory accounting methodology (Trade Date Accounting, Accrual Basis of Accounting, Income Recognition, Fair Value Standards, etc.).
- iii) Must have detailed audit trail on all internal General Ledger postings and changes.
- iv) Must have the functionality to calculate daily valuations using current end of day price inclusive of accruals, amortizations, earnings, unrealized and realized gains/losses.

D.5. IT Technical Requirements

- a) Successful Respondent's SaaS Solution must provide the following, but is not limited to:
 - i) The system must be capable of role-based permissions.
 - ii) All data, including primary and backup must remain within the continental United States.
 - iii) All data must be encrypted, FIPS 140-2 compliant, both in transit and at rest.
 - iv) The security framework should meet National Institute of Standards and Technology (NIST), International Organization for Standards (ISO) 270001.
 - v) The vendor must provide annually upon request, a SSAE-18 SOC 2 Type II, ISO 27002 report and proof of TX-RAMP or Fed-RAMP certification. Evidence of provisional certification at time of submission is acceptable. Any renewal terms are contingent on Respondent achieving full certification.
 - vi) The vendor should have a defined Service Level Agreement for support services with established contact methods (e-mail, phone and ticket system).
 - vii) The system should have the ability to implement multi-factor authentication such as OKTA (SAML connectivity) or OpenID Connect (OIDC).
 - viii) The system must utilize industry standard API methods for data interfacing.
 - ix) The vendor should have an established configuration management plan.
 - x) On premises solutions will not be accepted; the solution must be delivered as a cloud based service (i.e., SaaS model).

D.6. Managed Services

D.6.1. IT Technical Support Service Requirements:

- a) Successful Respondent shall be responsible for providing Information Technology Service Management (ITSM) Services to support Services under the Contract. ITSM is the activities that are performed by Successful Respondent to design, build, deliver, operate, and control IT services components provided by Successful Respondent under the Contract.
- b) Successful Respondent's execution of the ITSM processes, specifically those processes that are workflow-driven, shall be supported by Successful Respondent's provided ITSM or Information Technology Infrastructure Library (ITIL) software tool. Due to the complexities of the Services, Successful Respondent's ITSM tool shall, at a minimum, (1) have a workflow management system for handling of ITSM tickets related to this RFO (i.e., Incidents, Service Requests, Problems, Changes, etc.), (2) have a service catalog that offers various ticket-types for quick selection, (3) is capable of tracking metrics related to Service Levels, as applicable, and (4) also support a configuration management database in order for Successful Respondent to easily link between Incident, Service Request, Problem and Change records with each other and provide tracking of Services and Successful Respondent's ability to analyze for systemic issues.
- c) As applicable, Successful Respondent may utilize its enterprise-wide ITSM tool to support the Services under the Contract; however, Successful Respondent's compliance with delivering on the agreed-to ITSM processes and Service Levels shall not be impacted and/or degrade the Services to CPA under the Contract in anyway. CPA's contract, and Successful Respondent's ability to deliver on the Services under the Contract as required by CPA, will not be limited by Successful Respondent's organizational operations it may leverage to deliver the Services. Changes to Successful Respondent's ITSM tool, utilized to support the Services, shall be approved by the CPA Contract Manager or other CPA Project Manager as designated by CPA.
- d) Successful Respondent's ITSM shall be one of the primary central points of communication methods used by CPA and Successful Respondent on a day-to-day basis to support the Services. The main objectives of Successful Respondent's ITSM are:
 - i) Maximize service availability;
 - ii) Restore service whenever possible, otherwise escalate;
 - iii) Manage the lifecycle of Incidents, Service Requests, Problems, Changes, etc., escalating priority as appropriate and closing the ticket when the user is satisfied and/or the issue is confirmed resolved;
 - iv) Inform CPA of the status of all ITSM tickets; and
 - v) Set-up the ITSM tool to align to and track the Service Levels (i.e., ticket timers, etc.).
- e) The responsibility of opening tickets within Successful Respondent's ITSM tool lies with the Party that is either the service requestor or the Party that discovers an event for which a ticket is necessary (i.e., degradation in services resulting in an Incident).

D.6.2. General Management Practices.

- a) Continual Improvement. Successful Respondent shall adhere to providing Continual Improvement to the ITSM practices, services, and Work products under the contract. Successful Respondent is expected to bring a culture and commitment of continual improvement. Successful Respondent is not required to specially have a continual improvement register (CIR), but improvements must be captured, documented, assessed, prioritized, and acted on appropriately. Successful Respondent's proposed activities for Continual Improvement should include, but are not limited to, the following:
 - i) Encourage continual improvement across the organization;
 - ii) Ensure continual improvement is a priority;
 - iii) Identify and capture improvement opportunities;
 - iv) Assess and prioritize improvement opportunities;
 - v) Make business cases for improvement actions;
 - vi) Plan and implement improvements; and
 - vii) Measure and evaluate improvement.
- b) Compliance. Successful Respondent shall perform the Services in accordance with the terms of the Contract and CPA's then-current policies and procedures, as applicable.

D.6.3. Change Requests.

Any request for a change in Services shall be in writing including requests for changes in project plans, scope, specifications, schedule, designs, requirements, deliverables, or any other aspect. The parties may change the scope of the Services specified in the contract only by written amendment to the contract signed by an authorized representative of each party.

D.6.4. Incident Management Services.

- a) Successful Respondent shall be responsible for providing Incident Management Services. Incident Management Services provide the processes for early incident detection and restoring normal operations as quickly as possible with the least possible impact on CPA. An Incident is any event which is not part of the day-to-day operation of the Services, and which causes, or may cause, a degradation, an interruption, or a reduction of the quality of service. Successful Respondent shall take proactive measures and employ the Incident and Problem Management practices to prevent or minimize disruptions to business operations in accordance with the Service Levels.
- b) Incidents can include failures or degradation of Services reported by users, technical staff, third-party suppliers and partners, or automatically from monitoring tools; Incidents require investigation to determine if the Incident meets Problem Management, or Major Incident, or Security Incident criteria and invocation of the associated processes.
- c) Successful Respondent shall detect, register, classify, diagnose, resolve, and close Incidents in a comprehensive manner, soon after discovery, in consideration of the Warranty of Work Period, and without impact to other scheduled Services. Where necessary changes fall outside of the Warranty of Work Period and there is an IT resource component conflict (i.e., not Successful Respondent staffing conflict), CPA will initiate prioritization and grant approval for Successful Respondent to proceed with changes.
- d) Successful Respondent shall at a minimum:
 - i) Consider interoperability as it relates to connections and integrations;
 - ii) Provide expedited resolution for escalated or Major Incidents according to the Incident Management and Problem Management practices, including rapid response by Successful Respondent's dedicated team of knowledgeable resources, expert in relation to the issue(s) at hand;
 - iii) Perform and provide a Root Cause Analysis (RCA) for all Priority 1 Incidents, as well as lower priority Incidents at CPA's discretion and request;
 - iv) As requested by CPA, provide error correction across all software where Successful Respondent has support responsibility;
 - v) Record, track, maintain, and monitor the correlation of Incidents and Problems with any necessary changes identified during investigation and solutioning;
 - vi) Document and implement identified and prioritized bug fixes and security patches, as approved by CPA;
 - vii) Support CPA, at its request, in response to the need for extended support, in accordance with Successful Respondent's 24x7x365 coverage of Services; and
 - viii) Perform, verify, and validate break fix resolution, as part of an Incident task or Problem Management task, including implementation of approved corrective actions and re-opening any Incidents not resolved appropriately.
- e) Successful Respondent shall provide, at a minimum, the following:
 - i) Incident detection and recording;
 - ii) Classification and initial support;
 - iii) Investigation and diagnosis;
 - iv) Resolution and recovery;
 - v) Incident closure;
 - vi) Incident ownership, monitoring, tracking, and communication;
 - vii) Continuous improvement of incident management approaches; and
 - viii) Periodic Incident review.
- f) Incident Management shall be integrated with other ITIL-based IT service management processes incorporated in this RFO.

D.6.5. Response Times.

- a) Successful Respondent shall respond to service requests in accordance with the priority and within the response times listed in Table 5 (Response /Resolution Times). Any Respondent exceptions to the response times listed in Table 5 must be stated in the Respondent Exceptions Template and their Response and Resolution times must be provided with their Offer.
- b) "Response Time" is defined as the period between Successful Respondent's receipt of a service call from CPA and the time until Successful Respondent's service technician responds with repair efforts underway.
- c) "Resolution Time" is defined as the timeframe for Successful Respondent to complete the Software Maintenance and Technical Support Services required to return the affected systems to normal operations. CPA, in its sole discretion, will determine the service priority reporting of problems or issues with the Licensed Software.

Table 5– Response/Resolution Times			
Priority level	Description	Initial Response Time	Resolution time
Priority 1 (P1) – Critical	(1) Total outage or an outage of a critical component that renders the software unusable or unable to perform pending critical tasks; (2) Security issue that affects the production environment; (3) Work Stoppage. Incidents that cause a direct financial, brand, or security impact on the business organization.	15 minutes	2 hours
Priority 2 (P2) – High	(1) Performance degradation or diminished processing, capacity, or functionality that affects multiple users within the production environment; (2) Issue that affects fulfillment of a pending deadline or causes staff to be idle; (3) Work Degraded. An impact to a business service that directly supports the execution of a core business service; (4) Historical reporting unavailable; or (5) User administration.	2 hours	4 hours
Priority 3 (P3) – Medium	(1) Performance issue related to non-production environments, non-critical issue that is time sensitive, or non-impacting issue requiring additional troubleshooting; (2) Issue that does not affect current work but will affect customer’s ability to perform work within one business day; (3) Frequent issue of minor importance yet obviously affecting work efficiency; (4) Work not affected or workarounds available. Incidents that are inconvenient but do not impede core functions of the applications. May have valid workarounds; or (5) Reporting doesn’t match up.	4 hours	8 hours
Priority 4 (P4) – Low	(1) Scheduled maintenance outage; (2) Request for information prior to diminished processing, capacity, or functionality; (3) Low frequency error of marginal importance; (4) Minor problem that requires research, testing, or cooperative effort to resolve; (5) Incidents that cause very little impact on operations. May have valid workarounds; or (6) User interface or experience is difficult.	8 hours	12 hours

D.6.6. Escalation Protocol.

In its Offer, Respondent shall propose for CPA’s consideration an escalation protocol for collaboratively resolving issues encountered during the term of any contract resulting from this RFO. The proposed escalation process protocol must explain how issues or complaints are prioritized and resolved. This protocol shall include (1) an organization chart addressing topics such as specific steps to be taken on top priority issues or disputes arising due to untimely response to system down or critical malfunction remedial repair requests and (2) any other top priority service requirements of a contract resulting from this RFO which are not met.

D.7. Service Levels

D.7.1. Overview.

- a) Successful Respondent shall meet or exceed the Service Levels identified in this RFO to the Contract and shall remain fully responsible related to Successful Respondent's utilized subcontractors. This Part provides the framework and expectations related to Successful Respondent’s Service Level commitments for the Service Level Agreements (SLAs) and provides monitoring of the daily performance of the Services and the implications of meeting versus failing-to-meet the requirements and objectives, as applicable.
- b) Successful Respondent's compliance with this Part is in addition to and in conjunction with its compliance with all other provisions under the Contract, and Successful Respondent shall not degrade the quality and delivery of the Services for its benefit of achieving a Service Level.

- c) The Service Levels apply to Services collectively and not individually and shall be measured and reported by Successful Respondent collectively and not independently of each Contact Center application and/or Services component.
- d) Successful Respondent must maintain knowledgeable technical support staff so that Trust Company staff who are experiencing problems with the system can receive reliable and timely technical support during Trust Company business hours which are 7am-5pm, Central Standard Time, Monday through Friday.
- e) Successful Respondent will preferably have a designated technical support staff or contact representative for our organization so that Trust Company staff can directly contact that person.
- f) CPA has sole discretion regarding the Service Levels under the Contract throughout the Contract Term, which includes but is not limited to the number of Service Levels required to monitor the performance of Services. As such, as CPA's business and/or organizational objectives revise, and/or as Services advance with technological changes as permitted and required, CPA may determine, at any time, that existing Service Levels may need to be revised and/or new Service Levels may be required; CPA will not be bound to the Quarterly Review phase identified in this Part in the event revisions are required. Successful Respondent shall make continual improvements to the Services as referred to in this RFO.
- g) Service Levels
 - i) Service Uptime: The Provider guarantees a service uptime of 95% for the cloud-based platform, excluding scheduled maintenance and agreed upon downtimes. Uptime is calculated as a percentage of total minutes in a calendar month, excluding pre-scheduled downtime.
 - ii) Data Processing Time: Processing time for reports, including fund unitization and advanced financial reports, will not exceed 10 minutes for Respondent's proposed system standard reports menu and 20 minutes for customized reports.
 - iii) NAV Calculation Accuracy: The Provider will ensure accurate calculation and reporting of Net Asset Value (NAV) for investment funds, with a tolerance of 0.01% variance.

D.7.2. Service Level Report.

- a) Successful Respondent shall create, maintain, and submit the monthly Service Level Report. Successful Respondent shall propose the standard format, layout, and intended content of the Report for review and approval by CPA to baseline the Report template, and to allow the Report template to revise and improve over time to support CPA's oversight and monitoring as applicable.
- b) Successful Respondent shall provide documented detailed supporting information for each measured Service Level. The data and detailed supporting information shall include the methodology used by Successful Respondent to calculate each Service Level performance based on the data measured and reported by Successful Respondent's measurement tools, such that CPA is able to reproduce the calculations made by Successful Respondent and validate the results reported by Successful Respondent each month. The data and detailed supporting information shall be based on each entire month's reporting period (i.e., February 1st-February 28th and/or February 29th), and the data shall be collected and provided within the applicable reporting month.
- c) In addition, Successful Respondent shall provide CPA with direct, unaltered access to review and audit all raw data collection related to Service Levels. Successful Respondent shall retain all Service Level source data for the duration of the contract term, shall make such data available to CPA at all times, and shall provide and retain a complete audit trail. Successful Respondent's ITSM tool, or otherwise, shall be capable of meeting CPA's requirements in order to support Successful Respondent's responsibilities under this Part; archiving and/or deletion of any data or supporting information related to Successful Respondent's reported Service Levels (e.g., ITSM tickets) shall not occur unless specifically approved by the CPA Contract Manager.

D.7.3. Service Level Default.

- a) A Service Level Default occurs when any individual services component is not in compliance with the applicable service level requirements stated. All data related to a Service Level Default shall be contained in Successful Respondent's monthly Report in order to collect all data and metrics, regardless of the perceived Party at fault related to an individual Service Level Default instance.
- b) An Excused Service Level Performance (i.e., Service Level Exception) may be identified by Successful Respondent in the monthly Report if Successful Respondent believes that a Service Level Default was caused by CPA (i.e., CPA's responsibilities are the perceived root cause).
- c) In the event a Service Level Exception may be applicable, Successful Respondent shall be responsible for submitting all detailed supporting information related to its determination for supporting a Service Level Exception with its submission of the applicable monthly Report. CPA will review all applicable supporting documentation and will notify Successful Respondent of CPA's determination whether the identified Service Level Default qualifies as a Service Level Exception under the Contract. CPA has sole discretion in whether a Service Level Exception applies; and the

Parties agree and acknowledge that a Service Level Credit shall not be credited to CPA for any Service Level Default accepted by CPA as a Service Level Exception.

- d) Successful Respondent will provide a corrective plan to address the Service Level exception to include the following:
 - i) Service Level Exception;
 - ii) Data and information detailing the Service Level exception;
 - iii) Root Cause analysis showing the event, the details that led to the event;
 - iv) Remediation Plan; and
 - v) Agreement with CPA on the exception and plan to address.

D.7.5. Service Level Agreement (SLA) Credits.

- a) Successful Respondent acknowledges that CPA's payment to Successful Respondent is in consideration of Successful Respondent's performance of Services in a manner that meets or exceeds the applicable Service Levels established in this RFO. If Successful Respondent fails to meet its obligations with respect to such SLA, Successful Respondent shall credit to CPA the amounts specified in recognition of the diminished value of the Services resulting from Successful Respondent's failure to meet the SLA, and not as a penalty (i.e., the SLA Credit).
- b) In the event of a Service Level Default for an SLA is identified, the following at a minimum shall apply:
 - i) Successful Respondent shall notify CPA in writing if CPA becomes entitled to a SLA Credit; such written notice shall be included in Successful Respondent's applicable monthly Reporting for the Service Levels;
 - ii) Successful Respondent's SLA Credit(s) amount shall be based on the negotiated percentage "At Risk Amount Percentage" identified in Exhibit III (Service Levels) for each specific SLA that is in Service Level Default; and
 - iii) Successful Respondent shall provide and identify the SLA Credit Total Sum in Successful Respondent's associated and applicable month's invoice, with the at-risk amount percentage and amount due to CPA being applied to the applicable Total Monthly ongoing recurring costs charge against Appendix 1 (Mandatory Price Sheet), Price Schedules to the Contract.
- c) Successful Respondent acknowledges that CPA's payment to Successful Respondent is in consideration of Successful Respondent's performance of Services in a manner that meets or exceeds the applicable SLA's established in this RFO.
- d) The Parties agree and acknowledge that Service Level Defaults in the SLA category will result in an SLA Credit.
- e) In the event there are three (3) Service Level Defaults for the same SLA occurring within any consecutive 3 three (3) month period, then upon such third (3rd) occurrence, the Service Level Default shall be deemed a Service Delivery Failure under the applicable Service Level Report.
- f) In the event of a Service Delivery Failure, the At-Risk Amount Percentage for the specific SLA in Service Delivery Failure shall increase by fifty percent (50%) (i.e., the Service Delivery Failure At-Risk Amount), and shall apply to Successful Respondent's applicable invoice associated to the Service Level Report.
- g) The Service Delivery Failure credit shall be applied to Successful Respondent's monthly associated invoice until such time as Successful Respondent has demonstrated to CPA effective Service delivery performance, as evidenced by no reoccurrence of the SLA Default.
- h) If a Service Level Default for the same SLA reoccurs within three (3) months after Successful Respondent resolved the Service Delivery Failure, the Service Delivery Failure At-Risk Amount shall be applied to Successful Respondent's associated invoice until such time Successful Respondent has resolved the Service Delivery Failure.

D.8. Transition Planning

The Vendor shall develop a Transition Plan for the transition of all services and operations upon termination of the Contract. The plan shall specify the tasks to be performed by the parties, the schedule for the performance of such tasks and the responsibilities of the parties associated with the tasks. The Transition Plan is subject to Trust Company approval.

- a) The Vendor's Transition Plan shall address the following closeout activities, at a minimum:
 - i) Transfer (to either the Trust Company or another vendor) or close-out of operations including the method by which operations will be continued during the transition period and the organizational structure proposed during transition;
 - ii) Closeout of financial processes, including invoicing, outstanding contractual items, etc.;
 - iii) Transition of open operational items, including outstanding customer service and Contract monitoring issues;
 - iv) Transfer of confidential data, Source Media, and any other Trust Company property to the Trust Company or designee; and
 - v) Secure data destruction in accordance with Approved methods for media sanitization are listed in the National Institute of Standards and Technology (NIST) Special Publication 800-88 Revision 1, Guidelines for Media Sanitization: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf>.
- b) A draft of the Transition Plan shall be completed at a date agreed upon by the Trust Company and the Successful Respondent.

- c) During the transition period, the Successful Respondent shall meet with the Trust Company transition team, on a weekly basis, to review progress and update the Transition Plan.
- d) The Successful Respondent and the Trust Company shall meet annually to review and discuss any modifications to the Transition Plan.
- e) The Successful Respondent shall make any necessary modifications to the Transition Plan within twenty (20) Business Days after the annual meeting and resubmit the modified Transition Plan to the Trust Company for final approval.
- f) The Trust Company will not issue payment for services, or costs incurred by the Successful Respondent, in performing transition responsibilities that do not involve services performed pursuant to the specifications of this SOW.

D.9. Communication and Reporting

D.9.1. Project Plan

- a) The Vendor shall develop a Project Plan for all areas associated with this SOW for written approval by the Trust Company. The Project Plan shall specify, to the greatest degree possible, the activities that are to be undertaken, including a step-by-step timetable and the names or titles of the Vendor's staff involved in each step. This shall include all resource requirements necessary to successfully complete the project. Resource requirements shall include any required input from Trust Company staff and an estimate of the amount of Trust Company staff time required. The Respondent shall provide a DRAFT Project Plan as part of their response to this SOW.
- b) A draft high-level project work plan addressing the tasks specified in the SOW, which will include:
 - i) An outline of capability to deliver the required services, including process, functional and technical expertise.
 - ii) A description of the approach the Vendor will use to analyze, assess, validate, document, and complete the deliverables and milestones listed in the Project Plan.
 - iii) A description of key activities and milestones.
 - iv) A description of the resources necessary from the Trust Company to support the process, including estimates of time needed from the Trust Company's subject matter experts and high-level analysis of data gathering requirements.
 - v) Any assumptions and dependencies of the project.

D.9.2. Implementation Reports and Meetings

- a) The Vendor is required to provide the Trust Company contract manager with weekly written progress reports of this engagement. These are due to the Trust Company contract manager by the close of business on the Thursday each week throughout the implementation phase.
- b) The progress reports shall cover all work performed and completed during the week for which the progress report is provided and shall present the work to be performed during the subsequent week.
- c) The progress report shall identify any problems encountered or still outstanding with an explanation of the cause and resolution of the problem or how the problem will be resolved.
- d) The Vendor will be responsible for conducting weekly status meetings with the Trust Company contract manager. The meetings will be held on Monday of each week - at a time and place so designated by the Trust Company contract manager - unless revised by the Trust Company contract manager. The meetings will be held remotely by video conferencing.

D.10. Acceptance Criteria

- a) Prior to the Trust Company's authorization of payments under any contract resulting from this RFO, the Trust Company shall evaluate the software/system, Milestones and Deliverables and related integrations/processes provided. Thirty (30) consecutive day evaluation period will be required of any new software products, Milestones and Deliverables and Trust Company shall provide written acceptance to Respondent upon completion of the Software Acceptance Test.
- b) Software Acceptance Test shall include defined integrations. If the software/system, Milestones and Deliverables fails to meet any or all of the Software Acceptance Tests at the end of this period, Trust Company shall notify Respondent of such failure in writing and Respondent will have ten (10) consecutive calendar days in which to correct or improve software/system, Milestones and Deliverables so it will meet the Software Acceptance Test. Thereafter, Trust Company shall have twenty (20) additional calendar days in which to re-conduct the Software Acceptance Test. This process will be repeated, at Trust Company's discretion, until the Trust Company accepts the software/system, Milestones and Deliverables.
- c) Trust Company shall have the right and the option to cancel software/system, key Milestones and Deliverables and request removal if it fails to meet the Software Acceptance Test criteria, in which event neither party will have any further liability for that software/system, Milestones and Deliverables under any contract resulting from this RFO.

- d) The Trust Company may consider Contractor performance during the life of the Contract, including the system implementation phase and the parallel testing period. The Trust Company reserves the right of non-renewal or early termination of the contract for substandard performance.
- e) If substantial deficiencies are identified by Trust Company regarding Contractor performance or competence in the delivery of services performed under the Contract, the Trust Company may require corrective action to correct the deficiencies.
- f) The Trust Company will monitor the Contractor's performance and may use the results of this monitoring to evaluate the Contractor's ability to provide adequate services to the Trust Company in this Contract or future contracts.
- g) If the Contractor fails to meet contract goals and expected results, the Trust Company may reduce the scope of or terminate the Contract at no cost or penalty to the Trust Company.
- h) When assessing performance, Trust Company retains the sole authority to determine whether the Contractor's performance under the Contract is adequate. The Contractor agrees to the following:
 - i) Provide all Deliverables in accordance with Milestone target due dates;
 - ii) Provide the Trust Company with written notice of any known or potential issues with service performance within 24 hours of Contractor becoming aware of any such issues;
 - iii) Provide the Trust Company with an action plan to resolve any known or potential service performance issues and status updates as required by Trust Company; and
 - iv) Timely respond to Trust Company staff questions within one to two business days.
- i) Contractor shall provide an escalation plan for resolving known or potential issues with service performance that arise during the term of the Contract. The plan shall be subject to Trust Company's approval and must explain how issues are to be prioritized and resolved and include Contractor's representatives of increasing authority who have authority to resolve issues.
- j) The Parties will attempt in good faith to resolve any claim or controversy arising out of or relating to the execution, interpretation, and performance of services under the Contract through prompt negotiation between representatives of the Parties who have authority to settle the controversy.

D.11 CPA Data Security Terms.

D.11.1 CPA Data Safeguard Standards.

- a. Defined Terms. The term "CPA Data" refers to CPA's information as well as other entity information in the possession of CPA that is processed, stored, or transmitted by a computer. CPA Data includes all data that is generated by Successful Respondent in performance of a contract with CPA. The term "CPA Information System" refers to those devices, software, networks and related infrastructure that CPA owns, operates or has obtained for use to conduct CPA business. Devices include, but are not limited to, CPA-owned or managed storage, processing, and communications devices, as well as personally owned devices.
- b. Access to CPA Data. Successful Respondent represents and warrants that it will implement, maintain, and use appropriate administrative, technical, and physical safeguards to preserve the confidentiality, integrity, and availability of CPA Data. Successful Respondent will not collect, access, use, disclose, or retain CPA Data other than as necessary to perform the services specified in a contract resulting from this solicitation or as otherwise authorized in writing by CPA. Successful Respondent will restrict access to CPA Data to only those personnel who must have the information on a "need to know" basis. Successful Respondent will not use CPA Data, or any information derived from CPA Data, for its own benefit or the benefit of any other person or entity. Successful Respondent will not share CPA Data with its parent company or other affiliate without CPA's express written consent.
- c. Web-Based Remote Access to CPA Information Systems. Successful Respondent may use third-party web-based remote access connections to CPA Information Systems to provide support services under the following conditions:
 - 1. CPA shall affirmatively initiate and accept Successful Respondent's connections to CPA Information Systems.
 - 2. CPA shall monitor Successful Respondent's connections to CPA Information Systems for the duration of the Services.
 - 3. CPA shall terminate Successful Respondent's connections to CPA Information Systems upon completion of the Services.
- d. Reserved.
- e. Reserved.
- f. Location of CPA Data. Successful Respondent shall ensure that CPA Data (*i.e.*, primary and backup) remains, at all times, within the continental United States. Successful Respondent shall receive, process, transmit, and store all CPA

Data within the continental United States. Successful Respondent's point of access to CPA Data shall be within the continental United States.

g. Encryption Standards.

1. Successful Respondent shall encrypt CPA Data in transit and at rest. Data in transit means data is moving via email, in applications, or through browsers and other web connections. Data at rest (including data backups) means data is stored in databases, the cloud, removable media, or mobile devices.
2. Successful Respondent shall utilize encryption standards that are FIPS 140-2 compliant or, upon the written approval of CPA's Chief Information Security Officer, shall meet the intent of the standards as described in FIPS 140-2.
3. The minimum cryptographic algorithm used by Successful Respondent must be Advanced Encryption Standard (AES) 128 or higher (256 AES is preferred).
4. Successful Respondent shall encrypt CPA Data transmitted over a public or private network. CPA approved data encryption transmission protocols include the following: (1) SFTP (FTP over SSH), (2) FTPS (FTP over TLS), (3) HTTPS (HTTP over TLS), and (4) virtual private network.

h. Reserved.

i. Auditable Information Security Framework. Successful Respondent shall secure its own and its third-party service providers' systems (e.g., IT service provider, Cloud Service Provider) in a manner consistent with an auditable information security framework e.g., National Institute of Standards and Technology (NIST), International Organization for Standardization (ISO) 27001.

j. Defects and Vulnerabilities. Upon Contract award and during the term of the Contract, Successful Respondent shall provide CPA with prompt, written notice upon Successful Respondent's discovery of any product defects and vulnerabilities of the proposed Licensed Software/Solution/System that allow an attacker to violate an explicit (or implicit) security policy to achieve some impact or consequence. Examples of vulnerabilities include defects that allow intruders to gain increased levels of access or interfere with the normal operations of information systems. Vulnerabilities caused by insecure configurations, design choices, and changing environmental conditions are additional examples.

k. Supply Chain Risk Management. Successful Respondent shall provide CPA's Contract Manager a description of how it manages supply chain risks. Specifically, Successful Respondent shall describe its established agreements and procedures with entities involved in the supply chain for the notification of supply chain risks, compromises, and the result of assessments or audits. During the term of the contract, Successful Respondent shall provide CPA's Contract Manager prompt, written notice of supply chain risks that impact the delivery of the products and services of the Contract. Examples of supply chain risks include supplier financial failure, production control/product quality, market supply and demand, labor disputes/shortages, cybersecurity threats, natural disasters. Successful Respondent shall notify CPA of a supply chain compromise and potential compromise in accordance with the Section G Security Incident Notification.

l. Independent Information Security Assessment. If Successful Respondent has access to a CPA Information System or receives, processes, transmits, or stores CPA Data, then Successful Respondent shall provide CPA's Contract Manager with its most recent information security assessment conducted by an independent third-party (e.g., SSAE-18 SOC 2 Type II, ISO 27002) upon Contract award and annually thirty (30) days prior to the anniversary of the Contract award date thereafter. CPA, in its sole discretion, may conduct a security assessment of any information system holding CPA Data or connected to a CPA Information System. CPA's security assessment may consist of a review of the following: (i) independent third-party assessment(s) contracted by Successful Respondent (e.g., SSAE-18 SOC 2 Type II, ISO 27002) and (ii) Successful Respondent's System Security Plan.

m. Media Sanitization. Successful Respondent shall sanitize information system media, both digital and non-digital, in accordance with NIST Special Publication 800-88 (Guidelines for Media Sanitization) when CPA Data in the custody of Successful Respondent is no longer required to be retained by contract with CPA. Successful Respondent must maintain a record documenting each sanitization procedure that, at a minimum, includes the following information: (i) date sanitization completed, (ii) description of the item(s), serial number(s), inventory control number(s), if applicable, and (iii) sanitization method used. No later than sixty (60) calendar days from contract expiration or termination or as otherwise specified in the Contract, Successful Respondent must either (i) complete the sanitization and submit via email to the CPA Contract Manager all sanitization documentation or (ii) submit a written statement via email to the CPA Contract Manager explaining the reason that destruction of CPA Data by Successful Respondent

is technically impossible or impractical. Successful Respondent's obligations set forth in this clause survive the termination or expiration of the contract as long as Successful Respondent retains CPA Data.

- n. Third-Party Service Providers. It is Successful Respondent's sole responsibility to ensure that its access and the access Successful Respondent grants to its service providers to CPA Data or CPA Information Systems does not result in unauthorized access to CPA Data or CPA Information Systems.
- o. Reserved.
- p. Reserved.
- q. Reserved.
- r. State Authorization and Risk Management Program (TX-RAMP). Successful Respondent shall obtain TX-RAMP certification in accordance with the Department of Information Resources (DIR) Program Manual. CPA requires the following TX-RAMP certification based-on Agency criteria:
 - 1. ☐ None. Product is out of scope/low impact in accordance with the DIR TX-RAMP Manual.
 - 2. ☐ Level 1 Certification. The product will administer Agency public data.
 - 3. ☒ Level 2 Certification. The product will administer Agency sensitive, confidential, and/or regulated data.Upon Contract award, Successful Respondent shall maintain compliance with TX-RAMP program requirements and certification throughout the term of the contract. Successful Respondent shall notify the CPA Contract Manager immediately if TX-RAMP certification is revoked or otherwise removed.
- s. FedRAMP or StateRAMP Authorization. If Successful Respondent obtained TX-RAMP certification through FedRAMP or StateRAMP authorization, upon Contract award, Successful Respondent shall maintain continuous FedRAMP or StateRAMP acceptable status and notify the CPA Contract Manager immediately if such authorization is revoked or otherwise removed.
- t. Service Provider, Outsourced, and Cloud Computing. Regardless of TX-RAMP certification, the following requirements apply if Successful Respondent is a Service Provider or Cloud Service Provider (CSP) or contracts with a CSP or other Data Center to receive, process, transmit, or store CPA Data.
 - 1. Security Control Verification. Upon Contract award and annually thereafter, Successful Respondent shall provide to CPA evidence that it has implemented security controls correctly, the controls are operating as intended, and the controls are producing the desired outcome with respect to meeting security requirements for the information system. Acceptable documentation includes:
 - SSAE-18 SOC 2 Type II Report (or the updated, equivalent report);
 - FedRAMP certification (CPA preferred option for CSP);
 - Level Two: Cloud Security Alliance (CSA) Security, Trust & Assurance Registry (STAR) Attestation;
 - Level Two: CSA STAR Certification;
 - Level One: CSA STAR Self-Assessment;
 - Completed CSA Cloud Controls Matrix (CCM) and CSA Consensus Assessment Initiative Questionnaire;
 - CSA CCM;
 - Successful Respondent information security plan; and
 - Successful Respondent information security policies and procedures.
 - 2. Department of Information Resources Security Control Standards Catalog. At a minimum, Successful Respondent shall comply with the control baselines established by the Security Control Standards Catalog, all CPA specific security requirements, and any other applicable federal or statutory requirements.
 - 3. Penetration Test. Successful Respondent shall ensure that information system(s) that receive, process, transmit, or store CPA Data undergo an independent third-party annual penetration test. Successful Respondent shall provide a summary of the penetration test results to CPA annually thirty (30) days prior to the anniversary of the Contract award date. Successful Respondent shall coordinate with CPA to schedule the initial penetration test and subsequent annual penetration tests during the term of the Contract.
 - 4. Information System(s) Architecture. For information system(s) that receive, process, transmit, or store CPA Data, Successful Respondent shall develop and maintain a comprehensive architectural diagram that identifies the information system (s) components and environment, including ports, protocols, and services. Successful Respondent shall protect the architectural diagram from unauthorized access, disclosure, modification, and /or destruction. Successful Respondent shall provide the diagram to CPA annually.
 - 5. Configuration Minimum Requirements.

- a. Successful Respondent shall implement (SAML) an XML-based standard (CPA preferred) or OpenID Connect (OIDC) for exchanging authentication and authorization data for identity management of CPA internal users. If Successful Respondent is technically incapable of integrating with CPA's identity services provider, Successful Respondent shall ensure identifier and authenticator controls are consistent with CPA standards.
- b. Successful Respondent shall remove root access, where feasible, to information system(s) that receive, process, transmit, or store CPA Data.
- c. Successful Respondent shall prohibit Privileged User access to CPA data on information system(s) that receive, process, transmit, or store CPA data.
- d. Successful Respondent shall employ multifactor authentication for Privileged Users who support information system(s) that receive, process, transmit, or store CPA Data when accessing CPA Information System(s).
- e. Pursuant to Section 2054.192 of the Texas Government Code, Privileged Users that have access to a CPA Information System shall complete the CPA-Required Security Awareness Training described in Part D.#.1.e above.
- f. **Secure Baseline Configuration.** Successful Respondent shall develop secure baseline configurations for information system(s), components, or services that receive, process, transmit, or store CPA Data in accordance with industry best practices (e.g., U.S. Government Configuration Baseline (USGCB), Center for Internet Security (CIS) Benchmarks). In the absence of an industry defined secure configuration, Successful Respondent shall develop a baseline for information system(s), components, or services in collaboration with CPA.
- g. **Audit Information.** For information system(s) that receive, process, transmit, or store CPA Data, Successful Respondent shall enable information system(s) auditing to the greatest extent necessary to capture access, modification, and deletion of data by each unique user and Privileged User system access and actions. Audit controls shall ensure the movement of sensitive, confidential, and regulated data is traceable throughout the data lifecycle. Audit records shall contain date, time, type, source, and outcome of system event, the user account involved, service account, service, or process responsible for initiating the system event, and other information that facilitates reconstruction of events. Successful Respondent shall protect audit information from unauthorized access and modification. Successful Respondent shall share audit information with CPA upon request.
- h. Successful Respondent shall configure information system(s) that receive, process, transmit, or store CPA Data to deny local network mapping and prevent copy and paste from the information system(s) to unapproved workstations, laptops, or terminals.
6. **Configuration Management Plan.** Successful Respondent shall develop a Configuration Management Plan for information system(s) that receive, process, transmit, or store CPA Data. The Configuration Management Plan must include a comprehensive description of the roles, responsibilities, policies, and procedures that apply when managing the configuration of products and systems. The Configuration Management Plan may be an all-inclusive, stand-alone document or may be comprised of more broadly defined configuration management procedures contained in multiple documents. CPA shall review and approve the Configuration Management Plan annually during the contract term. Successful Respondent shall treat the Configuration Management Plan as confidential CPA information and protect the Configuration Management Plan from unauthorized disclosure and modification.
7. **Data Center Resiliency, Environmental Protections, and Physical Security.** Successful Respondent shall provide multiple geographic regions and availability zones to ensure resiliency in the event of natural disasters, common equipment failures, or information system failures. The data center(s) shall ensure electrical power systems are fully redundant and maintainable without interruption to continuous operations. Data center(s) shall provide backup power through various mechanisms including, but not limited to, UPS batteries. Data center(s) backup power shall supply consistently reliable power protection during utility brownouts, blackouts, over voltage, under voltage, and out-of-tolerance frequency conditions. The data center(s) shall use generators to provide power to critical equipment and customer loads. Trained security personnel shall staff the data center(s) twenty-four (24) hours a day, seven (7) days a week. Data center(s) shall use a security organization responsible for physical security functions to monitor its data center(s). The data center(s) shall have state-of-the-art electronic surveillance and multi-factor access control systems. Successful Respondent and/or CSP shall authorize physical access to its data center(s) strictly on a least privilege basis and access control systems shall log unauthorized activity and failed access attempts.
8. **Roles and Responsibilities.** Successful Respondent and CPA shall define and document CPA oversight and user roles and responsibilities with regard to the outsourced and/or CSP information system(s) that receive, process, transmit, or store CPA Data.
9. **Vulnerability Assessment and Continuous Monitoring.** For information system(s) that receive, process, transmit, or store CPA Data, Successful Respondent shall employ vulnerability scanning tools and techniques to identify

information system(s) flaws, improper configurations, and vulnerabilities. Successful Respondent shall conduct information system(s) scans at least monthly and remediate and mitigate vulnerabilities in accordance with the National Institute of Standards and Technology National Vulnerability Database Common Vulnerability Scoring System (CVSS). Successful Respondent shall report vulnerability assessment results and remediation efforts to CPA on a monthly basis.

10. **Court and Administrative Orders.** Except as otherwise required by law, the Successful Respondent and/or CSP shall promptly notify CPA of any subpoena, judicial, or administrative order that it receives and that relates to CPA Data held by the CSP or other data center.
11. **Transition of CPA Data.** Following termination of the Services, Successful Respondent shall, for no additional compensation, aid in the timely and secure transition of CPA Data to CPA or CPA's designated service provider in a secure agreed file format usable without the outsourced information system or cloud service.

D.12 Accessibility Compliance. Successful Respondent shall provide Licensed Software that complies with the applicable, statutorily required accessibility standards for the State of Texas. In the event that the Licensed Software does not meet or exceed the applicable statutorily required accessibility standards for the State of Texas, Successful Respondent shall provide technical support and Licensed Software documentation necessary to enable CPA to comply with the State of Texas reporting requirements outlined in 1 Texas Administrative Code Chapters 206 and 213. Such assistance includes, but is not limited to, Successful Respondent providing a Voluntary Product Accessibility Template (VPAT) or a similar report in substantially the same format as a VPAT. Successful Respondent shall respond to all written inquiries from CPA regarding the Licensed Software's compliance with requisite accessibility standards within five (5) business days of receiving such request.

D.13 Liquidated Damages. In submitting an Offer, Respondent agrees that the measure of damages in the event of a default or breach of contract by Successful Respondent may be difficult or impossible to calculate. In the event Successful Respondent fails to perform Services or complete the obligations under the Contract in a timely manner, CPA may require Successful Respondent to pay, as liquidated damages and not as a penalty, an amount equivalent to two percent (2%) of the total cost for Services or obligations not completed as required by the Contract per calendar day of delay. CPA may impose, but is not obligated to impose, these liquidated damages in lieu of any monetary damages available to CPA under the Contract or applicable law.

E. Contract Resulting From This Solicitation; Order of Priority.

Respondent's Offer is a legal offer to contract based upon the terms, conditions, and specifications set forth in this RFO. A contract award by CPA may be by (1) valid PO or (2) a formal, written agreement between CPA and Successful Respondent. The Contract is effective as of the Award Date and will be between CPA and the Successful Respondent. The entire Contract between CPA and Successful Respondent shall consist of the following documents, which shall control in the following order of priority, except as otherwise provided in the formal signed agreement or PO: (1) the PO and PO Change Notices, if any; (2) the formal, signed agreement, if any; (3) this RFO; and (4) Successful Respondent's Offer (collectively, the "Contract").

F. Warranty of Performance

Successful Respondent represents and warrants that its performance under the Contract shall be conducted conscientiously in a professional and workmanlike manner to the full extent of Successful Respondent's talents and capabilities with due diligence and in full compliance with the highest professional standards of practice in the industry applicable to the Services.

G. Security Incident Notification

Successful Respondent shall have policies and procedures for the effective management of Security Incidents, which shall be made available to CPA upon written request. Within twenty-four (24) hours of Successful Respondent's discovery or reasonable belief that there has been an event which results in the accidental or deliberate unauthorized access, loss, disclosure, modification, disruption, or destruction of confidential CPA information ("Security Incident"), Successful Respondent shall provide notice to CPA by calling (800) 531-5441 EXT 34357. Until the investigation is complete, Successful Respondent shall submit, on a daily basis or as otherwise agreed by CPA, a written report via encrypted email to security.alerts@cpa.texas.gov that includes, at a minimum, the following:

- Date and time incident occurred,

- Date and time incident detected,
- Date and time incident contained,
- Address where incident occurred,
- Name of person(s) that discovered incident,
- Description of how Successful Respondent discovered incident,
- Type of CPA information involved,
- Description of the nature of the incident,
- Description of the steps Successful Respondent has taken or will take to investigate incident,
- Description of the steps Successful Respondent has taken or will take to mitigate any negative impacts of incident,
- Information technology involved (e.g., laptop, server, mainframe),
- Description of steps taken to preserve computer evidence and maintain chain of custody, and
- Description of corrective action Successful Respondent has taken or will take to prevent future incidents.

Successful Respondent shall coordinate all media or other breach notifications with CPA in advance of such notification(s), unless expressly prohibited by law. Subject to review and approval of CPA, Successful Respondent shall provide notice at its own cost that satisfies the requirements of applicable law to individuals whose information was compromised or likely compromised as a result of the Security Incident. If CPA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing the notice shall be reimbursed to CPA by Successful Respondent. If Successful Respondent does not reimburse such costs within thirty (30) days of CPA's written request, then CPA shall have the right to collect such costs. CPA reserves the right to conduct an independent investigation of any Security Incident, and should CPA choose to do so, Successful Respondent shall cooperate fully with CPA and assume responsibility at its own expense for making personnel, resources, and systems access available to CPA and CPA's authorized representative(s).

H. Insurance and Bonds

Successful Respondent represents and warrants that it shall obtain and maintain the following coverages throughout the term of the Contract and that all coverages shall be with companies licensed in Texas with an "A" rating from A.M. Best Co. authorized to provide the required coverages:

- Blanket Employee Dishonesty Bond or Employee Dishonesty Coverage under a liability insurance policy with a minimum \$25,000 for each individual who will provide Services. A rider or endorsement shall name the Texas Comptroller of Public Accounts as loss payee or additional named insured under the respective bond or policy;
- Standard Workers Compensation Insurance covering all individuals who will provide Services;
- Commercial Crime Coverage: \$2,000,000 per claim and in the aggregate;
- Commercial General Liability Insurance: \$2,000,000 minimum each occurrence limit; \$10,000,000 minimum aggregate limit; and
- Professional Liability Insurance: \$1,000,000 minimum each occurrence limit; \$2,000,000 minimum aggregate limit. Professional Liability Insurance includes cyber liability coverage that addresses Successful Respondent's liability, including indemnification and other obligations, in the performance of services under the Contract for: (1) unauthorized access or use of a computer system or network; (2) denial of service attacks; (3) receipt or transmission of malicious code; (4) failure to protect confidential, personal or corporate information; (5) wrongful collection of confidential, personal or corporate information; and, (6) violation of privacy laws, statutes or regulations in connection with an event described in (4) or (5).

All of the above policies and bonds shall contain endorsements prohibiting cancellation except upon thirty (30) calendar days' prior written notice to CPA. No later than five (5) business days following the Award Date, and on an annual basis thereafter, Successful Respondent shall furnish proof to CPA of such coverage in the form of a Certificate of Insurance from Successful Respondent's insurance carrier(s) indicating the required coverages. The certificate shall be addressed to CPA as the certificate holder. Successful Respondent shall submit proof of required insurance coverage via email, referencing the PO number, to the following address: contract.administration@cpa.texas.gov.

I. Criminal Background Investigation

1. Criminal Background Investigation by Successful Respondent. Prior to an Assigned Personnel commencing Services under the Contract, Successful Respondent shall conduct a criminal background investigation and provide written notice via email to CPA's Criminal Investigation Division of any Assigned Personnel that have any felony criminal

conviction(s). If any information related to felony criminal conviction(s) for the Assigned Personnel changes during the Contract term, Successful Respondent shall provide written notice via email to CPA's Criminal Investigation Division no later than three (3) business days after Successful Respondent's discovery of such changed information. Written notice to CPA's Criminal Investigation Division shall be submitted to cjd.analysts@cpa.texas.gov.

Successful Respondent's exercise of due diligence in conducting the criminal background investigation shall include, at a minimum, the following: (1) compliance with Successful Respondent's published policies and procedures for background and criminal conviction checks and (2) a comprehensive search of the public information portion of Texas Department of Public Safety criminal conviction database located at: <https://publicsite.dps.texas.gov/ConvictionNameSearch/>. If Successful Respondent asserts that a search of the Texas Department of Public Safety criminal conviction database is not appropriate for a particular Assigned Personnel, Successful Respondent must provide written notice via email to CPA's Criminal Investigation Division that explains the proposed alternate approach for conducting the criminal background investigation.

For purposes of this clause, "Assigned Personnel" includes, without limitation, (1) all individuals provided by Successful Respondent under the Contract who will or may (a) be assigned as lead or key personnel; (b) provide Services on-site at CPA's premises; or (c) access CPA information resources, *i.e.*, the procedures, equipment, and software that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and (2) associated personnel, including consultants and contractors. At CPA's written request, Successful Respondent shall replace Assigned Personnel with any felony criminal conviction(s).

Within five (5) business days of receipt of a written request by CPA's Criminal Investigation Division during the Contract term, Successful Respondent shall provide written notice to CPA's Criminal Investigation Division of any Assigned Personnel that have any felony criminal conviction(s).

2. Criminal Background Investigation by CPA. At CPA's discretion, CPA may conduct a criminal background investigation on Successful Respondent's Assigned Personnel. Should any Assigned Personnel not be acceptable to CPA due to a finding of felony criminal conviction(s) as a result of the criminal background investigation, Successful Respondent shall replace such Assigned Personnel upon CPA's written request or CPA may terminate the Contract.
3. Remedies. If CPA becomes aware that Successful Respondent provided false information, Successful Respondent fails to promptly notify CPA of changed information that related to felony criminal convictions, or Successful Respondents fails to replace Assigned Personnel as required by this Section, Successful Respondent shall be in breach of contract and CPA shall have the option to terminate the Contract without further obligation to Successful Respondent as well as pursue all other remedies and rights available to CPA under contract, at law, or in equity.

J. Contract Term

The initial term of the Contract shall be from September 1, 2025 through August 31, 2027. CPA may, in its sole discretion, exercise the option to extend the Contract for up to four (4) additional, one-(1)-year periods. The optional additional periods are September 1, 2027 through August 31, 2028; September 1, 2028 through August 31, 2029; September 1, 2029 through August 31, 2030; and September 1, 2030 through August 31, 2031. To exercise the option to extend the term, CPA will notify Successful Respondent; such notice may be by PO or PO Change Notice issuance. Notwithstanding the termination or expiration of the Contract, certain provisions that by their nature are intended to continue beyond the termination or expiration of the Contract, *e.g.*, indemnification, confidentiality, dispute resolution, records retention, CPA data safeguards, State Auditor's right to audit, and CPA's right to audit, shall survive the termination or expiration of the Contract.

K. Invoice Acceptance Criteria

Prior to payment, CPA will evaluate the provided products and/or Services using the following criteria and any additional acceptance criteria provided in the Contract:

1. The products and/or Services must meet all specifications and standards of performance in the Contract; and
2. The products and/or Services must comply with all published specifications.

L. Payments

Payment(s) to Successful Respondent will be based upon the schedule described in Section IV (Mandatory Price Sheet) and the Contract. **CPA may, in its sole discretion, process payments on a quarterly basis.** CPA makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the Contract. Payment shall be made in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code. Generally, subject to several exceptions, the Texas Prompt Payment Act requires payments to be made no later than 30

days after the later of the date goods are received, services are completed, or an undisputed invoice is received. Payments will be made to Successful Respondent as provided in Section V (Provision for Direct Deposit or Warrant).

M. Discounts

If Successful Respondent provides a discount on the final Contract costs at any time during the term of the Contract, Successful Respondent will notify CPA in writing ten (10) calendar days before the effective date of the discount. CPA will generate a PO Change Notice (“POCN”) and send it to Successful Respondent. If an early payment discount is available to CPA, then Respondent’s Offer must describe the early payment discount offered and the discount percentage that would apply to CPA’s early payment within ten, fifteen, twenty or twenty-five calendar days after receipt of a correct invoice. Successful Respondent shall also specify any applicable, early payment discount option(s) on each submitted invoice.

N. PO Addition and Deletion

CPA reserves the right, in its sole discretion, to add or delete products or Services during the Contract term. All additions or deletions will be processed through CPA’s Procurement Section by POCN. The rate at the time of the addition or deletion shall be the same as the rate quoted in the Contract for the same model product or Service. The effective date of any addition or deletion will be no later than five (5) business days after receipt of CPA’s written notification of the addition or deletion. For this purpose, written notification may be by POCN sent by registered mail, regular mail, or email with confirmation receipt.

For any additions, CPA’s Procurement Section will provide a POCN to Successful Respondent. The total number of additions allowed to CPA is determined by the number CPA chooses to purchase. For any deletions, CPA’s Procurement Section will provide a POCN to Successful Respondent indicating the effective date of the deletion, the amount of the reduction or refund (if any), and sufficient details to identify the product or Service.

O. HUB Subcontracting Plan Information

In accordance with Section 2161.252 of the Texas Government Code and 34 Texas Administrative Code §20.285, each state agency that considers entering into a contract with an expected value of \$100,000 or more over the life of the contract (including any renewals) shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. If subcontracting opportunities are probable, each state agency’s invitation for bids, requests for proposals, or other purchase solicitation documents with an expected value of \$100,000 or more shall state that probability and require a Historically Underutilized Business (HUB) Subcontracting Plan (HSP).

CPA has determined that subcontracting opportunities are probable and requires Respondents to complete the State of Texas HUB Subcontracting Plan (HSP) form located at <https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>. The HSP form is also posted to the ESBD as separate Bid Package #2 under this RFP, available at: <http://www.txsmartbuy.com/esbd>. For assistance in completing the HSP, Respondent may visit the following website: <https://comptroller.texas.gov/purchasing/vendor/hub/>. Respondents may send an HSP review request to the Contact person provided in Section I, Part 8. CPA will provide a courtesy HSP review if the request is received no later than the date questions are due, as specified in Section I, Part 15..

For purposes of the HSP, CPA has determined that this procurement falls under the following category:

Special Trade Construction ____ Professional Services ____ Other Services X Commodities ____

CPA has identified the possible subcontracting opportunities on the “Agency Special Instructions/Additional Requirements” portion of the State of Texas HUB HSP form set forth below:

- - Agency Special Instructions/Additional Requirements - -

The Texas Comptroller of Public Accounts is committed to increasing contracting opportunities with HUBs by contracting directly with HUBs or indirectly through subcontracting opportunities in compliance with Chapter 2161 of the Texas Government Code, and by requesting a HSP for contracts with an expected value of \$25,000 to \$99,999.

If a bid/proposal/offer to a solicitation with an expected value of \$100,000 or more does not contain a completed HSP and supporting documentation, the bid/proposal/offer will be considered non-responsive and will be disqualified. After Contract award, Successful Respondent may be subject to debarment pursuant to Section 2161.253(d) of the Texas Government Code if any modifications are made to the HSP without PRIOR approval from CPA.

If Respondent is not subcontracting any portion of the Contract, Sections 1, 2(a), 3 and 4 of the HSP must be completed.

If Respondent is subcontracting some portion of the Contract, the supporting documentation of “Good Faith Effort” must be demonstrated in either Method A (Attachment A) or Method B (Attachment B) of the HSP.

The Texas Comptroller of Public Accounts requests all Respondents to consider utilizing HUBs in subcontracting areas listed below; however, this list should not be considered exhaustive.

Class	Item	Description
956	35	INTERNET DATABASE SUBSCRIPTIONS
946	00	FINANCIAL SERVICES
946	12	ACTUARIAL SERVICES
946	31	CERTIFIED PUBLIC ACCOUNTANT (CPA) SERVICES
946	56	INVESTMENT MANAGEMENT SERVICES

In accordance with 34 TAC §20.285(d)(1)(D)(iii), a Respondent (prime contractor) may demonstrate a good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of Respondent’s subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a Respondent uses this method to demonstrate a good faith effort, the Respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify toward meeting the HUB goal.

P. Respondent Documents

All Respondent documents that are related to the Services, this RFO, Respondent’s Offer, or a Contract including, but not limited to, boilerplate service agreements, service schedules, published specifications, warranty information, terms of service, ordering documents, maintenance agreements, and license agreements, are collectively referred to in this RFO as “Respondent Documents.” **Respondent must include copies of all proposed Respondent Documents with Respondent’s Offer.** CPA reserves the right, in its sole discretion, to amend the Respondent Documents to conform to this RFO and Texas law and provide them to Respondent for approval and signature prior to Contract award. Respondent Documents that are (1) submitted as part of the Offer and (2) amended to conform to this RFO and Texas law through mutual, written agreement of Successful Respondent and CPA will be incorporated as part of the Contract. Upon written request, Respondent shall promptly provide to CPA a Word version of all Respondent Documents.

Q. Respondent Exceptions

If Respondent takes any exception to any provisions of this RFO, the exceptions must be specifically and clearly identified by section number in Respondent’s Offer as provided in Section XI (Respondent Exceptions Response Template). Respondent’s proposed alternative must also be provided in the Offer; however, it is acceptable for Respondent to reference the terms of a previous contract with CPA. If a Respondent takes a “blanket exception” to the entire RFO or does not propose alternate language for CPA’s consideration, Respondent’s Offer may be considered non-responsive and disqualified from further consideration.

Respondents are strongly encouraged to submit any inquiries regarding specific terms or conditions of this RFO during the question-and-answer period designated in Section I (Summary).

R. Respondent’s Past Performance

Comptroller may conduct reference checks with other entities regarding past performance of Respondent or its subcontractors. In addition to evaluating performance through the Vendor Performance Tracking System (“VPTS”) as authorized by 34 Texas Administrative Code §20.115, Comptroller 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, Comptroller may initiate such examinations of vendor performance based upon media reports. Any such investigations shall be at the sole discretion of Comptroller, and any negative findings, as determined by Comptroller, may result in a non-award to Respondent. The Vendor Performance Tracking System information is located on Comptroller's website at: <https://www.comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>.

III. Offer Submission Requirements

A. Delivery of Offer

Respondent must submit its Offer electronically via email, in accordance with the following:

1. The Offer must be emailed to bidcpa@cpa.texas.gov, with copy to the CPA Contact Person identified in Section I, Part 8 at wendy.foley@cpa.texas.gov;
2. The subject line of the email must include Respondent's name and a reference to RFO No. 930-26-0237WF;
3. All attachments to the email must be in a format that is accessible to CPA (specific acceptable formats include Word, Excel, and pdf);
4. All required forms must be electronically signed or manually signed with scanned signatures; and
5. CPA strongly encourages Respondent to send the email with the attached Offer at least fifteen (15) minutes prior to the Deadline for Submission of Offers as specified in this RFO to allow for any networking delays that may occur (e.g., firewalls, security scans, etc.).

Respondent is solely responsible for ensuring timely delivery of its Offer to the Issuing Office by the deadline. **Late Offers will not be accepted.**

B. Offer Content and Format

The Offer must contain the information listed in this Part B. Failure to include all information may result in exclusion of the Offer from consideration. The Offer must contain an organized, paginated table of contents with hyperlinks corresponding to the sections and pages of the Offer. The Offer must be organized as follows:

1. **Respondent's Contact Person and Identifying Information.** Respondent must submit the following in its Offer:
 - a. Respondent's identifying information:
 - (1) name and address of business entity submitting the Offer;
 - (2) list of all principals;
 - (3) type of business entity (e.g., corporation, partnership);
 - (4) state of incorporation or organization; and
 - (5) principal place of business.
 - b. Respondent's contact information (i.e., name, title, email address, phone number and fax number) for the individual(s) who will be CPA's point of contact for questions regarding the Offer and the Contract.
2. **Respondent Questionnaire: Respondent's Qualifications, Experience and Past Performance.**
 - a. In its Offer, Respondent must provide a profile that:
 - (1) describes the size and scope of all of Respondent's operations, including number of Respondent's employees and years in business;
 - (2) describes the general nature of previous, similar work performed by Respondent, particularly work in the last three (3) years;
 - (3) describes Respondent's prior contracting experience with CPA and other public sector entities;
 - (4) includes a statement regarding the financial stability of Respondent, including the ability of Respondent to perform the Services and any other services proposed in its Offer; and
 - (5) includes any other information Respondent believes is pertinent to this RFO (e.g., certificates, industry awards).
 - b. **References.** In its Offer, Respondent must provide a list of **three (3)** entities other than CPA for which Respondent has provided services and/or products described in this RFO during the past three (3) years. For each of the three references, Respondent must include dates when items that were the same or similar to those requested in this RFO were provided, and the names, telephone numbers and email addresses of the entity's contact person. Respondent must provide the reference information in a format similar to the following:
 - (1) Entity Name: _____
Date Item(s) Provided: _____
Name of Entity's Contact Person: _____
Telephone Number of Entity's Contact Person: _____

- Email Address of Entity's Contact Person: _____
- (2) Entity Name: _____
- Date Item(s) Provided: _____
- Name of Entity's Contact Person: _____
- Telephone Number of Entity's Contact Person: _____
- Email Address of Entity's Contact Person: _____
- (3) Entity Name: _____
- Date Item(s) Provided: _____
- Name of Entity's Contact Person: _____
- Telephone Number of Entity's Contact Person: _____
- Email Address of Entity's Contact Person: _____

In CPA's sole discretion, CPA may contact Respondent's references by electronic mail or telephone. CPA will not notify Respondent of its reference-checking activities. Respondent is responsible for ensuring the references identified in its Offer are: (1) willing to provide information to CPA regarding the contracts and services provided by Respondent, and (2) are available to respond to CPA's inquiry for the three-week period following the deadline for submission of Offers. In the event Respondent provides more than three references, CPA will contact only the first three references listed in Respondent's Offer.

CPA is not obligated to contact Respondent in the event incomplete reference information is submitted in the Offer. Consequently, Respondent's failure to provide all or part of the requested reference information in its Offer may be reflected as a score of "0" for the applicable evaluation criterion. Additionally, Respondent's score for a reference for the applicable evaluation criterion shall be "0" in the following circumstances: (1) there is a requirement for a Respondent representative to schedule, monitor or otherwise participate in CPA's reference-check activities, or (2) Respondent's reference fails to respond to CPA's inquiry by CPA's specified due date. CPA is not responsible for undelivered emails or non-responsive references.

- c. Cancellations or Terminations. In its Offer, Respondent must list **all** contracts or purchase orders that Respondent executed or accepted within the last three (3) years and that were canceled or terminated before completion by any entity with which Respondent contracted. For each cancelled or terminated contract or purchase order, Respondent must include a detailed explanation for the cancellation or termination and final resolution of the matter. The Offer must include the names and telephone numbers of each such entity's contact person. If there were no contracts or purchase orders cancelled or terminated before completion in the last three years, specify none.

3. Respondent Questionnaire: Narrative.

- a. Scope of Services. In its Offer, Respondent must submit a detailed, narrative explanation of how the offered services will meet the requirements of Section II, Part D (Scope of Services). Respondent must provide in its Offer all the information requested in the Scope of Services in conformity with the structure outlined in Section II, Part D (Scope of Services). In the narrative, Respondent must also provide the following:
- 1) information requested in Section II, Part D.11 (Data Security Terms).
 - 2) copies of all Respondent Documents applicable to the proffered Services. Refer to Section II, Part P.
 - 3) a detailed description of how Respondent will provide problem or trouble resolution, its escalation procedures, and the timeframe in which Respondent will respond to CPA's request for maintenance and technical support.
 - 4) a description of the qualifications of personnel who will provide the offered Services. Respondent must also describe its organizational structure and staffing levels that will support the offered Services, including Respondent's policies for retaining personnel and engaging additional, qualified personnel, if necessary, to support the requirements set forth in this RFO. In addition, Respondent must identify all proposed personnel who will or may provide Services. For each proposed individual, Respondent must provide a resume that includes the following information: (1) professional employment history, (2) education, (3) relevant professional training and (4) professional certifications. Respondent must also identify the roles and responsibilities of the proposed personnel and provide an organizational chart depicting the lines of authority and functional titles of the proposed personnel.

- b. Description of All Offered Optional Features, Products, or Services. If offered, Respondent must describe in its Offer any Optional Features, Products or Services that would benefit CPA, but are not part of the minimum requirements of this RFO. Refer to Section II, Part D.2. Respondent must provide line-item pricing for each option on the Mandatory Price Sheet in Section IV. Optional features, products or services will not be considered in evaluation under Section I, Part 17.
 - c. Early Payment Discount Offering. If offered, Respondent must describe with specificity in its Offer any early payment discount offered as described in Section II, Part M.
- 4. Offer Submission Requirements.** In its Offer, Respondent shall include the following information:
- a. Compliance with CPA Data Safeguard Standards. Respondent shall describe its approach and methodology for meeting the requirements in Section II, Part D.11.1 (CPA Data Safeguard Standards).
 - b. Security Control Verification. Respondent shall provide evidence as listed in Section II, Part D.11.1. t.1.
 - c. Data Security Breach History. Respondent shall disclose any data security breach incidents, including pertinent, public information describing the breach such as the date of the incident, date of incident discovery, cause of the incident, and remediation efforts undertaken by Respondent.
 - d. Defects and Vulnerabilities. Respondent shall disclose product defects and vulnerabilities above of the proposed Licensed Software/Solution/System described in Section II, Part D.11.1.j (Defects and Vulnerabilities) known to Respondent at the time of Offer submission.
 - e. System Development Life Cycle. Respondent shall provide a written description of its system development lifecycle that addresses security engineering methods, software development methods, testing/evaluation/validation techniques, and quality control processes.
- 5. Mandatory Price Sheet.** Respondent must complete and submit, in its Offer, all pages of the Mandatory Price Sheet. See Section IV.
- a. All costs associated with the offered services must be entered on the Mandatory Price Sheet and described in the Offer.
 - b. If Optional Features, Products or Services are offered, refer to Section III, Part D.3.b.
- 6. HUB Subcontracting Plan (HSP) & Supporting Documentation.** The HSP document described in Section II, Part O must be completed, signed, and included in the Offer.
- 7. Execution of Offer.** Section VI must be completed, signed, and included in the Offer, as required by Section V.1.
- 8. Conflict of Interest Form.** Section VII must be completed, signed, and included in the Offer.
- 9. Nondisclosure Agreement.** Section VIII must be completed, signed, and included in the Offer, as required by Section V.
- 10. Certification regarding Public Nature of the Offer.** Section X must be completed, signed, and included in the Offer.
- 11. Respondent Exceptions.** Any exceptions Respondent takes to this RFO must be specifically and clearly identified by section number in Section XI (Respondent Exceptions Response Template). Respondent's proposed alternative must also be provided in Section XI; however, it is acceptable for Respondent to reference the terms of a previous contract with CPA.
- 12. Contractor Cybersecurity Training Attestation Form.** Successful Respondent must complete, sign and return to CPA at contract.administration@cpa.texas.gov the Cybersecurity Training Attestation form in Section XII within sixty (60) days of the Contract's effective date.

IMPORTANT NOTE: THE FORMS LOCATED IN THIS RFO ARE PREPARED EXCLUSIVELY FOR THIS RFO. RESPONDENT'S SUBMISSION OF OTHER FORMS OR DOCUMENTS, INCLUDING PRIOR VERSIONS OF THE FORMS, MAY RESULT IN DISQUALIFICATION OF THE OFFER.

IV. Mandatory Price Sheet

Respondent must include all costs for providing the Services for the items listed on this **Mandatory Price Sheet**. CPA requests that Respondents quote costs as an annual fee. However, CPA may, in its sole discretion, authorize payments on a quarterly basis. CPA will not prepay any amounts. The not-to-exceed prices associated with the Services shall be inclusive of all travel, meals, lodging or other related expenses. Respondent must provide full transparency into fees. Proposals must include a Total Cost of Ownership model inclusive of all variable and fixed costs and Respondents must commit to remain within that cost model over the term of the agreement.

This Mandatory Price Sheet consists of three (3) Price Schedules:

- (1) Setup and Implementation Costs
- (2) Licensed Software and Software Maintenance and Technical Support, and
- (3) Optional Features, Products, or Services.

Price Schedule 1 Setup and Implementation Costs (Refer to Section II)			
Description		Unit of Measure	One Time Fee
1 2 3	Setup Fee	1 Lot	\$
	Data Migration and Unitization	1 Lot	\$
	Interface Analysis and Configuration	1 Lot	\$
Total for Price Schedule 1			\$

THIS FORM MUST BE COMPLETED, SIGNED, DATED AND SUBMITTED WITH OFFER

Respondent's name: _____ **Date:** _____

Price Schedule 2
Licensed Software and Software Maintenance and Technical Support
(Refer to Section II)

Description		Unit of Measure	Initial Term (9/01/25 - 8/31/27)	Optional Renewal Terms			
				(9/01/27 - 8/31/28)	(9/01/28 - 8/31/29)	(9/01/29 - 8/31/30)	(9/01/30 - 8/31/31)
1	Licensed Software 1 Server License 30 Client Licenses	1 Lot	\$	\$	\$	\$	\$
2	Annual Software Maintenance and Technical Support – 1 Server License 30 Client Licenses	1 Lot	\$	\$	\$	\$	\$
Total for Price Schedule 2			\$	\$	\$	\$	\$

THIS FORM MUST BE COMPLETED, SIGNED, DATED AND SUBMITTED WITH OFFER

Respondent's name: _____ **Date:** _____

Price Schedule 3
Optional Features, Products, or Services
(Refer to Section II)

Description		Unit of Measure	Initial Term (9/01/25 - 8/31/27)	Optional Renewal Terms			
				(9/01/27 - 8/31/28)	(9/01/28 - 8/31/29)	(9/01/29 - 8/31/30)	(9/01/30 - 8/31/31)
1	Formal Training Services	1 Job	\$	NA	NA	NA	NA
2	Additional Client Licenses	1 Each	\$	\$	\$	\$	\$
3	Additional Server Licenses	1 Each	\$	\$	\$	\$	\$
4	Annual Software Maintenance and Technical Support for each Additional Client License	1 Each	\$	\$	\$	\$	\$
5	Annual Software Maintenance and Technical Support for each Additional Server License	1 Each	\$	\$	\$	\$	\$
6	<i>Insert lines as necessary for each offered Optional Feature, Product, or Service</i>	1 Each	\$	\$	\$	\$	\$

THIS FORM MAY BE COMPLETED, SIGNED, DATED AND SUBMITTED WITH OFFER

Respondent's name: _____ **Date:** _____

V. Standard Terms and Conditions

1. **Terms and Conditions.** This Section V (Standard Terms and Conditions) is incorporated into this RFO for all purposes. Respondent's representation and signature is required on the Execution of Offer located in Section VI.
2. **Contract Award; Copyright; Reissuance.** In awarding a Contract, CPA reserves the right, in its sole discretion, to reject all or any part of any Offers; waive minor technicalities; negotiate price and other provisions with all Respondents, the top-rated Respondents, or no Respondents; and award a Contract in the best interests of CPA and the State of Texas. CPA reserves the right, in its sole discretion, to award a Contract without discussion of Offer(s) with Respondent(s). CPA's waiver of any deviations in any Offers will not constitute a modification of this RFO and will not preclude CPA from asserting all rights against Respondent for failure to comply fully with all terms and conditions of this RFO. CPA reserves the right to make any corrections or include additional requirements in the PO or a PO Change Notice prior to issuance necessary for CPA's compliance, as an agency of the State of Texas, with all state and federal requirements. Copyrighted offers are unacceptable and are subject to disqualification as non-responsive. CPA reserves the right to disqualify any Offer that asserts a copyright on any CPA-created form that CPA requires a Respondent to include in its Offer, *e.g.*, Mandatory Price Sheet and forms to be completed by Respondent. CPA is not required to award a Contract. CPA may reissue or issue another solicitation for the requested Services or items described in this RFO or similar services or items at any time.
3. **Pricing; F.O.B. (Freight on Board) Destination.** All pricing must be submitted in the format provided in the Mandatory Price Sheet and must comply with the requirements described in this paragraph. If a trade discount is shown on the Offer, it should be deducted and net line extensions shown on the Mandatory Price Sheet. Respondent must be willing to negotiate from Offer prices. "Discount from list" Offers are not acceptable unless specifically requested. Cash discounts will not be considered in determining the best value. However, CPA will take all cash discounts offered if earned. A Respondent must quote F.O.B. destination with title and risk of loss transferred to CPA upon CPA's written acceptance; otherwise, Respondent must quote complete cost to deliver as specified in this RFO. A Respondent must quote unit price on quantity and unit of measure specified. Total prices must be computed to show the total cost for each item type. In case of errors in computation in Offers, unit prices shall govern. CPA will not consider Offers subject to unlimited price or percentage-of-price increases.
4. **Additional Specifications.** By submitting an Offer, Respondent guarantees and warrants that all requested Services or items offered will meet or exceed all specifications of this RFO. All items offered shall be new and in first-class condition, including containers suitable for shipment and storage, unless otherwise indicated in this RFO. Respondent must furnish samples, when requested, free of expense to CPA. CPA will return samples to Respondent, on request, at Respondent's expense. Each sample should be marked with Respondent's name, address, and CPA's RFO number or PO number, as applicable. No substitutions or cancellations are permitted without prior written approval of CPA's Procurement Section.
5. **Testing; Acceptance; Return; Revocation.** Prior to Contract award or payment, as applicable, requested samples will be subject to inspection and testing by CPA. CPA reserves the right to test requested samples or items prior to Contract award and Respondent will bear all costs of any testing. After Contract award and prior to payment, CPA may conduct acceptance testing on the requested items delivered under the Contract. If so, CPA will have up to thirty (30) days to conduct such testing. If the delivered and/or installed requested items fail to meet or exceed the acceptance criteria or any other requirement of the Contract, CPA may refuse to accept the requested items. If CPA refuses to accept the requested items, CPA shall return such requested items at Successful Respondent's sole expense. If the delivered, requested items meet or exceed all conditions and requirements of the Contract, CPA shall notify Successful Respondent in writing no later than thirty (30) days after receiving the samples or items being tested that Successful Respondent may submit an invoice to CPA's Accounts Payable Division for such requested items at: to bidcap@cpa.texas.gov. CPA reserves the right to revoke prior acceptance for, among other things, latent defects.
6. **Delivery; Dates; Delays; Delivery Hours.** Regardless of whether the latest acceptable delivery date is specified in the Mandatory Price Sheet, Respondent must list the number of days required to place equipment or goods in CPA's designated location under normal conditions. Failure to state a delivery time obligates Respondent to complete delivery in fourteen (14) calendar days or by the latest acceptable delivery date specified in Section II (Specifications) or the Mandatory Price Sheet. Unrealistically short or long delivery promises may cause an Offer to be disregarded. Consistent failure to meet delivery promises without valid reason may result in Successful Respondent's removal from the State of Texas' Centralized Master Bidders List ("CMBL"). If Successful Respondent determines that it will be unable to comply with any scheduled deadline or delivery of the requested items required under the Contract, Successful Respondent shall notify CPA in advance in writing of the expected delay, the reason for the delay and the date by which the requested items may be expected. CPA may, in its sole discretion, approve such delay in writing. Notwithstanding anything in this paragraph to the contrary, CPA reserves the right to terminate all or any part of the Contract and CPA does not waive any rights or remedies available to CPA for Successful Respondent's nonperformance under the Contract. Successful Respondent must deliver all items during CPA's standard business hours unless CPA's Procurement Section or CPA's Contract Manager provides prior

written approval for delivery before or after standard business hours. CPA's standard business hours are defined in in this Section V (Hours).

7. **Time for Submission.** Offers must be received by CPA's Procurement Section before the hour and date specified in Section I (Summary). Late Offers will not be considered under any circumstances.
8. **Electronic Signatures.** Respondent's Offer must be electronically signed or manually signed and scanned. Subsequent documents delivered pursuant to this RFO may be electronically signed as well. To the extent the parties sign electronically, their electronic signature, whether digital or encrypted, is intended to authenticate as applicable and will have the same force and effect as manual signatures. Delivery of a copy of the Offer, Contract, or any other document contemplated under this RFO, bearing an original manual or electronic signature by electronic mail in pdf or similar format intended to preserve the original graphic and pictorial appearance of a document, or through the use of electronic signature software will have the same effect as physical delivery of the paper document bearing an original, manual signature.

"Electronic signature" means electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by an authorized person with the intent to sign the record pursuant to the Texas Uniform Electronic Transactions Act (Tex. Bus. & Com. Code §322.001 *et seq.*), as amended from time to time.

9. **Respondent Identification.** Offers must include Respondent's Texas Identification Number ("TIN"), which is the taxpayer number assigned and used by CPA. If this number is not known, provide the Respondent's Federal Employer Identification Number ("FEIN"), if any, or, for sole proprietors that do not have a TIN or FEIN, the Offer must include Respondent's Social Security Number and mark it as "**CONFIDENTIAL**."
10. **No Alterations or Withdrawals of Offer after Deadline.** Offers cannot be altered or amended after the deadline specified in Section I (Summary), except as provided in this paragraph. Any alterations made before this deadline must be initialed by the Respondent or its authorized agent. No Offers can be withdrawn after the specified deadline without approval by CPA's Procurement Section based on a written reason acceptable to CPA, in its sole discretion.
11. **Selected Definitions.** This paragraph defines the following terms used throughout this RFO: Successful Respondent's employee, relative and financial interest.
- "Successful Respondent's employee" includes any individual who, on behalf of Respondent, will or may participate in the Contract.
 - "Successful Respondent's employee" includes all officers, personnel, replacement personnel, agents, subcontractors and other representatives of Respondent regardless of how employed or contracted by Respondent.
 - When the term "relative" refers to an individual, the term includes a current or former CPA employee's spouse, father, mother, brother, sister, son or stepson, daughter or stepdaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law.
 - "Financial interest" means receiving, or the right to receive, money or other valuable property or benefits under the actual or proposed contract; holding a position in the business of Respondent, such as a principal, officer, director, trustee, partner, employee or the like, or holding any position of management; holding any of the outstanding debt of a person directly involved in the proposed or resulting contract; or owning stock or other interest in the business of Respondent.
12. **Email Offers.** CPA will not be responsible for Offers received late, illegible, incomplete, or otherwise non-responsive due to network delays (e.g., firewalls, security scans, etc.), internet connection issues, etc.
13. **Mailed or Hand-delivered Offers.** CPA will not accept mailed or hand-delivered Offers.
14. **Terms and Conditions Attached to Offer.** CPA will not consider any terms and conditions or other documents attached to an Offer as part of the Offer unless the Respondent specifically and prominently refers to each of them in its Offer. In addition, see other Parts of this Section V (Terms and Conditions), for example, Incorporation of Entire RFO, Authority to Bind CPA; Execute Documents, Unacceptable Terms in Respondent's Offer, and Specifications; Performance, regarding limitations on terms and conditions or attachments to Respondent's Offer. CPA reserves the right, in its sole discretion, to reject any Respondent terms and conditions or other documents or attachments that are submitted to CPA as part of Respondent's Offer.
15. **Incorporation of Entire RFO.** Except as otherwise provided in the negotiated terms and conditions, if any, that are expressly identified as such in the Contract, this entire RFO applies to and becomes part of the Contract.
16. **Authority to Bind CPA; Execute Documents.** Only the Comptroller, Deputy Comptroller, and the Deputy Comptroller's authorized delegate have the authority to execute a document or grant a permission on behalf of CPA with respect to this RFO or the Contract, except that CPA's Procurement Section has authority to issue POs and POCNs.

- 17. Unacceptable Terms in Respondent's Offer.** No CPA action, including, but not limited to, issuance of a PO, will constitute an acceptance of conflicting terms, conditions, or attachments in Respondent's Offer; however, this lack of acceptance by CPA shall not apply to the negotiated terms and conditions, if any, that are expressly identified as such in the Contract. Proposed terms and conditions that may violate Texas law applicable to the specific procurement or may be unacceptable to CPA for inclusion in the Contract include the following:
- Offers that incorporate the laws of a state other than Texas;
 - Requirements for prepayment;
 - Limitations on CPA's remedies;
 - Requirements that CPA indemnify the Respondent;
 - Requirements that Respondent's documents control in case of conflicts;
 - Requirements that Respondent's documents control even if Respondent accepts or acknowledges the PO; and
 - Disclaimer of warranties.
- 18. Pre-contract Costs.** Respondent is responsible for all expenses related to the preparation and submission of an Offer. CPA shall pay no costs or other amounts incurred by any entity in responding to this RFO or incurred prior to the effective date of the Contract.
- 19. Specifications; Performance.** Successful Respondent will provide the requested Services and/or items of the quality and in the manner described in this RFO. Successful Respondent's failure to conform to all requirements of the Contract may, among other things, result in CPA's withholding of acceptance and payments under the Contract, CPA's cancellation of all or part of the Contract, CPA's revocation of any prior acceptance and Successful Respondent's refund to CPA of amounts paid by CPA prior to revocation of acceptance.
- 20. Respondent Costs.** Respondent will bear all costs and expenses for the provision of the requested Services or items required by the Contract. All such costs and expenses must be included in the prices detailed in the Contract. No other amounts will be paid.
- 21. Prepayments.** CPA, in its sole discretion, reserves the right, to the extent permitted by Texas law and CPA regulations, to prepay for any requested Services or items delivered to or provided to CPA by Successful Respondent in its performance under the Contract. CPA may inspect, test and evaluate the requested items prior to acceptance and payment.
- 22. Refunds.** Successful Respondent will promptly refund or credit, within thirty (30) calendar days, any funds erroneously paid by CPA not expressly authorized under the Contract.
- 23. Invoicing; Travel-related Expenses; Withholding of Payments.** To be paid, Successful Respondent must submit one copy of an itemized invoice showing the PO number to CPA's Accounts Payable Division at biaap@cpa.texas.gov for all requested Services and/or items delivered, inspected, tested, evaluated and accepted by CPA. CPA will not reimburse for travel, meals, lodging or other related expenses unless specifically provided in the Contract. In that event, Successful Respondent will invoice such costs to CPA based on actual expenses and CPA shall not be liable for reimbursement of expenses that: (1) were not pre-approved in writing by CPA, or (2) exceed the current State of Texas' Travel Regulations, available at: [Texttravel - Current Rates \(texas.gov\)](http://Texttravel - Current Rates (texas.gov)) or <https://fm.xcpa.texas.gov/fmx/travel/texttravel/rates/current.php>. Receipts are required to validate invoicing.
- 24. Termination and Cancellation Circumstances.** CPA may terminate or cancel the Contract in any one of the following circumstances:
- 25.1. Mutual Agreement.** Upon the mutual, written agreement of CPA and Successful Respondent, the Contract may be terminated or cancelled.
- 25.2. CPA Upon 30 days' Notice.** CPA may, in its sole discretion, terminate or cancel the Contract with thirty (30) calendar days' written notice to Successful Respondent. Upon termination under this provision, Successful Respondent shall refund to CPA any amounts attributable to the terminated months remaining in the Contract within thirty (30) days of the termination effective date.
- 25.3. Successful Respondent's Nonperformance.** If Successful Respondent fails to comply with any requirement of the Contract, including, but not limited to, requirements included in this RFO, CPA may immediately terminate or cancel all or any part of the Contract, may obtain substitute requested Services and/or items, may withhold acceptance and payments to Successful Respondent, may revoke any prior acceptance, may require Successful Respondent to refund amounts paid prior to revocation of acceptance, and may pursue all rights and remedies against Successful Respondent under the Contract and any applicable law. In addition, CPA will report defaulting Successful Respondent to the Statewide Procurement Division for possible action by the Statewide Procurement Division against defaulting Successful Respondent. CPA may also report such nonperformance in the Vendor Performance Tracking System available at:

25.4. Excess Obligations Prohibited. The Contract is subject to termination or cancellation, without penalty to CPA, either in whole or in part, subject to the availability of state funds. CPA is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If CPA becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either CPA's or Successful Respondent's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this paragraph, CPA will not be liable to Successful Respondent for any damages that are caused or associated with such termination or cancellation, and CPA will not be required to give prior notice. Termination under this paragraph shall not affect CPA's right to use previously paid Licensed Software through the term of each such license, nor any maintenance or support paid prior to such termination.

CPA reserves the right to recover reasonable costs, fees, expenses and other amounts or damages available to CPA under the Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Successful Respondent's request or if CPA terminates or cancels the Contract for cause. This right is in addition to any other remedies available to CPA under the Contract or under applicable law. CPA reserves the right to pursue any and all applicable rights and remedies if the Contract is terminated for any reason and CPA does not expressly waive such rights or remedies.

- 25. Substitute Hardware, Software, Services or Warranties.** In the event CPA terminates or cancels the Contract for Successful Respondent's nonperformance or for cause, CPA may procure, upon reasonable terms and in a manner as it deems appropriate, substitute requested items similar to those that were terminated or cancelled. Respondent will be liable to CPA for any excess or additional costs incurred by CPA in acquiring these requested items, plus court costs and attorneys' fees. CPA's recovery of costs under this paragraph is in addition to any other remedies available to CPA under the Contract or under applicable law.
- 26. Notice of Termination or Cancellation Delivery.** Any termination by CPA of the Contract that requires notice may be accomplished by CPA's delivery to Successful Respondent at the address in Section V, Part 46 (Notices) of a written notice of termination or cancellation specifying that the Contract is terminated or cancelled.
- 27. Hours.** If requested by CPA, Successful Respondent will provide delivery on-site at CPA five (5) days a week, Monday through Friday, 8:00 am to 5:00 pm CT, excluding weekends and State of Texas holidays, unless otherwise defined in Section II (Specifications).
- 28. Respondent Assignments.** Successful Respondent hereby assigns to CPA all claims of Successful Respondent's rights, title, and interest in and all claims and causes of action Successful Respondent may have under the antitrust laws of Texas or the United States or overcharges associated with the Contract. See also Section V, Part 37 (Assignment).
- 29. Taxes.** Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. CPA will furnish Tax Exemption Certificates upon request. Respondent represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State or local income, sales or excise taxes of Respondent or its employees. CPA shall not be liable for any taxes resulting from the Contract.

Successful Respondent will serve as an independent contractor under the Contract. Successful Respondent must be able to 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-2s to Respondent's employees. Successful Respondent will be solely responsible for payment of all taxes, including, but not limited to, state, federal, foreign, or local taxes, income taxes, withholding taxes, social security taxes, pension contributions, and any other form of payroll or any other taxes, for Successful Respondent and Successful Respondent's employees. CPA will have no responsibility for payment of any such taxes or amounts related to such taxes. At Successful Respondent's sole cost and expense, Successful Respondent will secure and maintain all insurance premiums that are required by this RFO or the Contract or insurance premiums that are necessary to protect the interests of the State of Texas and CPA or that Successful Respondent may need or desire for Successful Respondent or Successful Respondent's employees. Successful Respondent shall indemnify CPA and pay to CPA all costs, penalties, losses, and other amounts resulting from the Successful Respondent's omission or breach of this Section entitled "Taxes."

- 30. Warranties.** Notwithstanding any disclaimers in the Offer or other Respondent Documents and notwithstanding any other provision of this RFO to the contrary, Successful Respondent warrants and guarantees all of the following with respect to all requested items required under the Contract:

30.1. RFO and Manufacturer's Warranties. Successful Respondent warrants and guarantees that all items provided shall meet all specifications of the Contract, including, but not limited to, this RFO; in addition, Successful Respondent shall provide manufacturer's standard warranty for all items provided.

30.2. Replacement and Other Warranties. Successful Respondent will provide a one (1) year, full replacement warranty for all items provided and will provide any other warranties specified in Section II (Specifications). These warranties begin on the date CPA accepts the requested items.

All warranties required by the Contract survive beyond the termination, cancellation or expiration date of the Contract. Respondent Documents and the requirements of this RFO will not be construed to limit any rights or remedies otherwise available to CPA under this RFO, the Contract, or any applicable law.

- 31. Termination or Cancellation Effectiveness.** Unless otherwise specified in this RFO or the Contract, any termination or cancellation of the Contract will be effective upon the date specified in CPA's notice of termination or cancellation.
- 32. Limitation on Authority; No Other Obligations.** Respondent shall have no authority to act for or on behalf of CPA or the State of Texas, except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expenses or liability of any kind on behalf of CPA or the State of Texas.
- 33. Public Information Act.** Notwithstanding any provisions of this RFO to the contrary, Respondent understands that CPA will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code), as interpreted by judicial opinions and opinions of the Office of the Texas Attorney General ("Attorney General"). Information, documentation, and other material in connection with this RFO or the Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Successful Respondent is required to make any information created or exchanged with the State of Texas pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Specific formats acceptable to CPA include Word, Excel, and pdf. All Offers become the property of CPA and may be subject to release to any requester under the provisions of the Texas Public Information Act. After the award and execution of a contract for a particular procurement, offers submitted shall be presumed to be public information and subject to disclosure unless a specific exception to disclosure under the Texas Public Information Act applies. CPA advises each Respondent to consult with its legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or other proprietary information. CPA assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Respondent.
- 34. Confidential Information; Nondisclosure Agreements.** Successful Respondent and Successful Respondent's employees and subcontractors, if any, shall not disclose to anyone, directly or indirectly, any information designated by CPA as confidential or to information accessed as a result of the Contract without the prior written consent of CPA. In addition, Successful Respondent must sign the Nondisclosure Agreement located in Section VIII (Nondisclosure Agreement) and include it with its Offer.

If a Respondent asserts that any portion of its Offer is confidential, then Respondent must specify the confidential portions in its Offer. Respondent must stamp in bold red letters the term "**CONFIDENTIAL**" on that specific part or page of the Offer that Respondent asserts to be confidential. Respondent must submit in writing specific detailed reasons, including any relevant legal authority, stating why Respondent asserts the material is confidential. Merely making a blanket claim that the entire Offer is protected from disclosure because it contains some proprietary information is not acceptable and will not render the entire Offer confidential. CPA will not accept vague and general claims as to confidentiality; CPA will determine whether a claim is general or vague in nature. CPA will consider all Offers and parts of Offers that are not marked as confidential as public information after the contract is awarded. The successful Offer may be considered public information even though parts are marked confidential.

In the event CPA receives a request for portions of an Offer marked as "**CONFIDENTIAL**", CPA shall forward the request to the Attorney General for an opinion on whether CPA may withhold such information from disclosure under the Texas Public Information Act. CPA will notify the Respondent whose Offer is the subject of the request when the information is forwarded to the Attorney General. CPA assumes no obligation for asserting legal arguments on behalf of a Respondent. See Section V, Part 2 (Contract Award; Copyright; Reissuance) regarding possible disqualification of an Offer due to certain copyrighted portions.

Within three (3) days of receipt, Successful Respondent shall refer to CPA's Contract Manager any third-party requests, received directly by Successful Respondent, for information to which Successful Respondent has access as a result of or in the course of performance under the Contract. The provisions of this Section entitled "Confidential Information; Nondisclosure Agreements" survive the termination or expiration of the Contract.

- 35. No Other Benefits.** Respondent has no exclusive rights or benefits other than those set forth herein.
- 36. Parties Bound.** The Contract will be binding upon and inure to the benefit of CPA and Successful Respondent and to their respective heirs, executors, administrators, legal representatives and successors.

37. **Assignment.** Successful Respondent may not assign its rights under the Contract or delegate the performance of its duties under the Contract without the prior written approval from CPA. Any attempted in violation of this provision is void and without effect.
38. **Time Limits.** Time is of the essence in the performance of the Contract. Successful Respondent shall strictly comply with all of the deadlines, requirements, and Standards of Performance for the Contract.
39. **No Waiver.** No provision of the Contract, a PO or POCN or this RFO shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies or immunities available to CPA as an agency of the State of Texas or otherwise available to CPA. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies or immunities detailed in the Contract or otherwise available to CPA by law will not constitute a waiver of said privileges, rights, defenses, remedies or immunities or be considered as a basis for estoppel. **By issuing a PO, by its conduct prior to or subsequent to issuing the PO or by executing the Contract, CPA does not waive any privileges, rights, defenses, remedies or immunities available to CPA as an agency of the State of Texas or otherwise available to CPA. The modification of any privileges, rights, defenses, remedies or immunities available to CPA must be in writing, must reference this section, and must be signed by CPA to be effective. Such modification of any privileges, rights, defenses, remedies or immunities available to CPA will not constitute a waiver of any subsequent privileges, rights, defenses, remedies or immunities under the Contract or under applicable law.**
40. **CPA Not Liable Upon Termination.** If the Contract is terminated for any reason, CPA and the State of Texas will not be liable to Successful Respondent for any damages, claims, losses or any other amounts arising from or related to any such termination.
41. **Personal Injury; Property Damage.** Successful Respondent shall be liable for any bodily injury or personal injury to any individual caused by Successful Respondent or Successful Respondent's employees or Successful Respondent's defective products. In the event of loss, destruction or damage to any CPA or State of Texas property by Successful Respondent or Successful Respondent's employees, Successful Respondent shall indemnify CPA and the State of Texas and pay to CPA and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property, at CPA's election. Successful Respondent will reimburse CPA and the State of Texas for such property damage within ten (10) calendar days after Successful Respondent's receipt of CPA's notice of amount due.
42. **INDEMNIFICATION. SUCCESSFUL RESPONDENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CPA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS OR OMISSIONS OF SUCCESSFUL RESPONDENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT , INCLUDING ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY SUCCESSFUL RESPONDENT WITH THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUCCESSFUL RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE ATTORNEY GENERAL. SUCCESSFUL RESPONDENT AND CPA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**
43. **INDEMNIFICATION (INTELLECTUAL PROPERTY). SUCCESSFUL RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CPA AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS, AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF SUCCESSFUL RESPONDENT PURSUANT TO THE CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE, OR OTHER SERVICE PROVIDED THEREUNDER; AND/OR (3) CPA'S AND/OR SUCCESSFUL RESPONDENT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO CPA BY SUCCESSFUL RESPONDENT OR OTHERWISE TO WHICH CPA HAS ACCESS AS A RESULT OF SUCCESSFUL RESPONDENT'S PERFORMANCE UNDER THE CONTRACT. SUCCESSFUL RESPONDENT AND CPA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. NOTICE SHALL BE CONSIDERED TIMELY IF DELIVERED WITHIN FIVE (5) BUSINESS DAYS. SUCCESSFUL RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY SUCCESSFUL RESPONDENT WITH THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUCCESSFUL RESPONDENT MAY NOT AGREE TO ANY**

SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM ATTORNEY GENERAL. IN ADDITION, SUCCESSFUL RESPONDENT WILL REIMBURSE CPA AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES, OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF CPA DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF SUCCESSFUL RESPONDENT OR IF CPA IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, CPA WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND SUCCESSFUL RESPONDENT WILL PAY ALL REASONABLE COSTS OF CPA'S COUNSEL. SUCCESSFUL RESPONDENT REPRESENTS AND WARRANTS THAT IT HAS DETERMINED WHAT LICENSES, PATENTS AND PERMITS ARE REQUIRED UNDER THE CONTRACT AND HAS ACQUIRED ALL APPLICABLE LICENSES, PATENTS, AND PERMITS.

- 44. Governing Law and Venue.** The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas.
- 45. Support Documents; Inspection of Records.** Successful Respondent shall maintain and retain all records relating to the performance of the Contract, including supporting fiscal documents adequate to ensure that claims for Contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Successful Respondent for a period of seven (7) years (a) after the Contract expiration date or (b) until all audit, claim, litigation, negotiation, open records, administrative review, or other action involving the Contract or documents are resolved, whichever is later. Successful Respondent will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Successful Respondent pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by CPA or the State of Texas.
- 46. Notices.** Any written notice(s) required under the Contract will be by either hand delivery to Successful Respondent's office or to CPA's Issuing Office at the address specified in Section I (Summary), or by U.S. Mail, certified, return receipt requested. Notice will be effective on receipt by the affected party. CPA and Successful Respondent agree that either party may change the designated notice address in this paragraph by written notification to the other party.
- 47. Unfair Business Practices.** Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that it has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities that 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.
- 48. Immigration.** Respondent represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 *et seq.*) and all subsequent immigration laws and amendments.
- 49. Franchise Taxes.** Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
- 50. False Statements.** Respondent represents and warrants that all statements and information prepared and submitted in its Offer are current, complete, true and accurate. Submitting an Offer with a false statement or material misrepresentations made during the performance of a Contract are each a material breach of contract and may void the submitted Offer and the Contract.
- 51. Force Majeure.** Except as otherwise provided, neither Successful Respondent nor CPA shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, pandemics or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.
- 52. Subcontracts.** Successful Respondent may not subcontract for any of the equipment, software, warranties, or Services required under the Contract without the prior written consent of CPA. Should Successful Respondent subcontract any such items, Successful Respondent expressly understands and acknowledges that in entering into such subcontract(s), CPA is in no manner liable to any subcontractor(s) of Successful Respondent. Successful Respondent will retain responsibility for

ensuring that the performances rendered under any subcontracts comply with all requirements of this RFO and the Contract as if Successful Respondent rendered such performances. Successful Respondent shall be solely responsible to CPA for all performance by Successful Respondent's employees, representatives, agents, subcontractors, suppliers, third-party service providers, and similar entities ("Persons" for purposes of this paragraph) and for ensuring all such Persons comply with applicable provisions of this RFO and the Contract. CPA, in its sole discretion, may review any such subcontracts upon request.

- 53. Title; Ownership; Licenses.** CPA and the State of Texas will receive and Successful Respondent will convey to CPA and the State of Texas clear title, ownership, and licenses, as applicable, to all items provided by Successful Respondent under the Contract.
- 54. Severability.** If any provision of the Contract will, for any reason, be held to violate any applicable law, and so much of the Contract is held to be unenforceable, then the invalidity of such a specific provision will not be held to invalidate any other provisions, which other provisions will remain in full force and effect unless removal of said invalid provisions destroys the legitimate purpose of the Contract, in which event the Contract will be canceled.
- 55. Recycled, Remanufactured, or Environmentally Sensitive Materials.** Under Section 2155.445 of the Texas Government Code (relating to preference to recycled materials), CPA will give preference in the solicitation of products made of recycled, remanufactured, or environmentally sensitive products if the products meet applicable specifications as to quantity and quality.
- 56. Entire Agreement.** Except as expressly provided otherwise herein, the Contract will represent the entire agreement by and between CPA and Successful Respondent regarding the subject matter of this RFO. The Contract may not be changed except by CPA's written POCN or otherwise by the mutual, written agreement of the parties.
- 57. Dispute Resolution Processes.** Chapter 2260 of the Texas Government Code ("Chapter 2260") prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, CPA has adopted rules under Chapter 2260, codified at 34 Texas Administrative Code §§1.360 – 1.387, and may adopt revisions to these rules throughout the term of the Contract, including any extensions. Successful Respondent and CPA shall comply with such rules.

The dispute resolution process provided in Chapter 2260 must be used, as required, by CPA and the Successful Respondent to attempt to resolve any dispute arising under the Contract:

(A) If the Successful Respondent's claim for breach of contract cannot be resolved informally with CPA, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Successful Respondent shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under Section 2260.051 of the Texas Government Code. Compliance by the Successful Respondent with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

(B) The contested case process provided in Chapter 2260 is the Successful Respondent's sole and exclusive process for seeking a remedy for an alleged breach of contract by CPA if the parties are unable to resolve their disputes under subparagraph (A) of this Section.

(C) Neither the execution of a Contract by CPA nor any other conduct of any representative of CPA relating to a Contract shall be considered a waiver of sovereign immunity to suit.

For all specific breach of contract claims or disputes under the Contract not subject to Chapter 2260, the following shall apply:

Should a dispute arise out of the Contract, CPA and the Successful Respondent shall first attempt to resolve it 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 CPA and the Successful Respondent within fifteen (15) days after written notice by one of them demanding mediation under this Section. The Successful Respondent shall pay all costs of the mediation unless CPA has appropriated funds available to pay up to half of such costs. By mutual agreement, CPA and the Successful Respondent may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that CPA and the Successful Respondent shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. CPA's participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by CPA of (1) any rights, privileges, defenses, remedies or immunities available to CPA as an agency of the State of Texas or otherwise available to CPA; (2) 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, the Successful 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, Successful Respondent may suspend performance during the pendency of such claim or dispute if Successful Respondent has complied with all provisions of Section 2251.051 of the Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

- 58. Applicable Law and Conforming Amendments.** Successful Respondent must comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products described in this RFO to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Contract. CPA reserves the right, in its sole discretion, to unilaterally amend the Contract prior to award and throughout the term of the Contract to incorporate any modifications necessary for CPA's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.
- 59. Media Releases.** Successful Respondent shall not use CPA's name, logo or other likeness in any press release, marketing material or other announcement without CPA's prior written approval. CPA does not endorse any vendor, commodity or service. Respondent is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Offer or the Services without CPA's prior written consent, and then only in accordance with explicit written instructions from CPA. Disclosure of any Offer prior to Contract award or violation of this paragraph may result in disqualification of Respondent's Offer and subject the Respondent to other action deemed appropriate by CPA.
- 60. Provision for Direct Deposit or Warrant.** The electronic funds transfer (EFT) provisions of Texas law were codified in Section 403.016 of the Texas Government Code. Depending on eligibility under the law, certain payments from the State of Texas may be directly deposited into Successful Respondent's bank account or may be made by warrant. If Successful Respondent is eligible for direct deposit and wishes to be paid by direct deposit, Successful Respondent must request the form titled "Vendor Direct Deposit Authorization" from CPA's Accounts Payable Section at: biaap@cpa.texas.gov. The completed form must be returned to biaap@cpa.texas.gov or Comptroller of Public Accounts, Attention: Budget and Internal Accounting Division, Accounts Payable Section, LBJ State Office Building, 111 E. 17th Street, Austin, Texas 78774.
- 61. Equal Employment Opportunity.** Respondent represents and warrants its compliance with all applicable, duly enacted state and federal laws governing equal employment opportunities.
- 62. Americans with Disabilities Act (ADA).** Respondent represents and warrants that it will comply with the requirements of the ADA of 1990 and its implementing regulations, as each may be amended.
- 63. Protest Procedures.** Any actual or prospective Respondent who is aggrieved in connection with this RFO, evaluation, or award of the Contract may formally protest, as provided in CPA's rules at 34 Texas Administrative Code §1.72. Respondents may protest any term or condition of this RFO within ten (10) business days of issuance of this RFO, as provided in 34 Texas Administrative Code §1.72.
- 64. Debts and Delinquencies Affirmation.** Respondent acknowledges and agrees that, to the extent Respondent owes any debt, including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Respondent is otherwise owed under the Contract may be applied by CPA toward any debt Respondent owes the State of Texas until the debt is paid in full. These provisions are effective at any time Respondent owes any such debt or delinquency. Successful Respondent shall comply with Sections 403.055, 403.0551, and 2252.903 of the Texas Government Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- 65. Acceptance of PO Terms.** By submitting an Offer, acknowledging and accepting the PO or POCN, or delivering any of the required items under the PO or POCN, Respondent acknowledges, accepts and agrees to all terms of the PO or POCN, including, but not limited to, this RFO; however, this acceptance by Respondent of all terms of this RFO by submission of an Offer does not apply to terms to which Respondent specifically takes an exception and offers an alternative in Respondent's Offer.
- 66. State Auditor's Right to Audit.** In addition to and without limitation on the other audit provisions of this RFO or the Contract, pursuant to Section 2262.154 of the Texas Government Code, the Texas State Auditor's Office ("State Auditor") may conduct an audit or investigation of any entity receiving funds from the State of Texas directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by Successful 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, 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, Successful Respondent or other entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. Successful Respondent shall ensure that this

paragraph concerning the authority to audit funds received indirectly by subcontractors through the Successful Respondent and the requirement to cooperate is included in any subcontract it awards.

- 67. Lobbying Prohibition.** Respondent represents and warrants that CPA's payments to Respondent and Respondent's receipt of appropriated or other funds under the Contract are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code.
- 68. Most-favored Customer.** Successful Respondent represents and warrants that all prices, charges, benefits, warranties and terms granted to CPA pursuant to the Contract are comparable or more favorable to CPA than the prices, charges, benefits, warranties and terms that Successful Respondent has heretofore offered to any person or entity for the products and/or services covered under any other agreement. If at any time during the term of the Contract Successful Respondent shall contract with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity than the terms in the Contract, Successful Respondent must notify CPA of such more favorable terms and CPA, in its sole discretion, may require that such more favorable prices, charges, benefits, warranties or other terms be available to CPA under the Contract, and be retroactive to the effective date of such Contract.
- 69. Rolling Estoppel.** If Successful Respondent is aware a problem exists and fails to report the problem to CPA, Successful Respondent continues to be responsible for meeting the goals and timelines established in the Contract. Under these circumstances, CPA will not be liable for any detrimental consequences.
- 70. Property Rights.** For purposes of this RFO, the term "Work" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the Services. CPA and Successful Respondent intend the Contract to be a contract for the Services and each considers the Work and any and all documentation or other products and results of the Services to be rendered by Successful Respondent to be a work made for hire. Successful Respondent and Successful Respondent's employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the Services or any other property of CPA. Successful Respondent acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of CPA.

If for any reason the Work would not be considered a work-for-hire under applicable law, Successful Respondent does hereby sell, assign, and transfer to CPA, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Successful Respondent agrees to execute all papers and to perform such other property rights, as CPA may deem necessary to secure for CPA or its designee the rights herein assigned.

In the event that Successful Respondent has any rights in and to the Work that cannot be assigned to CPA, Successful Respondent hereby grants to CPA an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses.

No later than the first calendar day after the termination or expiration of the Contract or upon CPA's request, Successful Respondent shall deliver to CPA all completed, or partially completed, Work and any and all documentation or other products and results of the Services. Failure to timely deliver such Work or any and all documentation or other products and results of the Services will be considered a material breach of the Contract. Successful Respondent will not make or retain any copies of the Work or any and all documentation or other products and results of the Services without the prior written consent of CPA.

- 71. Evaluation Process.** Evaluation of Offers will begin as soon as practical after receipt. Only those Offers that are responsive to this RFO will be evaluated, using the criteria and the weights set forth in Section I. Clarifications on issues raised in the Offers may be sought from individual Respondents. Best and Final Offers may be sought from the Respondents whose Offers are ranked most highly by the evaluation committee. CPA reserves the right, in its sole judgment, and discretion to reissue or withdraw this RFO rather than continue with negotiations.
- 72. Outsourcing.** Respondent acknowledges that CPA may, in its sole discretion, enter into an outsourcing agreement with another provider that shall perform certain services for CPA. If CPA enters into a written agreement for outsourcing, Successful Respondent shall, as consistent with the terms of the Contract, grant the outsourcing vendor the right to use and access the services and/or equipment (e.g., software, hardware) on the same terms and conditions that Successful Respondent has granted CPA the right to use and access such services and/or equipment; provided, the outsourcing vendor

also agrees that it (i) shall only use the services and/or equipment for the benefit of CPA, and (ii) shall enter into a confidentiality agreement with CPA, which contains confidentiality terms that are substantially no less restrictive than the confidentiality terms contained in this RFO and the Contract. In addition, Successful Respondent shall either fully cooperate with all transition activities regarding outsourcing or Successful Respondent agrees that CPA shall have the right to immediately terminate or assign to the outsourcing vendor the Contract without any liability for any amounts to Respondent.

73. Information Security Requirements for Successful Respondent. Successful Respondent shall comply with all applicable state and federal laws and regulations regarding confidentiality, privacy, and security pertaining to confidential CPA information. If communications with Successful Respondent necessitate the release of confidential CPA information, each individual who will require access to or may be exposed to that information must sign the CPA Confidential Treatment of Information Acknowledgment (CTIA) form. See Section IX for the CTIA.

74. Internal Revenue Service Data. See Exhibit 7 (Safeguarding Contract Language) of IRS Publication No. 1075, revised November 2021, as it may be amended from time to time (hereinafter, "Exhibit 7").

a. Performance. In performance of this Contract, Successful Respondent agrees to comply with and assume responsibility for compliance by officers or employees with the following requirements:

- (1) All work will be performed under the supervision of Successful Respondent.
- (2) Successful Respondent and Successful Respondent's officers or employees to be authorized access to Federal Tax Information (FTI) must meet background check requirements defined in IRS Publication 1075. Successful Respondent will maintain a list of officers or employees authorized access to FTI. Such list will be provided to Comptroller (Agency) and, upon request, to the IRS.
- (3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of the Contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection or disclosure of FTI to anyone other than Successful Respondent or Successful Respondent's officers or employees authorized is prohibited.
- (4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- (5) Successful Respondent will certify that FTI processed during the performance of the Contract will be completely purged from all physical and electronic data storage with no output to be retained by Successful Respondent at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, Successful Respondent will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to Agency. When this is not possible, Successful Respondent will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide Agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- (7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- (8) No work involving FTI furnished under the Contract will be subcontracted without the prior written approval of the IRS.
- (9) Successful Respondent will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- (10) To the extent the terms, provisions, duties, requirements, and obligations of the Contract apply to performing services with FTI, Successful Respondent shall assume toward the subcontractor all obligations, duties and responsibilities that Agency assumes toward Successful Respondent, and the subcontractor shall assume toward Successful Respondent all the same obligations, duties and responsibilities which Successful Respondent assumes toward Agency under the Contract.
- (11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of the Contract apply to the subcontractor, and the subcontractor is bound and obligated to Successful Respondent hereunder by the same terms and conditions by which Successful Respondent is bound and obligated to Agency under the Contract.
- (12) For purposes of the Contract, the term "Successful Respondent" includes any officer or employee of Successful Respondent with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of Successful Respondent's subcontractor with access to or who uses FTI.
- (13) Agency will have the right to void the Contract if Successful Respondent fails to meet the terms of FTI safeguards described herein.

b. Criminal Sanctions. Successful Respondent acknowledges that this Section (b) serves as written notice of the information provided in this Section (b), as required by Exhibit 7 (Criminal Sanctions).

(1) Each officer or employee of a Successful Respondent to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.

(2) Each officer or employee of a Successful Respondent to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution.

(3) Each officer or employee of a Successful Respondent to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(4) Additionally, it is incumbent upon the Successful Respondent to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to Agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or Agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(5) Granting a Successful Respondent access to FTI must be preceded by certifying that each officer or employee understands the Agency's security policy and procedures for safeguarding FTI. A Successful Respondent and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the Agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the Agency's files for review. As part of the certification and at least annually afterwards, a Successful Respondent and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see Exhibit 4, *Sanctions for Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*). The training on the Agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the Successful Respondent and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c. Inspection. The IRS and Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of Successful Respondent to inspect facilities and operations performing any work with FTI under the Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where Successful Respondent is found to be noncompliant with FTI safeguard requirements.

75. Independent Contractor. Successful Respondent has the sole obligation to supervise, manage and direct the performance of its obligations under the Contract. Successful Respondent and Successful Respondent's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the Services. Neither Respondent nor CPA is an agent of the other and neither may make any commitments on the other Party's behalf. Should Respondent subcontract any of the services required in the Contract, Respondent expressly understands and acknowledges that in entering into such subcontract(s), CPA is in no manner liable to any subcontractor(s) of Respondent. In no event shall this provision relieve Respondent of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract. Respondent shall have no claim against 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. Successful Respondent and Successful Respondent's employees, representatives, agents, subcontractors, suppliers, third-party service providers, and similar entities shall not be employees of CPA. The Contract shall not create any joint venture, partnership, agency or employment relationship between Successful Respondent and CPA.

76. Representations and Warranties related to Software. If any software is provided under the Contract, Successful Respondent represents and warrants each of the following:

- Successful Respondent has sufficient right, title and interest in the software to grant the license required by the Contract;
- if Successful Respondent is a software publisher, Successful Respondent has implemented processes for the protection, detection, remediation, mitigation and timely customer notification of software vulnerabilities associated with its software;
- the software does not infringe upon or constitute a misuse or misappropriation of any patent, trademark, copyright, trade secret or other proprietary right;
- the software and any Software Update, Software Enhancement/Release, Software Patch/Fix, and Software Upgrade does not contain viruses, malware, spyware, key logger, back door or other covert communications, or any computer code intentionally designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of the computer program, or any other associated software, firmware, hardware, or computer system, (including local area or wide-area networks), in a manner not intended by its creator(s); and
- the software does not contain any computer code that would disable the software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as “time bombs”, “time locks”, or “drop dead devices”) or that would permit Successful Respondent to access the software to cause such disablement or impairment (sometimes referred to as a “trap door” or “back door”).

77. Use of State Property. Successful Respondent is prohibited from using State Property for any purpose other than performing the Services. State Property includes, but is not limited to, CPA’s office space, identification badges, CPA information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any CPA-issued software and the CPA Virtual Private Network (VPN client)) and any other resources of CPA. Successful Respondent shall not remove State Property from the continental United States. In addition, Successful Respondent may not use any computing device to access CPA’s network or e-mail while outside of the continental United States. Successful Respondent shall not perform any maintenance services on State Property unless the Contract expressly authorizes such services. During the time that State Property is in the possession of Successful Respondent, Successful Respondent shall be responsible for (i) all repair and replacement charges incurred by CPA that are associated with loss of State Property or damage beyond normal wear and tear, and (ii) all charges attributable to Successful Respondent’s use of State Property that exceeds the Contract scope. Successful Respondent shall fully reimburse such charges to CPA within ten (10) calendar days of Successful Respondent’s receipt of CPA’s notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to CPA under the Contract, at law, or in equity.

78. Business Attire; Conduct; CPA guidelines. Successful Respondent shall ensure that Successful Respondent’s employees conduct themselves in a professional manner and are in appropriate business attire when on CPA’s premises. In addition, Successful Respondent shall ensure that its employees comply with all guidelines established by CPA for independent contractors required to provide services on CPA’s premises. These guidelines may address issues that include, but are not limited to, the following: building security, IT security, preservation of records, safety, professional conduct, use of State property, non-disclosure of confidential information, drug-free and alcohol-free workplace rules and other requirements for on-site independent contractors.

79. Technology Access Clause. Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Respondent represents and warrants to CPA that the technology provided to CPA for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- being integrated into networks for obtaining, retrieving and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Part entitled “Technology Access Clause”, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means, such as assistive devices or services that would constitute reasonable accommodations under the Americans with Disabilities Act, as amended, or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

- 80. Electronic and Information Resources Accessibility Standards.** Respondent represents and warrants that any electronic and information resources products developed, procured, maintained, or used by CPA directly or used by the Respondent under the Contract that requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product complies with the applicable State of Texas Accessibility requirements for Electronic and Information Resources specified in the Department of Information Resources' rules at 1 Texas Administrative Code Chapter 213.
- 81. Drug-Free Workplace.** Respondent represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 and maintain a drug-free work environment.
- 82. Occupational Safety and Health Law.** Respondent represents and warrants that all articles and services quoted in response to this RFO meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Act*, any successor laws, and its regulations in effect or proposed as of the date of this solicitation.
- 83. Survival of Terms.** Termination of the Contract for any reason shall not release Successful Respondent from 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, invoice and fees verification.
- 84. No CPA Indemnification.** Any requirement that CPA defend, indemnify, or hold harmless the Successful Respondent or other entity is hereby deleted from the Offer and Respondent Documents.
- 85. Disaster Recovery Plan.** Upon CPA's request, Respondent shall provide to CPA the descriptions of its business continuity and disaster recovery plans.

VI. Execution of Offer

1. By signature hereon, Respondent represents and warrants that the provisions in this Execution of Offer apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide Services under, who have a financial interest in, or otherwise are interested in this RFO or any Contract.
2. By signature hereon, Respondent represents and warrants its intent to furnish the requested items at the prices quoted in its Offer.
3. By signature hereon, Respondent represents and warrants that it has read and understood and shall comply with CPA's Anti-Fraud Policy located on CPA's website at <https://comptroller.texas.gov/about/policies/ethics.php>, as such Policy currently reads and as it is amended throughout the term of the Contract.
4. By signature hereon, Respondent represents and warrants that its prices include all costs of Respondent to provide the requested items that meet all specifications of this RFO, and that its prices will remain firm for acceptance for a minimum of two hundred forty (240) days from deadline for submission of Offers.
5. By signature hereon, Respondent represents and warrants that each employee, including replacement employees, will possess the qualifications, education, training, experience and certifications necessary to perform the Services in the manner required by this RFO.
6. By signature hereon, Respondent represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest or not reasonably create an appearance of impropriety.
7. By signature hereon, Respondent represents and warrants that, pursuant to Section 2155.003 of the Texas Government Code, it has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted Offer.
8. By signature hereon, Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
9. By signature hereon, Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor any firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws; or (2) communicated directly or indirectly the contents of its Offer to any competitor or any other person engaged in the same line of business as Respondent.
10. By signature hereon, Respondent represents and warrants that all statements and information prepared and submitted in response to this RFO are current, complete, and accurate.
11. By signature hereon, Respondent represents and warrants that the individual signing this document and the documents made part of this RFO and Offer is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of the Offer.
12. By signature hereon, Respondent represents and warrants that if a Texas address is shown as the address of the Respondent on this Offer, Respondent qualifies as a Texas Bidder as defined by Section 2155.444(c) of the Texas Government Code.
13. Check below if Respondent is claiming a preference under 34 Texas Administrative Code §20.306 or Chapter 2155, Subchapter H of the Texas Government Code:
 - ☐ Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - ☐ Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - ☐ Agricultural products grown in Texas
 - ☐ Agricultural products offered by a Texas bidder
 - ☐ Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - ☐ Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - ☐ Texas Vegetation Native to the Region
 - ☐ USA produced supplies, materials or equipment of persons with mental or physical disabilities
 - ☐ Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
 - ☐ Energy Efficient Products
 - ☐ Rubberized asphalt paving material
 - ☐ Recycled motor oil and lubricants

- ☐ Products produced at facilities located on formerly contaminated property
- ☐ Products and services from economically depressed or blighted areas
- ☐ Vendors that meet or exceed air quality standards
- ☐ Recycled or Reused Computer Equipment of Other Manufacturers
- ☐ Foods of Higher Nutritional Value
- ☐ Commercial production company or advertising agency located in Texas

14. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Respondent certifies that the individual or business named in the Offer is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006, Texas Family Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Offer. This information must be provided prior to award. If applicable, enter the Name and Social Security Number for each person below:

Name: _____	SSN: _____
Name: _____	SSN: _____
Name: _____	SSN: _____

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2) of the Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e) of the Texas Family Code.

15. By signature hereon, in accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not: (1) the executive head of CPA, (2) a person who at any time during the four years before the date of the Contract was the executive head of CPA, or (3) a person who employs a current or former executive head of CPA.
16. By signature hereon, pursuant to Section 2155.004(a) of the Texas Government Code, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from CPA to participate in the preparation of specifications or solicitation on which this Offer or Contract is based. In addition, under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Offer or Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
17. By signature hereon, in accordance with Section 2155.4441 of the Texas Government Code, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside Texas.
18. By signature hereon, Respondent represents and warrants that CPA's payments to Respondent and Respondent's receipt of appropriated or other funds under the Contract are not prohibited by Sections 556.005, 556.0055 or 556.008 of the Texas Government Code.
19. By signature hereon, Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, entitled "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.
20. Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from accepting an Offer or awarding a contract that includes proposed financial participation by a 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 Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Respondent certifies that the individual or business entity named in its Offer or Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
21. By signature hereon, if Respondent is submitting an offer for the purchase or lease of computer equipment, then Respondent hereby certifies its compliance with Chapter 361, Subchapter Y of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules at 30 Texas Administrative Code Chapter 328.
22. By signature hereon, Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in Part 1 of this Section VI within the five (5) calendar years immediately preceding the submission of Respondent's Offer in response to this RFO that would or could impair Respondent's performance under

the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to CPA's consideration of Respondent's Offer. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Offer a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to CPA's consideration of Respondent's Offer. In addition, Respondent represents and warrants that it shall notify CPA in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update CPA shall constitute breach of contract and may result in immediate termination of the Contract.

23. By signature hereon, Respondent represents and warrants that it and each of its subcontractors have the requisite resources, qualifications and independence to conduct the services free from outside direction, control, or influence, and subject only to the accomplishment of CPA's objectives.
24. By signature hereon, Respondent represents that neither Respondent or any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, proposed in the Offer has been convicted of a felony criminal offense, or that if such a conviction has occurred Respondent has fully advised CPA of the facts and circumstances in its Offer.
25. By signature hereon, Respondent represents and warrants that if selected for award of a contract as a result of this RFO, Respondent will submit to CPA a Certificate of Interested Parties prior to contract award in accordance with Section 2252.908 of the Texas Government Code.
26. By signature hereon, pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Contract. Respondent shall state any facts that make it exempt from the boycott certification in its Offer.
27. By signature hereon, Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
28. By signature hereon, Respondent certifies that the offering 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. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.
29. By signature hereon, Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code as applicable. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the Contract and Respondent agrees that the Contract can be terminated if Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.
30. Under Section 2155.0061 of the Texas Government Code, regarding human trafficking, Respondent certifies that the individual or business entity named in this Offer is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
31. Pursuant to Government Code Section 2275.0102, relating to contracts for critical infrastructure, if applicable, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2275.0102, or (2) headquartered in any of those countries.
32. If Respondent is required to make a verification pursuant to Section 2276.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must so indicate in its Offer and state why the verification is not required.
33. If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its Offer and state why the verification is not required.
34. Pursuant to Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Respondent's business. Respondent acknowledges that such a vaccine or recovery requirement would make Respondent ineligible for a state-funded contract.

35. Pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, Respondent represents and warrants that it complies with the requirements of the Texas Department of Information Resources state risk and authorization management program (TX-RAMP) and Respondent agrees that throughout the term of this Contract it shall maintain any required TX-RAMP certifications and comply with applicable TX-RAMP requirements in performance of the Contract.
36. As of the effective date of the Offer, are not listed in any of the Divestment Statute Lists published on the Texas State Comptroller's website (<https://comptroller.texas.gov/purchasing/publications/divestment.php>).
37. To the extent applicable to the scope of this RFO, the Offer and Contract, Respondent hereby certifies that it is authorized to sell and provide warranty support for all products and services listed in its Offer and the Contract.
38. By signature hereon, Respondent represents and warrants that it has read and agrees to all terms and conditions of this RFO, unless Respondent specifically takes an exception and offers an alternative provision in Respondent's Offer.

An authorized representative on behalf of Respondent must complete and sign the following:

<hr/>		<hr/>	
Signature of Authorized Representative		Date Signed	
<hr/>		<hr/>	
Printed Name & Title of Authorized Representative		Phone Number	
<hr/>		<hr/>	
Entity Name ("Respondent")		Fax Number	E-mail Address
<hr/>		<hr/>	<hr/>
Federal Employer Identification Number		Unique Entity ID (generated by www.Sam.gov)	
<hr/>		<hr/>	
Physical Street Address		City, State, Zip Code	
<hr/>		<hr/>	
Mailing Address, if different		City, State, Zip Code	
<hr/>		<hr/>	

VII. Conflict of Interest/Disclosure Statement

A. Disclosures. Provide the requested information in the space provided; indicate "N/A" as appropriate.

1. Respondent must disclose any proposed personnel who are current or recent former employees of CPA or the State of Texas.

2. Respondent must disclose the following:

- a. 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 an Offer, possible selection as Successful Respondent, or its performance of the contract.

- b. all past and present contractual, business, financial or personal relationships between Respondent and CPA and between Respondent's proposed subcontractors, if any, and CPA.

For each item, Respondent must also provide a detailed explanation of why Respondent does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to Respondent's submission of an Offer, possible selection as the Successful Respondent, or its performance of the contract.

B. Defined Terms. For purposes of the disclosure statements required by this solicitation, the terms below are defined as follows:

- "past" is defined as within the two (2) calendar years prior to the deadline for submission of offers in response to this solicitation.
- "CPA" is defined as the statewide elected official who heads the agency, as well as the agency's employees or recent former employees.
- "recent former employees" are defined as those CPA employees who have terminated agency employment within the two (2) calendar years prior to the deadline for submission of offers in response to this solicitation.
- "personal relationship" is defined as a current or past connection other than a clearly contractual, business, financial or similar relationship and includes family relationships or other connections outside simply providing a response to this solicitation. For this purpose, "family relationship" means a relationship within the third degree of consanguinity or second degree of affinity; see Chapter 573 of the Texas Government Code, which defines these degrees of consanguinity and affinity. Connections other than such family relationships fall within this definition and must be disclosed if:
 - (a) a reasonable person could expect the connection to diminish Respondent's independence of judgment or effectiveness in the performance of the Respondent's responsibilities to CPA or the State of Texas under the contract;
 - (b) a reasonable person could expect the connection, within the overall context of Respondent's submission of an Offer, possible selection as Successful Respondent or its performance of the contract, to create an issue for the agency's consideration relative to a potential appearance of impropriety or conflict of interest; or
 - (c) the relationship is with a CPA or other State of Texas employee with authority to make decisions or recommendations on state contracting or procurement or this solicitation. For purposes of this provision, those persons with authority to make decisions or recommendations are those persons who fall within the definition of "purchasing personnel" in Section 2262.004(a)(2) of the Texas Government Code.

C. Continuing Duty to Disclose. If circumstances change or additional information is obtained subsequent to submission of the Offer, Successful Respondent's duty to disclose under these provisions continues under the term of the contract and does not end with submission of an Offer or receipt of contract award.

D. Disclosures under these provisions are information that will be evaluated by CPA; however, all information provided will not necessarily lead to a restriction or disqualification. Issues will be considered on a case-by-case basis in the best interests of the State of Texas. If Respondent is in doubt about whether information should be disclosed, Respondent should consult with its legal counsel. Failure to disclose any required information under these provisions may be cause for offer disqualification or termination of the contract resulting from this solicitation. CPA reserves the right, in its sole discretion, to determine if an issue should result in offer disqualification or termination of the contract.

Signature of Authorized Representative

Date Signed

Printed Name & Title of Authorized Representative

Entity Name ("Respondent")

VIII. Nondisclosure Agreement

In consideration of Texas Comptroller of Public Accounts (“CPA”) communicating with the undersigned Respondent regarding a potential contract resulting from the referenced solicitation (*e.g.*, RFP, RFO, IFB) and because of the sensitivity of certain information provided to Respondent, both parties agree that all information regarding CPA or gathered, produced, collected or derived from or related to the potential contract, or provided to Respondent under a resulting contract (“Confidential Information”) must remain confidential subject to release only upon prior written approval of CPA, and more specifically agree as follows:

1. The Confidential Information may be used by Respondent only to assist Respondent in connection with the business relationship contemplated in the solicitation or performance of a contract with CPA resulting from the solicitation.
2. Respondent shall not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as proposed consultant or independent contractor to CPA.
3. Unless otherwise provided in the solicitation or resulting contract, Respondent agrees to maintain the confidentiality of all Confidential Information in the same manner that it protects the confidentiality of its own materials of like kind, but in no event less than reasonable care. Respondent shall take reasonable precautions to protect the Confidential Information including, but not limited to, not disclosing Confidential Information in any manner to any person, firm, or entity, except for authorized employees, agents, or contractors of Respondent with a need to know who are bound by confidentiality obligations at least as stringent as those contained in this agreement prior to any disclosure of such Confidential Information.
4. The Confidential Information may not be copied, reproduced, disclosed, distributed, or otherwise divulged without CPA’s prior written approval. Confidential Information and any copies thereof shall be CPA’s exclusive property.
5. All Confidential Information made available to Respondent, including copies thereof, must be returned to CPA upon the first to occur of (a) expiration or termination of any contract resulting from the solicitation, or (b) request by CPA.
6. The foregoing does not prohibit or limit Respondent’s use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, provided such prior knowledge was not subject to a confidentiality obligation, (b) independently developed by it, (c) acquired by it from a third-party under no obligation of confidentiality to CPA, (d) which is or becomes part of the public domain through no breach by Respondent of this nondisclosure agreement or other contractual obligations to CPA, or (e) approved by CPA in writing for unrestricted disclosure.
7. If Respondent is required by applicable law, regulation, or legal process to disclose any Confidential Information, then Respondent shall provide CPA with prompt notice of any such requirement prior to delivery of the Confidential Information to allow CPA a reasonable opportunity to seek a protective order or equivalent.
8. This nondisclosure agreement shall become effective as of the date Confidential Information is first made available to Respondent and shall survive the expiration or termination of any contract resulting from the solicitation and be a continuing requirement.
9. The breach of this nondisclosure agreement by Respondent shall entitle CPA to immediately terminate any contract with Respondent resulting from the solicitation upon written notice to Respondent for such breach. The parties acknowledge that the measure of damages in the event of a breach of this nondisclosure agreement may be difficult or impossible to calculate, depending on the nature of the breach. Regardless of whether CPA elects to terminate any contract with Respondent resulting from the solicitation upon the breach hereof, CPA may require Respondent to pay to CPA the sum of \$5,000 for each breach as liquidated damages. This amount is not intended to be in the nature of a penalty, but is intended to be a reasonable estimate of the amount of damages to CPA in the event of a breach hereof by Respondent of this nondisclosure agreement. CPA does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this nondisclosure agreement.
10. This nondisclosure agreement is governed by and construed under the laws of the State of Texas. Any and all obligations of this agreement are due in Travis County, Texas and venue is proper in only such county.

Signature of Authorized Representative

Date Signed

Printed Name & Title of Authorized Representative

Entity Name (“Respondent”)

IX. Confidential Treatment of Information Acknowledgment



70-223
Comptroller of Public Accounts
FORM (Rev. 8-22/13)

Texas Comptroller of Public Accounts Confidential Treatment of Information Acknowledgment (CTIA)

I have read and understand the Comptroller's Summary Public Information Disclosure Manual, a copy of which has been made available to me. I understand that confidential information made available to me by the Comptroller's office may include the Comptroller's own information and information held by the Comptroller's office from other entities. I understand that confidential information is to be held in strictest confidence, and I will act in accordance with applicable federal and state laws, regulations, and Comptroller policy with regard to the safekeeping and disclosure of confidential information. I understand that I am not to use such information to the detriment of the Comptroller's office or the State of Texas.

I understand that it is my responsibility to consult with the Comptroller's office and obtain approval to disclose confidential information made available to me, and to ensure that any and all disclosures I make are made to people or entities authorized to receive such information.

I understand that I shall either return to the Comptroller's office or destroy any confidential information in my possession according to Comptroller guidelines when I no longer require such information for authorized purposes.

I understand that computer system password(s) I receive or devise to access computer systems, which may be made available to me for my use by the Comptroller's office, are confidential. I will not disclose to any unauthorized person any password(s) which I am given or devise, and I will not write such password(s) or post them where they may be viewed by unauthorized people. I understand that I am responsible for any computer transactions performed as a result of access authorized by use of my password(s). I understand that use of a password not issued specifically to me, or to a group of which I am a member, is expressly prohibited.


I understand that criminal and/or civil penalties and/or civil damages may apply if I obtain unauthorized access to, or make an unauthorized disclosure or inspection of, certain types of confidential information (e.g., IRS Federal Taxpayer Information, Protected Health Information, Sensitive Personal Information). Such penalties and/or damages may include, but are not limited to, the following:

- a misdemeanor, punishable by up to 1 year in jail and/or up to a \$4,000 fine (Texas Labor Code §301.085);
- a misdemeanor, punishable by up to 1 year in jail and/or up to a \$1,000 fine (Texas Tax Code §171.361);
- a misdemeanor, punishable by up to 180 days in jail and/or up to a \$2,000 fine (Texas Tax Code §22.27(c));
- a felony, punishable by up to 5 years in prison and/or a fine of up to \$5,000 (26 USC §7213);
- a misdemeanor, punishable by up to 1 year in jail and/or up to a \$1,000 fine (26 USC §7213A);
- civil damages equal to sum of the greater of \$1,000 for each unauthorized inspection/disclosure or sum of actual damages sustained plus punitive damages for gross negligence, and the cost of action (26 USC §7431); and
- civil and criminal penalties related to criminal justice information (28 CFR §20.25).

I understand that an attempt to circumvent any computer security system or other security control by any means is a violation of Comptroller policy. I also understand that failure to observe these restrictions may constitute a "Breach of Computer Security" as defined in Texas Penal Code, Section 33.02(b), and that such an offense constitutes a Class B misdemeanor, a state jail felony, or a felony of the first, second or third degree.

I understand that any copyrighted material including, but not limited to, commercial computer software, which may be made available to me for my use by the Comptroller's office, is protected by copyright laws and is not to be copied for any reason without permission from the copyright owner. I understand that the violation of copyright laws, including computer software, may result in fines and/or imprisonment.

By my signature hereon, I acknowledge my understanding of the contents of this form and the continued applicability of these provisions after my access to confidential information and computer systems has been terminated.

Printed name of person requesting access		Name of employer	
		Date	
Work phone (Area code and number)	Work email address		

For general questions regarding this form, contact the Comptroller's Information Security Office by calling 512-936-5671.

Under Ch. 559, Government Code, you are entitled to review, request and correct information we have on file about you, with limited exceptions in accordance with Ch. 552, Government Code. To request information for review or to request error correction, contact us at 1-800-531-5441, ext. 6-6057.

X. Certification Regarding Public Nature of the Offer

The Legislative Budget Board (LBB) has established a database of state agency contracts pursuant to Section 322.020 of the Texas Government Code. See the LBB website at www.lbb.state.tx.us. Following the contract award resulting from this solicitation, CPA plans to upload to the LBB contracts database the complete contract, except for information that is not subject to disclosure under Chapter 552 of the Texas Government Code. Information that is not subject to disclosure under Chapter 552 of the Texas Government Code must be referenced in an appendix that generally describes the information without disclosing the specific content of the information. In submitting an Offer in response to this solicitation, Respondent acknowledges that it understands and accepts this requirement.

Respondent **must initial below EITHER Item 1 or Item 2, as appropriate. DO NOT INITIAL BOTH ITEMS.**

By signature hereon, Respondent certifies the following:

1. _____ Respondent does not assert that any portion of its Offer is confidential.

OR

2. _____ Respondent has stamped in bold red letters the term “**CONFIDENTIAL**” on the specific part or page of the Offer considered to be confidential by Respondent. In the table below or as an attachment to this form submitted with the Offer, Respondent has identified by page number(s) the location of all information in the Offer asserted to be confidential by Respondent as well as provided an explanation, including any relevant legal authority, for why Respondent reasonably considers the identified portion(s) of its Offer to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code.

Page No. of Offer	General description of the designated information	Explanation, including relevant legal authority, in support of the confidential treatment of the designated portion(s) of the Offer.

Signature of Authorized Representative

Date Signed

Printed Name & Title of Authorized Representative

Entity Name (Respondent)

XI. Respondent Exceptions Response Template

If Respondent takes any exception to any provisions of this RFO, the exceptions must be specifically and clearly identified by section number in Respondent's Offer using this response template. In its Offer, Respondent must provide a proposed alternative for each exception and must explain the necessity for the change. If a Respondent takes a "blanket exception" to the entire RFO or does not propose alternate language for CPA's consideration, Respondent's Offer may be considered non-responsive and disqualified from further consideration.

Item Number	RFO Section and Part Reference	Original RFO Language	Respondent's Proposed Alternative and Explanation for Necessity for Change

XII. Contractor Cybersecurity Training Attestation Form

Texas Comptroller of Public Accounts (CPA)

Attestation of Contractor Compliance with State of Texas Cybersecurity Training Requirements

Contractor Name:	
CPA Purchase Order Number:	
Contract Description:	

In accordance with [Section 2054.5192](#) of the Texas Government Code, the contractor identified above (“Contractor”) shall ensure that any employee or subcontractor who has access to a CPA computer system or database in performing services under the contract identified above (“Contract”) has completed a cybersecurity training program certified by the Texas Department of Information Resources (“DIR”) on an annual basis during the term of the Contract and during any renewal periods.

Please identify the completed course(s) from the list of [Department of Information Resources \(DIR\) Certified Training Programs](#). CPA will only accept attestation for DIR-certified training programs. CPA’s security awareness training includes DIR-certified training programs in compliance with [Section 2054.519](#) of the Texas Government Code.

Contractor must complete, sign, and return this form to CPA no later than sixty (60) calendar days following Contract award and each anniversary thereafter during the term of the Contract, including any renewal periods. Contractor must email the completed and signed form to CPA at contract.administration@cpa.texas.gov and reference “Cybersecurity Training Attestation” and the purchase order number in the subject line.

By signing below, Contractor hereby certifies that all applicable employees or subcontractors have completed a DIR-certified cybersecurity training program in accordance with by Section 2054.5192 of the Texas Government Code.

[Contractor Entity Name]

Signature: _____
Printed Name: _____
Title: _____
Date: _____

XIII. Vendor Reference Scoring

Excellent (3)			
There are no quality problems.	There are no cost issues.	There are no delays.	Responses to inquiries, technical, service, and administrative issues are effective and responsive.
Satisfactory (2)			
Nonconformances do not impact achievement of contract requirements.	Cost issues do not impact achievement of contract requirements.	Delays do not impact achievement of contract requirements.	Response to inquiries, technical, service, and administrative issues is usually effective and responsive.
Marginal (1)			
Nonconformances require minor Agency resources to ensure achievement of contract requirements.	Cost issues require minor Agency resources to ensure achievement of contract requirements.	Delays require minor Agency resources to ensure achievement of contract requirements.	Response to inquiries, technical, service, and administrative issues is somewhat effective and responsive.
Unsatisfactory (0)			
Nonconformances are compromising the achievement of contract requirements.	Cost issues are compromising performance of contract requirements.	Delays are compromising the achievement of contract requirements.	Response to inquiries, technical, service, and administrative issues is not effective and responsive.