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### UT System RFP - Property Insurance Broker and Risk Management Services \*\*UPDATED 06/07/16\*\*

Open Date: 06/15/16 03:00 PM Agency Requisition Number: ORM05232016

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

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

-Package 1 size: 1829176 (in bytes) Type: Specification Format: Acrobat PDF Files -Package 2 size: 26805 (in bytes) Type: Addendum Format: Acrobat PDF Files -Package 3 size: 178995 (in bytes) Type: Addendum Format: Acrobat PDF Files

\*\*UPDATE 06/07/16 - Add Q&A document (Package 2)and HSP "Navigation" Guide (Package 3) The University of Texas System Administration ("University") is soliciting proposals in response to this Request for Proposal No. ORM 05232016 (this "RFP") for Selection of a Vendor to Provide property insurance broker and other risk management services related to the assessment and management of the University's property and builder's risk programs, which are more specifically described in Section 5.3 (Scope of Work) of this RFP.

Agency: UNIVERSITY OF TEXAS SYSTEM (720)

Open Date: 06/15/16 03:00 PM Agency Requisition Number: ORM05232016

Previous Price Paid: N/A

Solicitation type: 14 Days or more for entire solicitation package

NIGP Commodity Code(s): Class-Item: 958 - 52 Class-Item: 958 - 61 Contact Information:

Contact Name: Office of Risk Management Email: GRP-RFPVQ@utsystem.edu

texas.gov | Texas Records and Information Locator (TRAIL) | State Link Policy | Texas Homeland Security | Texas Veterans Portal

# **REQUEST FOR PROPOSAL**

by

The University of Texas System Administration

for

Selection of a Vendor to Provide
Property Insurance Broker and other Risk Management Services

related to

the assessment and management of the University's comprehensive property protection and builder's risk programs

RFP No. ORM 05232016

Submittal Deadline: 3:00 p.m., Wednesday, June 15, 2016

Issued: Monday, May 23, 2016

# **REQUEST FOR PROPOSAL**

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### INTRODUCTION

# 1.1 Description of University

With eight academic universities and six health institutions, The University of Texas System ("UT System") is one of the nation's largest systems of public higher education. UT System employs over 90,000 people, and total student enrollment exceeds 217,000. The mission of UT System is to provide high-quality educational opportunities and medical care for the enhancement of the human resources of Texas, the nation, and the world through intellectual and personal growth.

# 1.2 Background and Special Circumstances

For details regarding UT System's property protection and builder's risk programs and exposures, including detailed objectives, refer to **APPENDIX FIVE.** 

## 1.3 Objective of this Request for Proposal

The University of Texas System Administration ("University") is soliciting proposals in response to this Request for Proposal No. ORM 05232016 (this "RFP") for Selection of a Vendor to Provide property insurance broker and other risk management services related to the assessment and management of the University's property and builder's risk programs, which are more specifically described in **Section 5.3** (Scope of Work) of this RFP.

Additional objectives for Property and Builder's Risk Programs

- 1. To explore available options to finance and/or transfer the University's property risk and to select the optimal approach to maximize financial recovery in the event of a loss.
- 2. To be involved in all aspects of the marketing process, including meeting with underwriters.
- 3. To increase potential financial recoveries from catastrophic perils of named windstorm, flood, and resulting perils.
- 4. To access the most competitive markets and to use market capacity efficiently.
- 5. To reduce overall cost of risk to the University.
- 6. To obtain favorable coverage terms with thorough explanation of policy language.
- 7. To complete renewal process in timely manner.
- 8. To obtain policies in a timely manner.

# 1.4 Group Purchase Authority

Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System ("UT System"), which is comprised of fourteen institutions described at <a href="http://www.utsystem.edu/institutions">http://www.utsystem.edu/institutions</a>. UT System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this could give rise to additional purchase volumes. As a result, in submitting its proposal in response to this RFP, Proposer should consider

proposing pricing and other commercial terms that take into account such higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP.

### **NOTICE TO PROPOSER**

#### 2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until 3:00 p.m., Central Prevailing Time on Wednesday, June 15, 2016 (the "**Submittal Deadline**").

### 2.2 University Contact Person

Proposers will direct all questions or concerns regarding this RFP to the following University email address:

GRP-RFPVQ@utsystem.edu

Subject Line of email: RFP No. ORM05232016; Attn: Office of Risk Management

University specifically instructs interested parties to restrict all contact and questions regarding this RFP to written communications delivered in accordance with this Section **on or before close of business** on Friday June 3, 2016, or in accordance with Section 2.5 of this RFP relating to Historically Underutilized Businesses. University will provide responses within a reasonable time frame following the time for submission of questions. It is University's intent to respond to timely submitted questions. University reserves the right, however, to decline to respond to any question.

University may post and periodically update a Question and Answer document as an addendum to this RFP. Interested parties should check the posting site for updates, if any, at: http://esbd.cpa.state.tx.us/bid\_show.cfm?bidid=124665

#### 2.3 Criteria for Selection

The successful Proposer, if any, selected by University in accordance with the requirements and specifications set forth in this RFP will be the Proposer that submits a proposal in response to this RFP on or before the Submittal Deadline that is the most advantageous to University. The successful Proposer is referred to as the "Contractor."

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) services to University, (2) total overall cost to University, and (3) project management expertise. Proposers should describe all educational, state and local government discounts, as well as any other applicable discounts that may be available to University in a contract for the Services.

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

The criteria to be considered by University in evaluating proposals and selecting Contractor, will be those factors listed below:

2.3.1 Threshold Criteria Not Scored

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

#### 2.3.2 Scored Criteria

- 2.3.2.1 the cost of goods and services;
- 2.3.2.2 the reputation of the Proposer and of the Proposer's goods or services;
- 2.3.2.3 the quality of the Proposer's goods or services;
- 2.3.2.4 the extent to which the goods or services meet the University's needs;
- 2.3.2.5 the Proposer's past relationship with the University;
- 2.3.2.6 the total long-term cost to the University of acquiring the Proposer's goods or services
- 2.3.2.7 The Proposer's exceptions to the terms and conditions set forth in **Section 4** of this RFP.

# 2.4 Key Events Schedule

Issuance of RFP Monday, May 23, 2016

Pre-Proposal Conference 10:00 a.m. Central Prevailing (ref. **Section 2.6** of this RFP) Time on Wednesday, June 1, 2016

Deadline for Questions/Concerns 3:00 p.m. Central Prevailing (ref. **Section 2.2** of this RFP) Time on Friday, June 3, 2016

Submittal Deadline 3:00 p.m. Central Prevailing

(ref. **Section 2.1** of this RFP) Time on Wednesday, June 15, 2016

Oral Interviews (if requested)

June 27 & June 28, 2016

# 2.5 Historically Underutilized Businesses

All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a "HUB") in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any of the Services, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this Section 2.5 will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the Services will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Services by the Proposer is subject to review by University to ensure compliance with the HUB program.

- 2.5.2 University has reviewed this RFP in accordance with Title 34, *Texas Administrative Code*, Section 20.13 (a), and has determined that subcontracting opportunities are probable under this RFP.
- 2.5.3 A HUB Subcontracting Plan ("**HSP**") is required as part of Proposer's proposal. The HSP will be developed and administered in accordance with University's Policy on Utilization of Historically Underutilized Businesses attached as **APPENDIX THREE** and incorporated for all purposes.

Each Proposer must complete and return the HSP in accordance with the terms and conditions of this RFP, including **APPENDIX THREE**. Proposers that fail to do so will be considered non-responsive to this RFP in accordance with Section 2161.252, Government Code.

Questions regarding the HSP may be directed to:

Contact: Amy Nemetz
HUB Coordinator

Phone: 512-499-4485

Email: anemetz@utsystem.edu

Contractor will not be permitted to change its HSP unless: (1) Contractor completes a newly modified version of the HSP in accordance with the terms of **APPENDIX THREE** that sets forth all changes requested by Contractor, (2) Contractor provides University with such a modified version of the HSP, (3) University approves the modified HSP in writing, and (4) all agreements or contractual arrangements resulting from this RFP are amended in writing by University and Contractor to conform to the modified HSP.

- 2.5.4 *In addition to the materials identified in Section 3 of this RFP, Proposer must submit the following HUB materials ("HUB Materials"):* 
  - (a) One (1) complete original paper copy of Proposer's HSP, and
  - (b) One (1) complete electronic copy of Proposer's entire proposal in a single .pdf file on a flash drive,

to University at the same time Proposer submits the other copies of its proposal and no later than the Submittal Deadline (ref. **Section 2.1** of the RFP).

Proposer's HUB Materials must be submitted to University (as instructed in **Section 3.2** of this RFP) <u>under separate cover</u> and <u>in a separate envelope</u> (the "**HSP Envelope**"). Proposer must ensure that the top outside surface of its HSP Envelope clearly shows and makes visible:

- 2.5.4.1 the RFP No. ORM05232016 (ref. **Section 1.3** of this RFP) and the Submittal Deadline (ref. **Section 2.1** of this RFP), both located in the lower left hand corner of the top surface of the envelope,
- 2.5.4.2 the name and the return address of the Proposer, and
- 2.5.4.3 the phrase "HUB Subcontracting Plan".

Any proposal submitted in response to this RFP that is not accompanied by a separate HSP Envelope meeting the above requirements will be rejected by University and returned to the Proposer unopened as that proposal will be considered non-responsive due to material failure to comply with advertised specifications. Furthermore, University will open a Proposer's HSP Envelope prior to opening the proposal submitted by the Proposer, in order to ensure that the Proposer has submitted the number of completed and signed originals of the Proposer's HUB Subcontracting Plan ("HSP") that are required by this RFP. A Proposer's failure to submit the number of completed and signed originals of the HSP that are required by this RFP will result in University's rejection of the proposal submitted by that Proposer as non-responsive due to material failure to comply with advertised specifications; such a proposal will be returned to the Proposer unopened (ref. Section 1.5 of APPENDIX ONE to this RFP). Note: The requirement that Proposer provide one (1) original paper copy and one (1) electronic copy of the HSP under this Section 2.5.4 is separate from and does not affect Proposer's obligation to provide University with the number of copies of its proposal as specified in **Section 3.1** of this RFP.

# 2.6 Pre-Proposal Conference

University will hold a pre-proposal conference at 10:00 a.m., Central Prevailing Time on Wednesday, June 1, 2016, in Room 208 of Ashbel-Smith Hall Building (ref. **APPENDIX FOUR Campus Map**). The pre-proposal conference will allow all Proposers an opportunity to ask University's representatives relevant questions and clarify provisions of this RFP.

### SUBMISSION OF PROPOSAL

# 3.1 Number of Copies

Proposer must submit (a) five (5) complete paper copy of its entire proposal, and (b) one (1) complete electronic copy of its entire proposal in a single .pdf file on a flash drive. An original signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. Section 2 of APPENDIX ONE) of the submitted paper copy of the proposal.

#### 3.2 Submission

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

Jennifer Murphy
The University of Texas System Administration
Accounting and Purchasing Services
210 West 6<sup>th</sup> Street, Room B.140E
Austin, TX 78701

## 3.3 Proposal Validity Period

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

#### 3.4 Terms and Conditions

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

3.4.1.1.	Specifications and Additional Questions (ref. <b>Section 5</b>	of
	this RFP);	

- 3.4.1.2. Agreement (ref. **APPENDIX TWO**);
- 3.4.1.3. Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4. Notice to Proposers (ref. **Section 2** of this RFP).

#### 3.5 Submittal Checklist

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

- 3.5.1 Responses to questions and requests for information in the <u>Specifications and Additional Questions</u> Section (ref. **Section 5** of this RFP)
- 3.5.2 Signed and Completed <u>Pricing and Delivery Schedule</u> (ref. **Section 6** of this RFP)
- 3.5.3 Signed and Completed Execution of Offer (ref. Section 2 of APPENDIX ONE)
- 3.5.4 Responses to <u>Proposer's General Questionnaire</u> (ref. **Section 3** of **APPENDIX ONE**)
- 3.5.5 Signed and Completed Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**)
- 3.5.6 Signed and completed originals of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** of this RFP and **APPENDIX THREE**).
- 3.5.7 Responses to questions and requests for information in the Security Characteristics and Functionality of Contractor's Information Resources (ref APPENDIX SIX).

# **GENERAL TERMS AND CONDITIONS**

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

# SPECIFICATIONS AND ADDITIONAL QUESTIONS

#### 5.1 General

The specifications for the Services, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. As indicated in **Section 2.3** of this RFP, the successful Proposer is referred to as the "**Contractor**."

### 5.2 Additional Questions Specific to this RFP

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

- 5.2.1 If Proposer takes exception to any terms or conditions set forth in the Agreement (ref. **APPENDIX TWO**), Proposer must submit a list of the exceptions.
- 5.2.2 By signing the Execution of Offer (ref. Section 2 of APPENDIX ONE), Proposer agrees to comply with <a href="Section 2252.908">Section 2252.908</a>, Government Code ("Disclosure of Interested Parties Statute"), and <a href="Texas Administration Code Sections 46.1">1 Texas Administration Code Sections 46.1</a> <a href="texas Ethics Commission">through 46.5</a> ("Disclosure of Interested Parties Regulations"), as implemented by the Texas Ethics Commission ("TEC"), including, among other things, providing the TEC and University with the information required on the form promulgated by the TEC and set forth in APPENDIX SEVEN. Proposers may learn more about these disclosure requirements, including the use of the TEC electronic filing system, by reviewing the information on the TEC website at <a href="https://www.ethics.state.tx.us/whatsnew/FAQ Form1295.html">https://www.ethics.state.tx.us/whatsnew/FAQ Form1295.html</a>.
- 5.2.3 In its proposal, Proposer must respond to each item listed in APPENDIX SIX, Security Characteristics and Functionality of Contractor's Information Resources. APPENDIX SIX will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to University. Responses to APPENDIX SIX will be incorporated into the Agreement and will be binding on Contractor.
- 5.2.4 Proposer will briefly, yet specifically, describe its expertise in each of the following areas, as more fully described in the Scope of Work (Exhibit A of the Agreement (ref. **APPENDIX TWO**)) of this RFP:
  - 5.2.4.1 Assessment of University's property and builder's risk exposure and recommendation of Program design;
  - 5.2.4.2 Alternative risk financing and reinsurance;
  - 5.2.4.3 Large property insurance placements, including Catastrophic Named Windstorm and Flood coverage;
  - 5.2.4.4 Placement of NFIP, TWIA and other deductible buydown policies:
  - 5.2.4.5 Placements for historical buildings, healthcare occupancies, and higher education occupancies
  - 5.2.4.6 Drafting Manuscript Policy Language
  - 5.2.4.7 Risk Management Services;
  - 5.2.4.8 Claims Handling for large property claims.
- 5.2.5 Based on the exposures described in this RFP, Proposer shall describe, in detail, its initial, proposed strategy for the following:

- 5.2.5.1 Developing a program design, including retentions, alternative risk financing products; insurance and reinsurance placements, and/or other;
- 5.2.5.2 Approaching markets, including the names of the North American Retail, wholesale E&S, European, Bermuda and/or other markets to be used (both Proposer affiliated and non-affiliated);
- 5.2.5.3 Wind modeling
- 5.2.5.4 Managing large number of NFIP, TWIA and other deductible buydown placements:
- 5.2.5.5 Obtaining additional underwriting information to be provided by University in order to implement proposed program design;
- 5.2.5.6 Placing and administering the builder's risk insurance program.
- 5.2.5.7 Proposed implementation schedule with key tasks, dates, and milestones.
- 5.2.6 Proposer will describe the proposed approach for ensuring that all propertyrelated policies purchased by University dovetail so that coverage is maintain in the most effective and cost effective manner.
- 5.2.7 Proposer will provide a list of the top five (5) property and builder's risk placements, that included risk financing and/or commercial insurance for named windstorm or catastrophic flood in coastal areas, handled by the proposed marketing personnel in the past three (3) years. Please briefly specify Proposer's approach to and structure of these placements.

## 5.3 Scope of Work

Contractor will provide the following property insurance broker and other risk management services to University:

The "Services" are specifically described in the Scope of Work (Exhibit A of the Agreement (ref. **APPENDIX TWO**)) of this RFP.

# PRICING AND DELIVERY SCHEDULE

Proposa	ıl of:
•	(Proposer Company Name)
То:	The University of Texas System Administration
Ref.:	Property Insurance Broker and other Risk Management Services related to the assessment and management of the University's comprehensive property protection and builder's risk programs.
RFP No.	: ORM 05232016
Ladies a	nd Gentlemen:
attachme other Ri	carefully examined all the specifications and requirements of this RFP and any ents thereto, the undersigned proposes to furnish the Property Insurance Broker and sk Management Services required pursuant to the above-referenced Request fo I upon the terms quoted below.
6.1 P	ricing for Services Offered
6.1.1	Fixed Fee for Implementation of property insurance program services, including all global brokering fees, for each of the following property policies/programs (Section A and B the Scope of Work, Exhibit A of the Agreement (ref. <b>APPENDIXTWO</b> )). Provide proposed pricing for each policy/program on an annual and estimated three year cumulative amount:
	University's master Property, Boiler & Machinery policies/programs
	University's National Flood Insurance Program (NFIP), Texas Windstorm Insurance Association (TWIA) and other deductible buydown policies
	UT MD Anderson's Excess Named Windstorm policy
	UTMB Named Storm Deductible Buydown (including premium protector policy)
	UTMB Ike Master Builder's Risk Program
	UT MDACC JOC Builder's Risk Program
6	.1.2 Commission and Fee Cap for builder's risk insurance program services, including all global brokering fees, for each of the following builder's risk policies/programs (Section A and B the Scope of Work, Exhibit A of the Agreement (ref. APPENDIX TWO)). Provide pricing for each policy/program on an annual and estimated three year cumulative amount:
	Master Builder's Risk Program

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6.1.3	Fixed Fee for Risk Management Services (Section C of the Scope of Work, Exhibit A of the Agreement (ref. <b>APPENDIX TWO</b> )	
6.1.4	Fixed Fee for Claims Handling Services (Section D of the Scope of Work, Exhibit A of the Agreement (ref. <b>APPENDIX TWO</b> ))	
by the agreer enhand comming fiducia	dditional compensation, beyond that set forth in this compensation provision, received broker, any of its affiliates, or any other intermediary broker during the term of the ment, including, but not limited to: commissions, fees, contingent commission ced or supplemental commissions, excess and surplus lines and reinsurance issions, profit sharing, volume over-rides, work transfer payments, service incoming funds income, sales incentives, and gifts, must be promptly reported to the sity. Such additional compensation will be treated as belonging to the University are treated as an offset against the Fixed Fees.	is s, e e, ne
	Respectfully submitted,	
	Proposer:	
	By:(Authorized Signature for Proposer) Name: Title:	
	Date:	

# APPENDIX ONE

# PROPOSAL REQUIREMENTS

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#### **GENERAL INFORMATION**

#### 1.1 Purpose

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

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

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

#### 1.2 Inquiries and Interpretations

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

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

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

#### 1.3 Public Information

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

University may seek to protect from disclosure all information submitted in response to this RFP until such time as a final agreement is executed.

Upon execution of a final agreement, University will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act* (*Government Code*, Chapter 552.001, et seq.). Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under Sections 552.101, 552.110, 552.113, and 552.131, *Government Code*.

#### 1.4 Type of Agreement

Contractor, if any, will be required to enter into a contract with University in a form substantially similar to the Agreement between University and Contractor (the "Agreement") attached to this RFP as APPENDIX TWO and incorporated for all purposes.

### 1.5 Proposal Evaluation Process

University will select Contractor by using the competitive sealed proposal process described in this Section. University will open the HSP Envelope submitted by a Proposer prior to opening the Proposer's proposal in order to ensure that the Proposer has submitted the number of completed and signed originals of the Proposer's HUB Subcontracting Plan (also called the HSP) that are required by this RFP (ref. Section 2.5.4 of the RFP.) All proposals submitted by the Submittal Deadline accompanied by the number of completed and signed originals of the HSP that are required by this RFP will be opened publicly to identify the name of each Proposer submitting a proposal. Any proposals that are not submitted by the Submittal Date or that are not accompanied by the number of completed and signed originals of the HSP that are required by this RFP will be rejected by University as non-responsive due to material failure to comply with advertised specifications. After the opening of the proposals and upon completion of the initial review and evaluation of the proposals, University may invite one or more selected Proposers to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of Contractor.

University may make the selection of Contractor on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of Contractor on the basis of negotiation

with any of the Proposers. In conducting such negotiations, University will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.

At University's sole option and discretion, University may discuss and negotiate all elements of the proposals submitted by selected Proposers within a specified competitive range. For purposes of negotiation, University may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, University will defer further action on proposals not included within the competitive range pending the selection of Contractor; <u>provided</u>, <u>however</u>, University reserves the right to include additional proposals in the competitive range if deemed to be in the best interests of University.

After submission of a proposal but before final selection of Contractor is made, University may permit a Proposer to revise its proposal in order to obtain the Proposer's best and final offer. In that event, representations made by Proposer in its revised proposal, including price and fee quotes, will be binding on Proposer. University will provide each Proposer within the competitive range with an equal opportunity for discussion and revision of its proposal. University is not obligated to select the Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to University overall, as determined by University.

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

#### 1.6 Proposer's Acceptance of Evaluation Methodology

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

#### 1.7 Solicitation for Proposal and Proposal Preparation Costs

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

#### 1.8 Proposal Requirements and General Instructions

- 1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.
- 1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of University.
- 1.8.3 University will not provide compensation to Proposer for any expenses incurred by the Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer. Proposer submits its proposal at its own risk and expense.
- 1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by University, at University's sole discretion.
- 1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.
- 1.8.6 University makes no warranty or guarantee that an award will be made as a result of this RFP. University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the Agreement when deemed to be in University's best interest. University reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to University, at University's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.
- 1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by University, in University's sole discretion.

#### 1.9 Preparation and Submittal Instructions

#### 1.9.1 Specifications and Additional Questions

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

#### 1.9.2 <u>Execution of Offer</u>

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

#### 1.9.3 Pricing and Delivery Schedule

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

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

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

#### 1.9.4 Proposer's General Questionnaire

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

#### 1.9.5 Addenda Checklist

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

#### 1.9.6 <u>Submission</u>

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

Proposer must also submit the number of originals of the HUB Subcontracting Plan (also called the HSP) as required by this RFP (ref. **Section 2.5** of the RFP.)

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

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

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

By signing the Execution of Offer (ref. Section 2 of APPENDIX ONE) and submitting a proposal, Proposer certifies that any terms, conditions, or documents attached to or referenced in its proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP and (b) do not place any requirements on University that are not set forth in this RFP or in the Appendices to this

RFP. Proposer further certifies that the submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified herein and that such intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.

#### 1.9.7 Page Size, Binders, and Dividers

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

#### 1.9.8 <u>Table of Contents</u>

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

#### 1.9.9 Pagination

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

#### **EXECUTION OF OFFER**

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

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

- By signature hereon, Proposer certifies that the individual signing this document and the documents made a part of this RFP, is authorized to sign such documents on behalf of Proposer and to bind Proposer under any agreements and other contractual arrangements that may result from the submission of Proposer's proposal.
- **2.7** By signature hereon, Proposer certifies as follows:

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

- By signature hereon, Proposer certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any component of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to University in writing; (ii) Proposer has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline; and (iii) no person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. Section 669.003, Government Code). All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before University enters into a contract or agreement with Proposer.
- 29 By signature hereon, Proposer certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- By signature hereon, Proposer represents and warrants that all products and services offered to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the *Texas Hazard Communication Act*, Chapter 502, *Health and Safety Code*, and all related regulations in effect or proposed as of the date of this RFP.
- Proposer will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this <a href="Execution of Offer"><u>Execution of Offer</u></a>. All such disclosures will be subject to administrative review and approval prior to the time University makes an award or enters into any contract or agreement with Proposer.
- 2.12 If Proposer will sell or lease computer equipment to the University under any agreements or other contractual arrangements that may result from the submission of Proposer's proposal then, pursuant to Section 361.965(c), Health & Safety Code, Proposer certifies that it is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Chapter 361, Subchapter Y, Health & Safety Code and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in Title 30, Chapter 328, Subchapter I, Texas Administrative Code. Section 361.952(2), Health & Safety Code, states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

213	Proposer should complete the following information:
	If Proposer is a Corporation, then State of Incorporation:
	If Proposer is a Corporation then Proposer's Corporate Charter Number:
	RFP No.: ORM 05232016

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

Submitted and Certified By:			
(Proposer Institution's Name)			
(Signature of Duly Authorized Representative)			
(Printed Name/Title)			
(Date Signed)	-		
(Proposer's Street Address)	-		
(City, State, Zip Code)	-		
(Telephone Number)	-		
(FAX Number)	-		

#### PROPOSER'S GENERAL QUESTIONNAIRE

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

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

 .1		ser Profile
	3.1.1	Legal name of Proposer company:
		Address of principal place of business:
		Address of office that would be providing service under the Agreement:
		Number of years in Business:  State of incorporation:
		Number of Employees:
		Annual Revenues Volume:  Name of Parent Corporation, if any  NOTE: If Proposer is a subsidiary, University prefers to enter into a contract or agreemer with the Parent Corporation or to receive assurances of performance from the Parent Corporation.
	3.1.2	State whether Proposer will provide a copy of its financial statements for the past two (2) years, if requested b University.
	3.1.3	Proposer will provide a financial rating of the Proposer entity and any related documentation (such as a Dun and Bradstreet analysis) that indicates the financial stability of Proposer.
	3.1.4	Is Proposer currently for sale or involved in any transaction to expand or to become acquired by anothe business entity? If yes, Proposer will explain the expected impact, both in organizational and directional terms.
	3.1.5	Proposer will provide any details of all past or pending litigation or claims filed against Proposer that woul affect its performance under the Agreement with University (if any).
	3.1.6	Is Proposer currently in default on any loan agreement or financing agreement with any bank, financia institution, or other entity? If yes, Proposer will specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.

3.1.7

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

business relationship, and background of services provided by Proposer.

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

#### 3.2 Approach to Project Services

- 3.2.1 Proposer will provide a statement of the Proposer's service approach and will describe any unique benefits to University from doing business with Proposer. Proposer will briefly describe its approach for each of the required services identified in **Section 5.3** Scope of Work of this RFP.
- 3.2.2 Proposer will provide an estimate of the earliest starting date for services following execution of the Agreement.
- 3.2.3 Proposer will submit a work plan with key dates and milestones. The work plan should include:
  - 3.2.3.1 Identification of tasks to be performed;
  - 3.2.3.2 Time frames to perform the identified tasks;
  - 3.2.3.3 Project management methodology;
  - 3.2.3.4 Implementation strategy; and
  - 3.2.3.5 The expected time frame in which the services would be implemented.
- 3.2.4 Proposer will describe the types of reports or other written documents Proposer will provide (if any) and the frequency of reporting, if more frequent than required in the RFP. Proposer will include samples of reports and documents if appropriate.

#### 3.3 General Requirements

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

#### 3.4 Service Support

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

## 3.5 Quality Assurance

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

### 3.6 Miscellaneous

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

# ADDENDA CHECKLIST

Proposal of:
(Proposer Company Name)
To: The University of Texas System Administration
<b>Ref.:</b> Property Insurance Broker and other Risk Management Services related to the <u>assessment and management of the University's comprehensive property protection and builder's risk programs</u>
RFP No.: ORM 05232016
Ladies and Gentlemen:
The undersigned Proposer hereby acknowledges receipt of the following Addenda to the captioned RFP (initial i applicable).
No. 1 No. 2 No. 3 No. 4 No. 5
Respectfully submitted,
Proposer:
By:(Authorized Signature for Proposer) Name: Title:
Date:

# APPENDIX TWO AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

	( Agreement ) to made	and entered into
effective as of, 20, (th	ne <b>"Effective Date</b> "), b	y and between
The University of Texas System, an agency and insti	itution of higher education	established under
the laws of the State of Texas ("University"), and	_	
, a	("Contractor"),	Federal Tax
Identification Number U	Iniversity and Contractor	hereby agree as

# 1. Scope of Work.

- 1.1 Contractor will perform the scope of the work ("Work") set forth in <u>Exhibit A</u>, Scope of Work, attached and incorporated for all purposes, to the satisfaction of University. Time is of the essence in connection with this Agreement. University will have no obligation to accept late performance or waive timely performance by Contractor.
- 1.2 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local, laws, statutes, regulations and ordinances ("**Applicable Laws**"), for the performance of the Work.
- 1.3 Upon execution of this Agreement, all services previously performed by Contractor on behalf of University and included in the description of the Work, will become a part of the Work and will be subject to the terms and conditions of this Agreement.

### 2. The Project.

The Work as more particularly described in **Exhibit A** will be provided in connection with the University's risk management program and all other related, necessary and appropriate services (the "**Project**").

# 3. Time for Commencement and Completion.

The term ("Initial Term") of this Agreement will begin on the Effective Date and expire on the later of (i) August 31, 2019 or (ii) the last expiration date of any policies University procures through Contractor, or (iii) the day after all claims or disputes related to all policies procured by University through Contractor are finally resolved and settled to University's satisfaction. University will have the option to renew this Agreement for three (3) additional one (1) year terms (each a "Renewal Term"). The Initial Term and each Renewal Term are collectively referred to as the "Term".

# 4. <u>Contractor's Obligations</u>.

4.1 Contractor will perform the Work in compliance with (a) all Applicable Laws, and (b) the *Rules and Regulations* of the Board of Regents of The University of Texas System at <a href="http://www.utsystem.edu/bor/rules/">http://www.utsystem.edu/bor/rules/</a>, the policies of The University of Texas System at <a href="http://www.utsystem.edu/bor/procedures/policy/">http://www.utsystem.edu/bor/procedures/policy/</a>; and the institutional rules, regulations and policies of each University institution (collectively, "University Rules"). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or

anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.

- 4.2 Contractor represents, warrants and agrees that (a) it will use its best efforts to perform the Work in a good and workmanlike manner and in accordance with the highest standards of Contractor's profession or business, and (b) all of the Work to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in the global market under the same or similar circumstances.
- 4.3 Contractor will call to University's attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished. Nothing shall excuse or detract from Contractor's responsibilities or obligations hereunder in a case where such document or data is furnished unless Contractor advises University in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and University confirms in writing that it wishes Contractor to proceed in accordance with the document or date data as originally given.
- 4.4 Contractor warrants and agrees that the Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will at no time be in any way diminished by reason of any approval by University nor will Contractor be released from any liability by reason of any approval by University, it being agreed that University at all times is relying upon Contractor's skill and knowledge in performing the Work.
- 4.5 Contractor will, at its own cost, correct all material defects in the Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in the Work within a reasonable time, then University may correct the defective Work at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that University may have at law or in equity.
- 4.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of the Work to be duly registered and/or licensed under all Applicable Laws. Contractor will assign to the Project a designated representative who will be responsible for the administration and coordination of the Work. Any proposed changes to Contractor staff identified in Submittal must be approved by University.
- 4.7 Contractor represents that if (i) it is a corporation, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a

partnership, limited partnership, limited liability partnership, or limited liability company then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

- 4.8 Contractor represents and warrants that neither the execution and delivery of this Agreement by Contractor nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision [i] if a corporation, of Contractor's articles of incorporation or by-laws, [ii] if a limited liability company, of its articles of organization or regulations, or [iii] if a partnership, of any partnership agreement by which Contractor is bound; (b) result in the violation of any provision of any agreement by which Contractor is bound; or (c) to the best of Contractor's knowledge and belief, conflict with any order or decree of any court or other body or authority having jurisdiction.
- Contractor represents and warrants that: (i) the Work will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor for the benefit of University; (ii) University will receive free, good and clear title to all Work Material developed under this Agreement; (iii) the Work Material and the intellectual property rights protecting the Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges or other restrictions; (iv) the Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of the Work Material will not violate the rights of any third parties in the Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.
- 4.10 If this Agreement requires Contractor's presence on University's premises or in University's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable University Rules, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.

# 5. Commissions and Replacement Fees.

- 5.1 Contractor's sole compensation for the policies procured by University through Contractor under this Agreement shall consist of one or more of the following, as determined by University in its sole discretion:
  - (a) commissions, if any, paid to Contractor by the insurance carriers that issue such policies; or
  - (b) fees that University pays to Contractor for risk management services provided and/or in lieu of commissions paid to Contractor by the insurance carriers that issue such policies (a "Replacement Fee").

In no event shall Contractor be compensated for the policies procured by University under this Agreement other than as set forth in this **Section 5.1**.

- 5.2 Contractor shall disclose to University in writing all commissions or fees paid or to be paid to Contractor in connection with insurance policies procured or to be procured by University (including, but not limited to, commissions to be paid to Contractor by insurance carriers). In some cases, University will compensate Contractor through a Fixed Fee in lieu of commissions. Contractor will be compensated on a fee basis for specific policies and services if requested by University and Contractor will provide evidence from insurance carriers that premiums are provided net of commissions for those policies including but not limited to, commissions, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Fixed Fees.
- 5.3 The insurance policies procured by University under this Agreement for which Contractor is paid a Replacement Fee as compensation in whole or in part for those policies are sometimes referred to as "Replacement Fee Policies."
- 5.4 In the event that University and Contractor agree that Contractor shall be paid a Replacement Fee as compensation in whole or in part for one or more Replacement Fee Policies procured by University under this Agreement, then University and Contractor shall enter into a written Addendum for those Replacement Fee Policies. Each Addendum shall meet the following requirements:
  - (a) Addendum Formats.
    - (1) Each Addendum shall be based upon a predefined "Addendum Format" jointly developed and agreed to in writing by the University and Contractor.
    - (2) The initial Addendum Formats agreed to by University and Contractor under this Agreement are:

- (i) The "Fee-Only Addendum Format", as more specifically set forth in Exhibit B attached to this Agreement and incorporated for all purposes, which the University and Contractor shall use in the event that a Replacement Fee is to constitute Contractor's sole compensation for the identified Replacement Fee Policies procured by University. Contractor will be compensated on a fee basis for specific services if requested by University and Contractor will provide evidence from service providers that premiums are provided net of commissions for those policies including but not limited to, commissions, contingent commissions, supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Fixed Fees, and
- the "Safety and Loss Prevention / Claims Handling (ii) Services Addendum Format", as more specifically set forth in Exhibit C attached to this Agreement and incorporated for all purposes, which the University and Contractor shall use in the event that Contractor is to be paid a Replacement Fee as compensation for Contractor's performance of Safety and Loss Prevention Services and/or Claims Handling services for one or more Replacement Fee Policies, but Contractor's sole compensation for all other services Contractor performs for those Replacement Fee Policies (including any services not identified through the use of this Addendum Format) shall be the commissions, if any, that are paid to Contractor by the insurance carriers issuing such Policies. Contractor will be compensated on a fee basis for specific services if requested by University and Contractor will provide evidence from service providers that premiums are provided net of commissions for those policies including but not limited commissions, fees, contingent commissions, enhanced, or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Fixed Fees.
- (3) The University and Contractor may develop other Addendum Formats in addition to the "Fee-Only Addendum Format" and the "Safety and Loss Prevention I Claims Handling Services Addendum Format" in order to

document alternate approaches by which Contractor may be compensated for a Replacement Fee Policy. If University and Contractor agree to add such an additional Addendum Format, then Contractor and the University's Executive Vice Chancellor for Business Affairs, his or her duly-authorized designee, or any other person duly authorized by The University of Texas Board Regents "University System of (the Representative") shall execute that Addendum Format by signing a copy of the Addendum Format. Once such an additional Addendum Format is so executed, that Addendum Format shall be incorporated into this Agreement for all purposes, and the Addendum Format can be used by the University and Contractor as the basis for new Addenda under this Agreement.

- (4) Each Addendum shall contain only the terms and conditions that are set forth in the Addendum Format used as a basis for that Addendum.
- (5) In the event that an Addendum contains terms and conditions that are not set forth in the Addendum Format that was used as a basis for that Addendum, such terms and conditions are of no force or effect and are deleted from that Addendum.
- (6) In the event that an Addendum does not contain some or all of the terms and conditions set forth in the Addendum Format that was used as a basis for that Addendum, then the University and Contractor agree that the terms and conditions set forth in the Addendum Format are incorporated by reference into that Addendum.
- (b) Each Addendum shall document the Replacement Fee Policies for which University shall pay the Replacement Fees identified in that Addendum.
- (c) Each Addendum shall identify the Replacement Fee to be paid by University and the method under which Contractor shall invoice the University for that Replacement Fee.
- (d) Each Addendum shall identify the total amount to be remitted by University to Contractor under that Addendum (the "Addendum Cap"). Furthermore, each Addendum shall state that the total amount remitted by University to Contractor under that Addendum shall not exceed the Addendum Cap without the prior written approval of University.
- (e) Each Addendum under which Contractor shall be paid a Replacement Fee as Contractor's compensation for its performance of certain Safety and Loss Prevention Services for one or more Replacement Fee Policies shall document those

specific Safety and Loss Prevention Services that are to be performed by Contractor. Contractor will be compensated on a fee basis for specific policies and services if requested by University and Contractor will provide evidence from insurance carriers that premiums are provided net of commissions for those policies including but not limited to, comm1ss1ons, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Fixed Fees.

- (f) Each Addendum under which Contractor shall be paid a Replacement Fee as Contractor's compensation for performance of certain Claims Handling Services for one or more Replacement Fee Policies shall document those specific Claims Handling Services that are to be performed by Contractor. Contractor will be compensated on a fee basis for specific policies and services if requested by University and Contractor will provide evidence from insurance carriers that premiums are provided net of commissions for those policies including but not limited to, commissions, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Fixed Fees.
- (g) Contractor shall attach a proposed Addendum to the quote for each Replacement Fee Policy. University and Contractor may negotiate the Replacement Fee set forth in a proposed Addendum prior to executing that Addendum. If University and Contractor agree on a completed Addendum, then Contractor and the University's Executive Vice Chancellor for Business Affairs, his or her duly- authorized designee, or any other person duly authorized by The University of Texas System Board of Regents (the "University Representative") shall execute the Addendum by signing the Addendum.
- 5.5 In the event that an Addendum is executed by Contractor and the University Representative in accordance with Section 5.4(g) before University has obtained all of the insurance policies or other risk management services that are identified in that Addendum, then the University's payment obligations under that Addendum shall not be enforceable, and the University shall have no obligation to pay Contractor the Replacement Fee documented in that Addendum, until University has obtained all of the insurance policies or other risk management services identified in that Addendum.

- 5.6 The Replacement Fees set forth in an Addendum shall include any applicable federal, state or local sales or use tax that are to be paid by University on the Contractor services set forth in that Addendum.
- After (1) the University Representative and Contractor have executed an Addendum and (2) University and the insurance carriers have executed all of the insurance policies identified in that Addendum, Contractor shall submit invoices to University as more specifically set forth in that Addendum. University will, no later than the twenty-first (21st) day after the date University receives such an invoice, approve or disapprove the invoice. If University approves the invoice, it shall pay the amount set forth in the invoice to Contractor in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code; provided, that, Contractor is not in breach of or in default under this Agreement. If the University disapproves the invoice, it shall provide Contractor with specific reasons for the disapproval in writing.

University shall have the right to verify the details set forth in Contractor's invoices, either before or after payment of such invoices, by (1) inspecting the books and records of Contractor relating to the Work performed by Contractor under this Agreement at mutually convenient times; (2) examining any reports with respect to the Work performed by Contractor under this Agreement; (3) interviewing Contractor's and insurance carrier's employees that have been involved with Work performed by Contractor under this Agreement; (4) visiting any place where performance of all or a portion of the Work performed by Contractor under this Agreement occurs; and (5) other reasonable action.

- 5.8 University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Work in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* ("TAC") Section 3.322.
- 5.9 In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that the University did not receive from Contractor prior to termination.
- 5.10 So long as Contractor has provided University with its current and accurate Federal Tax Identification Number in writing, University will pay Contractor for the performance of the Work as set forth in **Exhibit A**. Contractor understands and agrees that payments under this Agreement may be subject to the withholding requirements of Section 3402(t) of the Internal Revenue Code.

# 6. Payment Terms.

- 6.1 Notwithstanding any provision of this Agreement to the contrary, University will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if Contractor is in default under this Agreement.
- 6.2 The cumulative amount of all Commissions and Replacement Fees will not exceed \$\_\_\_\_\_\_, inclusive of any contract renewals. This establishes a not to exceed amount, it is not a guarantee of payment and it will be paid based on annual negotiated Commissions and Replacement Fees.

- 6.3 No payment made by University will (a) be construed to be final acceptance or approval of that part of the Work to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement.
- 6.4 The acceptance of Final Payment by Contractor will constitute a waiver of all claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of the Final Invoice for payment.
- 6.5 University will have the right to verify the details set forth in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action. In the event University makes any payment in advance of services, the parties agree that University is entitled to full and complete repayment of any sums unearned by Contractor. University may offset or withhold any payment under this Agreement to achieve such repayment. In the event that the Agreement is terminated, any unearned advance payment will be paid to University by Contractor within 30 days of request.
- 6.6 Section 51.012, Texas Education Code, authorizes University to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from University through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, University will confirm Contractor's banking information. Any changes to Contractor's banking information must be communicated to University in writing at least thirty (30) days in advance of the effective date of the change in accordance with **Section 12.14**.

# 7. Ownership and Use of Work Material.

- 7.1 All instructions, information, requirements, procedures, documents, drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials exchanged with or prepared by Contractor or any subcontractors in connection with the Work (collectively, "Work Material"), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.
- 7.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to the Work Material.
- 7.3 Contractor will deliver all Work Material to University or another entity of University's choosing upon expiration or termination of this Agreement in a timeframe and format determined by University. University will have the right to use the Work Material for the completion of the Work or otherwise. University may, at all times, retain the originals of the Work Material. The Work Material will not be used by any person other than University on other projects unless expressly authorized by University in writing.

7.4 The Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.

#### 8. Default and Termination.

- 8.1 In the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement ("**default**"), the other party may terminate this Agreement upon thirty (30) days' written notice of termination setting forth the nature of the material failure; <u>provided</u>, <u>that</u>, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the thirty-day period.
- 8.2 University may, without cause, terminate this Agreement at any time upon giving seven (7) days' advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for the Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.
- 8.3 Termination under **Sections 8.1** or **8.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 8.4 If Contractor fails to cure any default within thirty (30) days after receiving written notice of the default, University will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement, any and all reasonable expenses incurred in connection with University's curative actions.
- 8.5 In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that University did not receive from Contractor prior to termination.

#### 9. Indemnification.

- 9.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS. CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- 9.2 IN ADDITION, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

#### 10. Relationship of the Parties.

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of University. Contractor will not bind nor attempt to bind University to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

#### 11. Insurance.

- 11.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-: VII or better, and in amounts not less than the following minimum limits of coverage:
  - 11.1.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

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

Workers' Compensation policy must include under Item 3.A. on the information page of the Workers' Compensation policy the state in which Work is to be performed for University.

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

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 300,000
Medical Expenses (any one person)	\$ 10,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

The required Commercial General Liability policy will be issued on a form that insures Contractor's and subcontractor's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

- 11.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 combined single limit of liability per accident for Bodily Injury and Property Damage;
- 11.1.4 Professional Liability (Errors & Omissions) Insurance with limits of not less than \$10,000,000 each occurrence. Such insurance will cover all Work performed by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.

- 11.2 Contractor will deliver to University:
  - 11.2.1 Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Work by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.
    - 11.2.1.1 All insurance policies (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System, and University as Additional Insureds for liability caused in whole or in part by Contractor's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.
    - 11.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System and University. *All insurance policies* will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System and University. No policy will be canceled until after thirty (30) days' unconditional written notice to University. *All insurance policies* will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 11**.
    - 11.2.1.3 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University prior to the performance of any Work by Contractor under this Agreement. All deductibles and selfinsured retentions will be shown on the Certificates of Insurance.
    - 11.2.1.4 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name: Ruth Maldonado

Address:

The University of Texas System Claudia Taylor Johnson

#### 210 W. 6<sup>th</sup> Street, Suite B140E Austin, TX 78701

Facsimile Number: (512) 499-4524

Email Address: <a href="mailto:rmaldonado@utsystem.edu">rmaldonado@utsystem.edu</a>

- 11.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or The University of Texas System. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by University in writing, except as provided in this **Section 11.3**.
  - 11.3.1 Professional Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of this policy.

#### 12. Miscellaneous.

- Assignment and Subcontracting. Except as specifically provided in <a href="Exhibit D">Exhibit D</a>, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes, Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Applicable Laws, including Chapter 2161, Texas Government Code, and 34 TAC Chapter 20,§§20.101 20.108. The benefits and burdens of this Agreement are assignable by University.
- 12.2 **Texas Family Code Child Support Certification.** Pursuant to Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 12.3 **Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code ("**Chapter 171**"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 12.4 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.
- Loss of Funding. University performance of its duties and obligations under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the

Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

- 12.6 **Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both University and Contractor.
- 12.7 **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("**force majeure occurrence**").
- 12.8 **Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 12.9 **Governing Law.** Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
- 12.10 **Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
- 12.11 Confidentiality and Safeguarding of University Records; Press Releases; Public Information. Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, "University Records"). However, it is expressly agreed that University will not provide to Contractor, and Contractor will never seek to access, any University Records that contain personally identifiable information regarding any individual that is not available to any requestor under the Texas Public Information Act, Chapter 552, Texas Government Code, including "directory information" of any student who has opted to prohibit the release of their "directory information" as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA") and its implementing regulations. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security that are no

less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with University Rules regarding access to and use of University's computer systems, including UTS 165 at <a href="http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html">http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html</a>. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

- 12.11.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.
- 12.11.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.
- 12.11.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this **Section 12.11**.
- 12.11.4 Press Releases. Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.
- 12.11.5 Public Information. University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act ("TPIA"), Chapter 552, Texas Government Code. In accordance with Section 552.002 of TPIA and Section 2252.907, Texas Government Code, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.

- 12.11.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.
- 12.11.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 12.12 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- 12.13 Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments will be available to University or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Project, unless University otherwise instructs Contractor in writing.
- 12.14 Notices. Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to University: The University of Texas System

Claudia Taylor Johnson

210 W. 6th Street, Suite B140E

Austin, TX 78701

Attention: Stacy Youngdale

Assistant Director of Risk Management

with copy to: The University of Texas System

Claudia Taylor Johnson

210 W. 6th Street, Suite B140E

Austin, TX 78701

Attention: Phillip B. Dendy

**Executive Director of Risk Management** 

If to Contractor:		 
	Attention: _	

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

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

The University of Texas System Claudia Taylor Johnson 210 W. 6<sup>th</sup> Street, Suite B140E Austin, TX 78701

Email: LegalNotices@utsystem.edu

Attention: Stacy Youngdale

Assistant Director of Risk Management

with copy to: The University of Texas System

Claudia Taylor Johnson

210 W. 6th Street, Suite B140E

Austin, TX 78701

Email: LegalNotices@utsystem.edu

Attention: Phillip B. Dendy

**Executive Director of Risk Management** 

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

- 12.15 **Severability.** In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.
- 12.16 **State Auditor's Office.** Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "**Auditor**"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with subcontractors.
- 12.17 Limitation of Liability. Except for University's obligation (IF any) to pay Contractor certain fees and expenses University will have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any duty or obligation of University to Contractor or to anyone claiming through or under Contractor, no present or future affiliated enterprise, subcontractor, agent, officer, director, employee, representative, attorney or regent of University, or the University of Texas System, or anyone claiming under University has or will have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.
- 12.18 **Survival of Provisions.** No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature

survive expiration or termination, including **Sections 6.7**, **9**, **12.5**, **12.9**, **12.10**, **12.11**, **12.13**, **12.16**, **12.17**, **12.19** and **12.21**.

#### 12.19 Breach of Contract Claims.

- 12.19.1 To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other Applicable Laws, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor:
  - 12.19.1.1 Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by subchapter B of Chapter 2260, to University in accordance with the notice provisions in this Agreement. Contractor's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that University allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The chief business officer of University, or another officer of University as may be designated from time to time by University by written notice to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.
  - 12.19.1.2 If the parties are unable to resolve their disputes under **Section 12.19.1.1**, the contested case process provided in subchapter C of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by University.
  - 12.19.1.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's

sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.

- 12.19.2 The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.
- 12.19.3 University and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.
- 12.20 **Undocumented Workers.** The *Immigration and Nationality Act* (8 *United States* Code 1324a) ("Immigration Act") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("I-9 Form") as the document to be used for employment eligibility verification (8 Code of Federal Regulations 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, University may terminate this Agreement in accordance with Section 8. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.
- 12.21 Limitations. The Parties are aware that there are constitutional and statutory limitations on the authority of University (a state agency) to enter into certain terms and conditions that may be a part of this Agreement, including those terms and conditions relating to liens on University's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on University except to the extent authorized by the laws and Constitution of the State of Texas.
- 12.22 Ethics Matters; No Financial Interest. Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at <a href="http://www.utsystem.edu/policy/policies/int160.html">http://www.utsystem.edu/policy/policies/int160.html</a>, University's Standards of Conduct Guide available

at <a href="http://www.utsystem.edu/system.compliance/SOCcombined.pdf">http://www.utsystem.edu/syst

- 12.24 **Enforcement.** Contractor agrees and acknowledges that University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing the Work. Contractor's services provide a peculiar value to University. University cannot be reasonably or adequately compensated in damages for the loss of Contractor's services. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Agreement will cause University irreparable injury and damage. Contractor, therefore, expressly agrees that University will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.
- Historically Underutilized Business Subcontracting Plan. Contractor agrees to use good faith efforts to subcontract the Work in accordance with the Historically Underutilized Business Subcontracting Plan ("HSP") (ref. Exhibit D). Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, "TPSS"). Submission of compliance reports will be required as a condition for payment under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108. University may also revoke this Agreement for breach and make a claim against Contractor.
  - 12.25.1 Changes to the HSP. If at any time during the Term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with Section 12.6 to replace the HSP with the revised subcontracting plan.
  - 12.25.2 **Expansion of the Work.** If University expands the scope of the Work through a change order or any other amendment, University will determine if the additional Work contains probable subcontracting opportunities *not* identified in the initial solicitation for the Work. If University determines additional probable

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

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

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

12.27 Office of Inspector General Certification. Contractor acknowledges that University is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Contractor to work on site at University's premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("OIG") to work on site at University's premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at University's premises or facilities. Contractor acknowledges that University will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at University's premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG's List of Excluded Individuals. The OIG's

List of Excluded Individuals may be accessed through the following Internet website: http://exclusions.oig.hhs.gov/

12.28 Access to Documents. To the extent applicable to this Agreement, in accordance with Section 1861(v)(I)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

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

UNIVERSITY:		CONTRACTOR:	
THE UNIVERSITY OF TEXAS SYSTEM			
By: Name: Title:	Name:	By:	
		Attest: Corporate Secretary	
Attach:			
EXHIBIT A – Scope of Work  EXHIBIT B – Fee-Only Addendum Forma	nt		

EXHIBIT C - Safety and Loss Prevention / Claims Handling Services Addendum Format

**EXHIBIT D** – HUB Subcontracting Plan

#### **EXHIBIT A**

#### **SCOPE OF WORK**

#### **Specific Duties Required**

#### A. Implementation of Comprehensive Property Protection Program

- Conduct a comprehensive assessment of University's property risk and exposure profile and recommend a Program design for the most effective risk financing arrangement considering cost and protection. Services will include, but not be limited to, the following:
  - Review of University's property insurance program, including program history, insurance policies, loss experience, and Plan guides.
  - Review of University's property exposure given University's
    - Standing as a state institution of higher education;
    - · Risk tolerance:
    - Financial ability to retain risk; and
    - FEMA obligations and coverage requirements.
  - Review of University's property schedule to identify data needs and make recommendations for data improvement and refinement.
  - Preparation and evaluation of Wind Modeling reports, including but not limited to stratification of values and calculating University's Maximum Foreseeable Loss, value concentrations, etc.
  - Evaluation and recommendations for coverage of University's historical structures.
  - Evaluation of University's current property insurance program structure including strengths, weaknesses, and areas for improvement.
  - Evaluation of alternative property program structures, such as captive or self-insurance programs, capital markets and/or alternative risk financing methods.
  - Evaluation of insurance options and markets available for commercial insurance.
  - Evaluation of University's current National Flood Insurance Program (NFIP), Texas Windstorm Insurance Association (TWIA) and other deductible buydown policies and recommendations for improved placement strategies and procedures.
- 2. Upon University's request, assist University with developing renewal and new placement strategies for University's property exposures, which include, but are not limited to the following:
  - a. University's master Property, Boiler & Machinery insurance policies,
  - b. University's National Flood Insurance Program (NFIP), Texas Windstorm Insurance Association (TWIA), and other deductible buydown policies,
  - c. UT MD Anderson's Excess Named Windstorm policy.
  - d. UTMB Named Storm Deductible Buydown (including premium protector policy)
  - e. At University's discretion, implementation of additional property and builder's risk policies/programs,
  - f. Other risk financing solutions, such as captive or self-insurance programs, capital markets and/or alternative risk financing methods.
- Upon University's request, assist University with developing renewal and new placement strategies for University's Builder's Risk Program for all covered construction projects.

- 4. Strategy development shall include, but not be limited to, the following:
  - Educating University personnel regarding available risk financing options, current alternative risk financing and insurance market conditions and the marketing process.
  - Assisting University in determining property program design (suitable risk financing options, appropriate coverages, retention level, limits, sublimits, etc.)
  - Assisting University in determining builder's risk program design (suitable risk financing options, appropriate coverages, retention level, limits, sublimits, etc.).
- 5. Notify University of new insurance products which address University exposures.
- 6. Develop a comprehensive action plan for placement and marketing of new or renewal business, including a timeline identifying major milestones and necessary data needed to obtain quote(s) and produce complete proposal packages.
- 7. Identify necessary information to develop market submissions and assist University with collection and presentation of data.
- 8. Assemble and format University's data into a marketing submission for consideration by insurance carriers, wholesalers, Managing General Agents, Surplus Lines Brokers, alternative risk financing markets.
- 9. Perform catastrophe modeling, stratification of values, flood surveys, windstorm analysis, etc. on University locations, as necessary. Provide modeling results by individual institution as well as in the aggregate.
- 10. Identify the insurance carriers, wholesalers, Managing General Agents, Surplus Lines Brokers, alternative risk financing markets that your firm intends to approach for quotes on the University's program, including the amount of business your firm currently conducts with each, the underwriter(s)/contact(s) your firm will be working with, and your firm's assessment of the competitive advantage each may provide.
- 11. Upon University's request, actively pursue markets that are able to provide products required by University. Identify underwriters/contacts within quoting markets and arrange for meetings between contacts and University personnel. When travel is required by University personnel to attend underwriter meetings, Contractor will assist University personnel with planning and coordinating travel arrangements.
- 12. Prior to sending the marketing submission to carriers, supply a draft of the submission to University for review and approval.
- 13. As appropriate, solicit quotes and negotiate insurance coverage terms and conditions and/or alternative risk financing arrangements, including, terms, services, and premiums from markets with input from University.
- 14. Ensure that supplemental property policies purchased by University (inland marine, National Flood Insurance program policies, Texas Windstorm Insurance Association policies, Fine Art policies, Excess Wind, deductible buydown, equipment policy, Builders Risk, etc.) dovetail with master property program.
- 15. Provide updates to University on status of placement action plan in a format and frequency acceptable to University.
- 16. Present complete proposal package to include quotes and declinations, coverage options, specimen policy form(s), and/or risk finance solutions to University in a detailed manner.
- 17. As part of complete proposal package, create coverage comparisons requested to facilitate University review of current and proposed coverage options. Documents should be in a form that can be shared with University executive

- management and should include evaluation of any proposed endorsements.
- 18. Formally present property program options to University personnel as needed.
- 19. Provide a detailed description of responses received from insurance carriers, wholesalers, Managing General Agents, Surplus Lines Brokers, alternative risk financing markets. If carriers decline to quote policies, University requests a summary of all responses and explanations of any actions taken by Contractor to reverse the declination decision.
- 20. Disclose any additional compensation, beyond that set forth in <a href="Exhibit B">Exhibit B</a>, received by the Contractor, any of its affiliates, or any other intermediary during the term of this agreement, including, but not limited to, commissions, fees, contingent commissions, enhanced or supplemental commissions, excess and surplus lines and reinsurance commissions, profit sharing, volume over-rides, work transfer payments, service income, fiduciary funds income, sales incentives, and gifts. Such additional compensation will be treated as belonging to the University and will be treated as an offset against the Replacement Fees.
- 21. If requested by University, bind alternative risk financing plans or insurance coverage and maintain financing agreements, insurance policies, and coverage without lapses.
- 22. Verify that rates and premiums are properly calculated and charged and confirm to University in writing that invoiced premiums are correct. If policies are placed on a fee basis, obtain documentation from insurers that premiums are net of commissions.
- 23. University and contractor will agree on whether a policy is direct billed or agency billed. University prefers to pay premiums through Contractor rather than direct bill.
- 24. University prefers to pay premiums and all applicable taxes through Contractor rather than direct bill. When premiums are billed through Contractor, make advance payment of premiums due to insurance carrier.
- 25. When appropriate, allocation for the University's individual institutions will be required. Proposer will allocate billings for each of the University's institutions and supply University with electronic invoices on a per institution basis.
- 26. Confirm policies issued conform to University specifications. When requested by University, forward copy of completed Policy Review Checklist used to review policy.
- 27. When necessary, communicate information between University and selected insurance carriers and, or wholesalers, Managing General Agents, Surplus Lines Brokers, alternative risk financing markets, including information regarding policy renewals, premium pay-ins, audit returns and buy-out provisions.
- 28. When necessary, schedule meetings between University and selected insurance carriers and, or wholesalers, Managing General Agents, Surplus Lines Brokers, alternative risk financing markets.
- 29. Request, implement, monitor, and verify coverage changes requested by University.
- 30. Allocate audited premiums on a UT institution by institution basis and provide individual invoices for each institution as requested by University.
- 31. When requested by University, identify for University's consideration any Replacement Fees, as more specifically defined in **Section 5**, that Contractor proposes to charge University for any insurance policies University contemplates procuring under this Agreement.
- 32. Maintain and provide University with an Open Task Report that details all outstanding tasks related to University placements/projects. Examples of items to be reported would be endorsement requests, policy issuance, upcoming

- renewals and pending coverage questions. The frequency for the Open Task Report will be determined by University based upon Contractor's placement activity level.
- 33. When notified by University, report building additions and value changes to risk finance markets and insurance carriers in accordance with policy conditions.
- 34. Other services required in order to achieve new business objectives.

#### B. <u>Policyholder Services Provided by the Contractor</u>

- 1. Act as an *advocate* on behalf of the University.
- 2. Work proactively to identify emerging trends, and to provide actionable information to University.
- 3. Coordinate data gathering functions and processes between all parties.
- 4. Organize and attend meetings as requested by University and document meeting discussions by taking meeting minutes. Send minutes to University within 48 hours of the meeting for review and comment.
- 5. Communicate with and secure all data required by insurance carrier and, or wholesaler, Managing General Agent, Surplus Lines Broker, alternative risk financing markets, or requested by University.
- 6. Provide insurance binders, certificates, and policies when requested.
- 7. Verify the accuracy of any bills, audits, and other premium adjustments prior to submittal to University.
- 8. Answer phone calls and emails, and field questions during regular business hours.
- 9. Respond to coverage questions and any other information requests in writing when requested by University.
- 10. Notify University of any new or pending legislation or regulations that could impact University insurance premiums or coverage. Assist University with analysis and implementation of legislative and regulatory requirements.
- 11. Notify University of adequate A.M. Best Rating Company financial strength and size levels to require of outside contracting parties in order to determine their insurance company's claims paying ability, suitability, service record, and financial stability. Notify University when a rating change occurs with a carrier providing coverage to the University.
- 12. Provide University with estimated premiums annually for budget projections when requested.
- 13. Develop forms, notification processes, etc. for compiling, tracking, and reporting data required to obtain and maintain insurance coverage under the Master Builder's Risk Program. The processes should utilize available information from existing University data sources, including University's construction project management tools. Access to University's construction project management tools is subject to compliance with University's acceptable use and security policy agreement.
- 14. Work with University's Office of Facilities Planning and Construction, University Institutions, Office of Risk Management, Construction Management firms and Controlling Contractors to obtain needed information to obtain and maintain coverage under the Builder's Risk program. Copy designated personnel in University's Office of Risk Management on all correspondence with above parties.
- 15. When notified by University, report new projects, project value changes, project status, and project completion to Builder's Risk insurance carriers in accordance with policy conditions in order to maintain appropriate coverage.

- 16. For Builder's Risk, allocate premiums by project and provide individual invoices per project as requested.
- 17. Maintain spreadsheet to track bound projects, invoices, pending projects, premiums and coverage expirations.
- 18. Develop a Builder's Risk Program Manual that outlines the recommended administrative and claim reporting processes. Claims reporting process documentation shall include phone numbers for after-hours and emergency claim reporting.
- 19. Review provisions related to property insurance and Builder's Risk in University contract documents and provide analysis and recommendations for changes in wording. As requested, review and provide analysis and recommendations for other contract provisions that may have implications for property and Builder's Risk policies, such as indemnification language and other insurance requirements.
- 20. Notify University of any proposed changes to key personnel who will be providing services under the Agreement with University. Contractor shall submit a staffing plan and resumes for prospective replacement personnel to University for review and approval.
- 21. Other services required in order to achieve new business or renewal objectives.

#### C. Risk Management Services

- 1. Assist University in identifying potential exposures.
- 2. When requested by University prior to the purchase or renewal of a policy, conduct inspections, tests and other safety and loss prevention services.
- 3. When requested by University, perform other risk management services. Examples of such services would include, but are not limited to, Market Analyses, Business Continuity Planning, Crisis Management, Catastrophe Modeling, Risk Management Reviews and Risk Assessments.
- 4. Perform Loss Prevention Services including, but not limited to, the following:
  - Perform at least one visit to each institution and provide a summary report of property conservation program. All reports will be delivered to University and the institution within 30 days after completing the site visit. All reports will be delivered in electronic version, including the latest updated Premium Allocation Model (PAM) for that institution.
  - Perform loss prevention surveys for all buildings (new and existing) that
    were not previously surveyed and are valued at or above \$10,000,000 or as
    determined by University. For new buildings at institutions that have already
    received a loss prevention survey visit, or for due diligence surveys on new
    property, these visits will be coordinated with University and the institution as
    appropriate.
    - Gather all available COPE and Secondary Wind Characteristics data and identify gaps in information prior to visit.
    - Evaluate past loss reports and institution responses to identify recommendations that should be closed or revisited prior to visit.
    - Work with University and institution to identify recommendations that should remain "active" or be put into "abeyance".
    - Establish goals for site visits and identify particular areas of concern the institutions would like to address during the visit.
    - Develop a timeline to accomplish the goals of the visit.
    - All institution visits will be scheduled at least two weeks in advance and coordinated with University and the institution.

- Review of property conservation programs, applicable to human element, mechanical and natural element hazards.
- Review of fire protection equipment, recordkeeping, inspection schedules, and testing, including a visual assessment on condition of equipment.
- Review and assessment of natural element hazards including windstorm, named windstorm, and flood exposures.
- Conduct interviews with appropriate staff to gauge knowledge of current systems.
- Visual inspection and condition assessment of construction to include structural, fire divisions, and roofs.
- Provide reference for building fire code or standard section for each recommendation (if applicable).
- Recommendations will be prioritized with life safety recommendations ranking higher in priority than others. All recommendations will clearly state if they go beyond the minimum NFPA or other applicable life safety standards.
- Develop Maximum Foreseeable Loss (MFL) figures based on current industry accepted criteria.
- Develop Probable Maximum Loss (PML) figures based on current industry accepted criteria.
- Participate in closing conference on all site visits.
- Review outcomes from i. through xv. Above prior to closing conference to ensure that visit accomplished established goals.
- Review of all new recommendations.
- Record responses and gather supporting documentation for risk summary report.
- Provide overview of the current Premium Allocation Model (PAM) and consultation on how the institutions could improve their overall score.
- Work with institution contacts on identifying building specific business income.
- Perform Due Diligence building surveys upon request. Surveys will be scheduled within two (2) weeks of request. Survey reports will be delivered to University and the institution within ten (10) days after completing the site visit. The PAM will be updated and included in the electronic version of the summary risk report.
- Gather and analyze all information required to populate and administer the UT System Premium Allocation Model. The PAM will be updated accordingly and included in the electronic version of the loss prevention survey report. Final version of PAM will be made available fourteen (14) days after completion of the final survey.
- Flood Locations and Elevations: As directed by University and as needed for new, acquired and existing properties, determination of building latitude and longitude, documentation of mitigation work, as well as occupancies, operations, and equipment risk. As directed by University, assist with the process of obtaining elevation certificates and other documentation required for NFIP coverage.
- Google Earth: Plotting of University properties based on latest building inventory including building data. Building data will include select COPE information as well as relevant flood data, mitigation work, and relevant documentation.

#### D. Claims Handling

- 1. Act as an advocate on behalf of the University. Provide claims advocacy services if a loss occurs, including but not limited to working with insurance carriers, alternative financing markets, and applicable federal and state agencies.
- 2. When requested by University, communicate information to insurance carrier, report claims to the carrier or administrator, and monitor claims activity.
- 3. Provide claims reports when requested. Reports should include, but not be limited to, loss date, report date, status, loss type, incurred total, paid total, reserve total, recoveries, cause code, litigation claims.
- 4. Complete periodic file reviews, claim audits, and claim surveys and provide findings to the carrier and the University.
- 5. Provide or obtain from carrier periodic loss runs, including electronic data feeds, as requested by University.
- 6. Provide on-site claims presence within twenty-four (24) hours if requested by University.
- 7. Confirm to University that all deductible billings (and other claims billings) are accurate and allocate deductible billings on an institution by institution basis when requested by University.
- 8. With regard to the master property insurance policies and Builder's Risk policies, obtain options from quoting insurance carriers to provide claims handling services to University for claims within University's deductible.
- 9. When claims handling fees (including investigation fees) are incurred as part of University's quota share or self-insured retention, verify the accuracy of bills received, advance payment to claims handling service firm for University's portion up to a maximum of \$25,000 per policy year, and invoice University for reimbursement.
- 10. Coordinate claims meetings with insurance carriers, contractors, and University as necessary and upon University request.
- 11. Coordinate Builder's Risk claim reporting by all projects according to process outlined in Builder's Risk Program Manual.
- 12. Negotiate a streamlined claim settlement process with insurance carrier(s), including, but not limited to, a common, University-approved adjuster provision and streamlined Proof of Loss and claim payment provisions.

#### E. General

1. Notify University of any pending or actual material changes to Contractor's business or insuring business with whom Contractor is insuring University (examples: changes in financial status or changes in organization structure at local or corporate office).

#### **EXHIBIT B**

#### **FEE-ONLY ADDENDUM FORMAT**

made	Addendum to Agreement Between University And Contractor (this "Addendum") is and entered into by and between The University of Texas System, an agency and ution of higher education organized under the laws of the State of Texas ("University"), and, Federal Tax Identification Number ("Contractor").
l.	Overview. This Addendum identifies the Replacement Fee for certain insurance policies and/or risk management services University obtains through or from Contractor under the "Agreement Between University And Contractor" dated effective August 31, 2012 (the "Agreement"), as more specifically set forth in Section 5.4 of the Agreement.
II.	<u>Identification of Policies</u> : The Replacement Fee identified in this Addendum shall constitute Contractor's sole compensation for the following insurance policies procured by University through Contractor under the Agreement (the "Policies"):
	issued byissued byissued byissued byissued byissued byissued by
III.	<ul> <li>Provided, however, if any of the above Policies or risk management services are not obtained by the University ("Unobtained Policies or Services"), the University shall not be required to pay to Contractor that portion of the Replacement Fee set forth in this Addendum applicable to Unobtained Policies.</li> <li>Identification and Payment of Replacement Fee: The Replacement Fee for the Policies and/or risk management services shall consist of the following:</li> </ul>
	A. <u>Fixed Fee</u> :
	(1) <u>Definition</u> . University shall pay Contactor a Fixed Fee for Implementation of property insurance program services, including all global brokering fees, for each of the following property policies/programs (Section A and B the Scope of Work, Exhibit A of the Agreement (ref. <b>APPENDIX TWO</b> )). Provide proposed pricing for each policy/program on an annual and estimated three year cumulative amount:
	University's master Property, Boiler & Machinery policies/programs
	University's National Flood Insurance Program (NFIP), Texas Windstorm Insurance Association (TWIA) and other deductible buydown policies
	UT MD Anderson's Excess Named Windstorm policy
	UTMB Named Storm Deductible Buydown (including premium protector policy)
	UTMB Ike Master Builder's Risk Program

TU	MDAC	C JOC I	Builder's Risk Program
			Risk Management Services (Section C of the Scope of Work, e Agreement (ref. <b>APPENDIX TWO</b> )
6.1.4			Claims Handling Services (Section D of the Scope of Work, Exhibit ment (ref. <b>APPENDIX TWO</b> ))
in this Theref provis broker fees, surplu transfe must treated Fees.	Exhibit fore, ar ion, reconting conting s lines er paymbe prord as belaccordi	represe by additivelved by the tentent come and reinents, see nptly replaying tonging	tion of the parties to this Agreement that the Fixed Fees described on the exclusive compensation allowed for the services described on all compensation, beyond that set forth in this compensation by the Contractor, any of its affiliates, or any other intermediary of this agreement, including, but not limited to: commissions, emissions, enhanced or supplemental commissions, excess and insurance commissions, profit sharing, volume over-rides, work ervice income, fiduciary funds income, sales incentives, and gifts, ported to the University. Such additional compensation will be to the University and will be treated as an offset against the Fixed such compensation must be immediately reported to University in Exhibit A.
	(2)		Fee Invoices. Contractor shall invoice the University for the Fixed follows (check and complete one of the following):
			Contractor shall submit a single invoice for the entire Fixed Fee, to University on
			Contractor shall invoice the Fixed Fee to University in equal monthly installments of \$ each, starting on and ending on
			Contractor shall invoice the Fixed Fee to University in equal quarterly installments of \$ each, starting on and ending on
			Other (please describe in full):
B. <u>Cor</u>	mmissio	<u>n</u>	
	(1)	for bu	on. University shall pay Contractor a Commission with a Fee Cap ilder's risk insurance program services, including all global ng fees, for each of the following builder's risk policies/programs

APPENDIX TWO Page 32 of 34

and estimated three year cumulative amount:

(Section A and B the Scope of Work, Exhibit A of the Agreement (ref. **APPENDIX TWO**)). Provide pricing for each policy/program on an annual

		: Please ensure that the se fied in Section III.A.(1) of thi	rvices identified in the above are not a s Addendum.	lso
	(2)	Master Builder's Risk policy subject to a cap of \$	actor shall include a commission of X% in premiums invoiced for each enrolled project total commission earned for policy y date) to University on or after endorsing respective policies.	ect, ear
Adde			nitted by University to Contractor under dendum Cap") without the prior written appro	
		REOF, University and Conas of the later of the two (2) da	tractor have executed and delivered ates specified below:	this
UNIVERSIT	Y:		CONTRACTOR:	
THE UNIVE	RSITY O	F TEXAS SYSTEM		_
Name:			Name:	
Title:			Title:	
Date:			Date:	

Master Builder's Risk Program

#### **EXHIBIT C**

#### **HUB SUBCONTRACTING PLAN**

Please refer to APPENDIX THREE of this RFP.

#### **APPENDIX THREE**

#### **HUB SUBCONTRACTING PLAN**

# THE UNIVERSITY OF TEXAS SYSTEM ADMINISTRATION JANUARY 1, 2016

### **APPENDIX III**

# POLICY ON UTILIZATION HISTORICALLY UNDERUTILIZED BUSINESSES VENDOR/COMMODITIES



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

#### Contents

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•	Summary of Requirements/Historically Underutilized Business (HUB) Subcontracting Plan (HSP)	Pages 4-6
•	Summary of Attachments Required from Respondents	Page 7
•	Letter of Transmittal	Page 8
•	Letter of HUB Commitment (indefinite duration/indefinite quantity contracts)	Page 9
•	HSP Quick Checklist	Page 10
•	<ul> <li>HUB Subcontracting Plan (HSP)</li> <li>Section 2 – Good Faith Effort Subcontractor Selection</li> <li>Self-Performance Justification</li> <li>HSP Good Faith Effort Method A (Attachment A)</li> <li>HSP Good Faith Effort Method B (Attachment B)</li> </ul>	Page 11-18 Page 12 Page 14 Page 15 Page 16-17
•	HUB Subcontracting Opportunity Notification Form Minority and Trade Organizations contact information is available online at: <a href="http://comptroller.texas.gov/procurement/prog/hub/mwb-links-1/">http://comptroller.texas.gov/procurement/prog/hub/mwb-links-1/</a>	Page 18
•	HUB Subcontracting Plan Prime Contractor Progress Assessment Report (PAR) (Required of successful respondent for payment requests only)	Page 19

## The University of Texas System Office of HUB Development

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

#### **Introduction**

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

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

- 11.2% for heavy construction other than building contracts;
- 21.1% for all building construction, including general contractors and operative builders contracts;
- 32.9% for all special trade construction contracts;
- 23.7% for professional services contracts;
- 26% for all other services contracts, and
- 21.1% for commodities contracts.

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

**NOTE:** The goals above are the State of Texas HUB goals. For purposes of this procurement, The University of Texas System goals listed in the Special Instructions on page 11 will apply.

## SUMMARY OF REQUIREMENTS Historically Underutilized Business (HUBs) Subcontracting Plan (HSP)

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

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

University, the HUB Subcontracting Plan shall become a provision of the Respondent's contract with UT System. Revisions necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort. Any revisions after the submission of the HSP shall be approved by the HUB Coordinator.

- 7. **Design Build (DB) and Construction Manager @ Risk (CM@R) responses:** Respondents to a "design build" or "construction manager-at-risk" purchase solicitation shall include the Letter of HUB Commitment in their Response attesting that the Respondent has read and understands the Policy on Historically Underutilized Businesses (HUBs), and a HUB Subcontracting Plan for all preconstruction and construction services including a HUB Subcontracting Plan as prescribed by the Texas Comptroller specific to construction services identifying first, second and third tier subcontractors. Respondents proposing to perform Part 1 preconstruction services with their own resources and employees shall submit, as part of their HSP, the Self Performance Justification.
- 8. **DB and CM@R HUB Contract Requirements:** Contractors engaged under design-build and construction manager-at-risk contracts shall submit a HUB Subcontracting Plan for all preconstruction and construction Phase Services, and, must further comply with the requirements of this Policy by developing and submitting a HUB Subcontracting Plan for each bid package issued in buying out the guaranteed maximum or lump sum price of the project. The HSP shall identify first, second and third tier subcontractors.
- 9. The University of Texas System shall reject any Response that does not include a fully completed HSP as required. An incomplete HUB Subcontracting Plan is considered a material failure to comply with the solicitation for proposals.
- 10. Changes to the HUB Subcontracting Plan: Once a Respondent's HSP is accepted by UT System and becomes a provision of the contract between Respondent and UT System, the Respondent can only change that HSP if (a) the Respondent complies with 34 TAC Section 20.14; (b) the Respondent provides its proposed changes to UT System for review; (c) UT System (including UT System's HUB Coordinator) approves Respondent's proposed changes to its HSP; and (d) UT System and the Respondent amend their contract (in writing signed by authorized officials of both parties) in order to replace the contract's existing HSP with a revised HSP containing the changes approved by UT System.
- 11. Expansion of Work: If, after entering into a contract with a Respondent as a result of a purchase solicitation subject to the Policy, UT System wishes to expand the scope of work that the Respondent will perform under that contract through a change order or any other contract amendment (the "additional work"), UT System will determine if the additional work contains probable subcontracting opportunities not identified in the initial purchase solicitation for that contract. If UT System determines that probable subcontracting opportunities exist for the additional work, then the Respondent must submit to UT System an amended HUB Subcontracting Plan covering those opportunities that complies with the provisions of 34 TAC Section 20.14. Such an amended HSP must be approved by UT System and the Respondent (including UT System's HUB Coordinator) before (a) the contract may be amended by UT System and the Respondent to include the additional work and the amended HSP and (b) the Respondent performs the additional work. If a Respondent subcontracts any of the additional subcontracting opportunities identified by UT System for any additional work (i) without complying with 34 TAC Section 20.14 or (ii) before UT System and that Respondent amend their contract to include a revised HSP that authorizes such subcontracting, then the Respondent will be deemed to be in breach of its contract with UT System. As a result of such breach, UT System will be entitled to terminate its contract with the Respondent, and the Respondent will be subject to any remedial actions provided by Texas law, including those set forth in Chapter 2161, Texas Government Code, and 34 TAC Section 20.14. The University may report a Respondent's nonperformance under a

- contract between that Respondent and UT System to the Texas Comptroller in accordance with 34 TAC Sections 20.10 through 20.18.
- 12. A Response may state that the Respondent intends to perform all the subcontracting opportunities with its own employees and resources in accordance with the Policy. However, if such a Respondent enters into a contract with UT System as a result of such a Response but later desires to subcontract any part of the work set forth in that contract, before the Respondent subcontracts such work it must first change its HUB Subcontracting Plan in accordance with the provisions of Section 10 above.
- 13. The University of Texas System shall require a professional services firm, contractor or vendor to whom a contract has been awarded to report the identity and the amount paid to its subcontractors on a monthly basis using a HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (PAR) as a condition for payment.
- 14. If the University of Texas System determines that the successful Respondent failed to implement an approved HUB Subcontracting Plan in good faith, UT System, in addition to any other remedies, may report nonperformance to the Texas Comptroller in accordance with 34 TAC Section 20.14, (g) (1) related remedies of nonperformance to professional services firms, contractor and vendor implementation of the HSP.
- 15. In the event of any conflict between this "Summary of Requirements" and the remainder of the HUB Policy, the remainder of the HUB Policy will control.
- 16. These requirements, including the attachments referred to above, may be downloaded over the internet from: <a href="http://utsystem.edu/offices/historically-underutilized-business/hub-forms">http://utsystem.edu/offices/historically-underutilized-business/hub-forms</a>. For additional information contact: The University of Texas System

  Office of HUB & Federal Small Business Program

  201 West 6<sup>th</sup> Street, Room B.140E

  Austin, TX 78701

  (512) 499-4530

## Other Services/Vendor/Commodities HSP Summary of Attachments Required from Respondents

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

#### (RESPONDENT'S BUSINESS LETTERHEAD)

Date

Regional HUB Coordinator
Office of HUB and Federal Small Business Program
The University of Texas System
201 W. 6 <sup>th</sup> St., Room B.140E
Austin, Texas 78701

	No. of	Total	Total	% Minority	% Woman	% Service
	_35.25% for commo	odities contracts				
	26% for all other s					
	32.9% for all speci		tion contracts			
	ne of the following:					
Subcontracting P						
	Code Section 20.1	.3, and the goal	as stated in the	Agency Special	Instructions sect	tion of the HUB
<u>-</u>	Bs). I also unde					-
	d understand Th	•	•	•		•
to forward this	ith the requireme HUB Subcontractions osals referencing t	ng Plan as an int	egral part of our			
Dear,						
•	Jnderutilized Busir nber	• •	ect Title):			
Austin, Texas 787	701					
201 W. 6 <sup>th</sup> St., Ro						
The University of	Texas System					

	No. of	Total	Total	% Minority	% Woman	% Service
Subcontractors	Subcontractors	Subcontract\$	Estimated	Owned	Owned	Disabled
		Value	HUB %			Veteran
HUB						
NON-HUB						
TOTAL						

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

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

Sincerely,	
(Project Executive)	

cc: Contract Administrator

#### RESPONDENT'S BUSINESS LETTERHEAD

Date

Regional HUB Coordinator
Office of HUB and Federal St

The University of Texas System 201 W. 6 <sup>th</sup> St., Room B.140E Austin, TX 78701
RE: Historically Underutilized Business Plan for (Project Title
Dear:
In accordance with the requirements outlined in the specification section "HUB Participation Program", I am pleased to forward this HUB Subcontracting Plan as an integral part of our proposal in connection with your invitation for request for proposals, referencing Project Number
I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs).
Good Faith Effort will be documented by a two part HUB Subcontracting Plan (HSP) process. Part one (1) of the HSP submission will reflect self-performance with the appropriate sections completed per the instructions in Option One of the HSP Quick Checklist located on page 10 of The University of Texas Exhibit H Policy on Utilization of Historically Underutilized Businesses (HUBs).
As the scope of work/project is defined under this ID/IQ contract, part two (2) of the process will require a revised HUB Subcontracting Plan (HSP) and the Good Faith Effort will be documented per instructions in Attachment B (page 16-17) and Option Three of the HSP Quick Check List. The revised HUB Subcontracting Plan will be submitted to the HUB Coordinator prior to execution of each contract process. Documentation of subcontracted work will be provided with each pay request.
Sincerely,
Project Executive
cc: Project Manager

Rev. 09/15



# HUB Subcontracting Plan (HSP) QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

Option One: If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified **HUB** vendors, complete: Section 1 - Respondent and Requisition Information Section 2a. - Yes, I will be subcontracting portions of the contract. Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors. ☐ Section 2 c. - Yes ☐ Section 4 - Affirmation GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2b. ☐ Letter of Transmittal Option Two: If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a "continuous contract"in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional requirments:, complete: Section 1 - Respondent and Requisition Information Section 2 a. - Yes, I will be subcontracting portions of the contract. Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors. ☐ Section2c.-No ☐ Section 2 d. - Yes ☐ Section 4 - Affirmation GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b. ☐ Letter of Transmittal Option Three: If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete: ☐ Section 1 - Respondent and Requisition Information Section 2a. - Yes, I will be subcontracting portions of the contract. Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors. □ Section2c.-No ☐ Section2d.-No □ Section 4 - Affirmation GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2b. □ Letter of Transmittal Option Four: If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment, including transportation and delivery), complete: Section 1 - Respondent and Requisition Information Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. Section 3 - Self Performing Justification ☐ Section 4 - Affirmation ☐ Letter of HUB Commitment

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

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# **HUB Subcontracting Plan (HSP)**

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

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

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

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- · 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

Agency Special instructions/Additional Requirements			

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

Other Services HUB Goal – 26% Commodities HUB Goal – 35.25% Special Trades HUB Goal – 32.9%

- Responses for Special Trades construction shall submit a HUB Subcontracting Plan (HSP) that meets the Good Faith Effort
  prescribed in Method B (Attachment B). See instruction for <u>Option Three</u> on the HSP Quick Check List. No other Good
  Faith Effort method will be accepted.
- Responses for Miscellaneous Services Agreements for indefinite duration/indefinite quantity- Two (2) part process:
  - 1. Submit a Letter of HUB Commitment (page 9) and a Good Faith Effort described in Option Four.
  - 2. Submit a revised HSP prior to execution of each contract process as described in Option Three of Quick Check List.
- Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the bid, proposal or other expression of interest to be considered Non-responsive.
- Respondents who intend to Self-Perform all of their work shall submit an HSP for Self-Performance HUB Subcontracting Plan (HSP) as described in Option Four.
- Prime Contractor Progress Assessment Report (PAR) shall be submitted with each request for payment as a condition of payment.
- Please note that phone logs are no longer acceptable documentation of Good Faith Effort. Only fax, email and certified letter are acceptable.

SECTION-1 RESPONDENT AND REQUISITION INFORMATION					
a.	Respondent (Company) Name:	State of Texas VID #:			
	Point of Contact:	Phone #:			
	E-mail Address:	Fax #:			
b.	Is your company a State of Texas certified HUB? — - Yes — - No				
c.	Requisition #:	Bid Open Date:			
		(mm/dd/yyyy)			

Enter your company's name here:	Requisition #:
	·

#### SECTION-2: RESPONDENT'S SUBCONTRACTING INTENTIONS

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

- a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:
  - ☐ Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
  - □ No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods, services, transportation and delivery. (If No, continue to SECTION 3 and SECTION 4.)
- **b.** List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

		HU	lBs	Non-HUBs
Item#	Subcontracting Opportunity Description	Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

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

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

- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed.)
- No (If No, continue to Item d, of this SECTION.)
- **d.** Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you do not have a continuous contract\* in place with for more than five (5) years, meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."
  - Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
  - □ No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

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

#### SECTION-2 RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

	possinego o uno comitato per oripco to amare to inicio e une are nota i	HUBs				
Item#	Subcontracting Opportunity Description	Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.		
16		%	%	%		
17		%	%	%		
18		%	%	%		
19		%	%	%		
20		%	%	%		
21		%	%	%		
22		%	%	%		
23		%	%	%		
24		%	%	%		
25		%	%	%		
26		%	%	%		
27		%	%	%		
28		%	%	%		
29		%	%	%		
30		%	%	%		
31		%	%	%		
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34		%	%	%		
35		%	%	%		
36		%	%	%		
37		%	%	%		
38		%	%	%		
39		%	%	%		
40		%	%	%		
41		%	%	%		
42		%	%	%		
43		%	%	%		
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%		

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

Enter your company's name here:		Requisition #:	
ECTION-3 SELF PERFORMING JUSTIFI	CATION (If you responded "No" to SECTION	2, Item a, you must complete this SEC	TION and continue to SECTION
you responded "No" to SECTION 2, Item a, in the supplies, materials and/or equipment, to include trans		npany will perform the entire contract v	vith its own employees,
<b>ECTION-4: AFFIRMATION</b> evidenced by my signature below, I affirm that I apporting documentation submitted with the HSP is t			
The respondent will provide notice as soon as contract. The notice must specify at a minimus subcontracting opportunity they (the subcontract the total contract that the subcontracting opport point of contact for the contract no later than ten	practical to all the subcontractors (HUBs ar um the contracting agency's name and its ctor) will perform, the approximate dollar valu- tunity represents. A copy of the notice requir	nd Non-HUBs) of their selection as a point of contact for the contract, the ue of the subcontracting opportunity arred by this section must also be provided.	subcontractor for the awarded e contract award number, the nd the expected percentage o
The respondent must submit monthly complian compliance with the HSP, including the use o <a href="http://www.window.state.tx.us/procurement/prog">http://www.window.state.tx.us/procurement/prog</a>	of and expenditures made to its subcontrac		
The respondent must seek approval from the subcontractors and the termination of a subcont respondent may be subject to any and all enforc state contracting.	tractor the respondent identified in its HSP. If	f the HSP is modified without the contr	acting agency's prior approval
The respondent must, upon request, allow the care being performed and must provide document			/or work-site where services

#### Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort Method B (Attachment B)" for <u>each</u> of the subcontracting opportunities you listed in SECTION 2, Item b.

### HSP Good Faith Effort - Method A (Attachment A)

Rev 09/15

Enter your company's name here:	Requisition #:
IMPORTANT: If you responded "Yes" to <b>SECTION 2, Items c</b> or <b>d</b> of the companies Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed in spage or download the form at <a href="http://window.state.tx.us/procurement/prog/hub/hub-forms">http://window.state.tx.us/procurement/prog/hub/hub-forms</a>	<b>SECTION 2, Item b</b> of the completed HSP form. You may photo-copy this
SECTION A-1: SUBCONTRACTING OPPORTUNITY	
Enter the item number and description of the subcontracting opportunity you listed in S the attachment.	SECTION 2, Item b, of the completed HSP form for which you are completing
Item Number:Description:	
SECTION A-2: SUBCONTRACTOR SELECTION	

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <a href="http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp.">http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp.</a> HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	□- Yes □- No		\$	%
	□- Yes □- No		\$	%
	□- Yes □- No		\$	%
	□- Yes □- No		\$	%
	□- Yes □- No		\$	%
	□- Yes □- No		\$	%
	□- Yes □- No		\$	%
	□- Yes □- No		\$	%
	□- Yes □- No		\$	%
	□ - Yes □- No		\$	%
	□ - Yes □- No		\$	%
	□ - Yes □- No		\$	%
	□ - Yes □- No		\$	%
	□ - Yes □- No		\$	%
	□ - Yes □- No		\$	%
	□ - Yes □- No		\$	%
	- Yes - No		\$	%
	☐ - Yes ☐- No		\$	%
	Yes No		\$	%
	☐ - Yes ☐- No		\$	%
	☐ - Yes ☐ - No		\$	%
	☐ - Yes ☐- No		\$	%

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

Page 1 of 1 (Attachment A)

## HSP Good Faith Effort - Method B (Attachment B)

	Rev. 09/15
Enter your company's name here:	Requisition #:
<b>IMPORTANT:</b> If you responded " <b>No</b> " to <b>SECTION 2, Items c</b> and <b>d</b> of the common Method B (Attachment B)" for <u>each</u> of the subcontracting opportunities you listed in <b>SECTIO</b> page or download the form at	

online at <a href="http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan.">http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan.</a>
Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs <a href="https://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan.">https://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan.</a>
Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs <a href="https://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan.">https://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan.</a>
Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs <a href="https://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan.">https://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan.</a>
Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs <a href="https://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan.">https://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan.</a>
Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs <a href="https://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan.">https://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan.</a>
Retain supporting documentation of a state agency, not including weekends, federal or state agency, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs <a href="http

When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available

- **a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs <u>at least seven (7) working days</u> to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) Historically Underutilized Business (HUB) Directory Search located at <a href="http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp">http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp</a>. HUB status code "A" signifies that the company is a Texas certified HUB.
- b. List the <u>three (3)</u> Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB I	Respond?
			- Yes	□- No
			- Yes	□- No
			- Yes	□- No

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

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted
		- Yes - No
		- Yes - No

### HSP Good Faith Fffort - Method B (Attachment B) Cont.

	Requisition #:				
ECTION B-4: SUBCONTRACTOR SELECTION iter the item number and description of the subcontracting opportunity you lise attachment.	sted in <b>SECTI</b>	ON 2, Iter	<b>m b,</b> of the completed HSP	form for which you	are completing
<b>a.</b> Enter the item number and description of the subcontracting opportunity f	for which you a	ire complet	ing this Attachment B contin	uation page.	
Item Number: Description:  List the subcontractor(s) you selected to perform the subcontracting op	nortunity year	istad in Cr	ECTION R-1 Also identife	whather they are	a Tovas cortii
HUB and their Texas Vendor Identification (VID) Number or federal E subcontracted, and the expected percentage of work to be subcontracted you use the State of Texas' Centralized Master Bidders List ( <a href="http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp">http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp</a> . HUB status code	Emplioyer Ider ed. When sear (CMBL) - Hi	ntification N ching for T storically U	Number (EIN), the approxinexas certified HUBs and ve Underutilized Business (H	nate dollar value o erifying their HUB st IUB) Directory Se	f the work to atus, ensure t
Company Name	Texas cert	ified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage Contract
	□- Yes	□- No		\$	%
	□- Yes	□- No		\$	9
	□- Yes	□- No		\$	9
	□- Yes	□- No		\$	9
	□- Yes	□- No		\$	9
	□- Yes	□- No		\$	9
	□- Yes	□- No		\$	9
	□- Yes	□- No		\$	9
	☐ Yes	□- No		\$	9
	□- Yes	□- No		\$	9
. If any of the subcontractors you have selected to perform the subcontrac justification for your selection process (attach additional page if necessa	☐ Yes ☐- Yes ting opportunit	□- No	in <b>SECTION B-1</b> is <u>not</u> a	\$	, provide <u>v</u>

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



# HUB Subcontracting Opportunity Notification Form

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

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

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

TION: A PRIME CONTRACTOR'S INFORMATION			State of T	OVAC VID #.	
Company	Name:		State of 1		
Point-of-Contact:					
E-mail Address:				r ax " ·	
TION: B CONTRACTING STATE AGENCY AND REQUIS					
Agency Name:					
Point-of-Contact:				Phone #:	
Requisition #:			— Bid C	Open Date:	(mm/dd/yyyy)
TION: C SUBCONTRACTING OPPORTUNITY RESPON	SE DUE DATE, DESCRIP	TION, REQUIR	EMENTS AND	RELATED	INFORMATION
otential Subcontractor's Bid Response Due Date:					
If you would like for our company to consider you	r company's bid for the sub	contracting oppo	ortunity identifie	ed below in I	tem 2,
we must receive your bid response no later	than	on		<u></u> .	
	Central Time	Da	te (mm/dd/yyyy)		
accordance with 34 TAC §20.14, each notice of subcontracting op ven (7) working days to respond to the notice prior to submitting of bmitting our bid response to the contracting agency, we must development centers (in Texas) that serves members of groups rvice Disabled Veteran) identified in Texas Administrative Code,	our bid response to the contra rovide notice of each of our s s (i.e., Asian Pacific America §20.11(19)(C).	cting agency. In ubcontracting of n, Black America	addition, at leas oportunities to t an, Hispanic Am	t seven (7) w wo (2) or mon nerican, Nativ	orking days prior to re trade organizati re American, Won
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#### **APPENDIX FOUR**

#### **CAMPUS MAP**



**APPENDIX FOUR** Page 1 of 1

210 W. 6<sup>TH</sup> Street, Suite B.140E, Austin, TX 78701

# APPENDIX FIVE INFORMATION REGARDING UNIVERSITY'S COMPREHENSIVE PROPERTY PROTECTION AND BUILDER'S RISK PROGRAMS

#### University's Current Property Program Design – Effective April 1, 2016 – April 1, 2017

The University of Texas System provides a master property insurance plan ("Plan") for its fourteen Institutions. The Plan consists of two programs including a Fire and All Other Perils Program (Fire and AOP) and Named Windstorm and Resulting Flood Program (Wind and Flood). The Plan provides coverage for All Risks of Direct Physical Loss or Damage with a \$1,300,000,000 per occurrence limit. The program includes a \$250 million sublimit for Named Windstorm.

A per occurrence deductible of \$5,000,000 is in place for all perils except Named Windstorm which has a \$50,000,000 per occurrence deductible at UTHSC Houston (locations in Texas Medical Center only) and UT MDACC (locations in Texas Medical Center only). A \$100,000,000 per occurrence deductible applies for UTMB (locations in Galveston only). For all other locations in Tier 1 counties, a deductible of 5% of the value of the "Unit of Insurance" applies subject to a \$5,000,000 minimum and \$50,000,000 maximum. The following shall be considered a separate "Unit of Insurance": (a) each separate building or structure (b) all personal property at each separate building or structure (c) any resulting TIME ELEMENT for the twelve (12) months immediately following the date of the loss at each separate building or structure. An annual aggregate deductible of \$15,000,000 applies for all perils except Named Windstorm.

The Boiler and Machinery deductible is \$100,000 per occurrence with certain exceptions for large power generation equipment at UT Austin.

University funds a share of the commercial insurance program excess of the deductible; University prefers to fund the most expensive share of the commercial insurance program.

Primary insurance policies providing low limits (up to \$4.424 million per building/contents for wind and \$1,000,000 maximum building/contents for flood) are purchased through the Texas Windstorm Insurance Association (TWIA) for facilities in Tier 1 seacoast territories, the National Flood Insurance Program (NFIP) for properties located in various flood zones, and deductible buydowns are purchased for other properties as needed.

#### **Graphical Depiction of Current Master Property Program Design**

#### **Named Windstorm**

#### \$250 million **UT Share** Named Windstorm 7% of 75m layer x of 25m Commercial Insurance Policy \$250m Layer \$75 million UTMB 3 Year Aggregate Named Windstorm Deductible Buydown \$50m \$50 million 4 Interim Financing 60% Fund 40% Institution with Loss Institution Deductible \$250k \$250,000 (can be eroded by NFIP & TWIA Policies) **NFIP & TWIA Policies**

#### Fire and AOP



#### **NFIP and TWIA Policies**

From June 2015 to June 2016 the following TWIA and NFIP policies were purchased:

NFIP - 189 policies U.T. Arlington – 1 Policy U.T. Austin – 28 Policies (26 of which are Marine Science Institute in Port Aransas)

U.T. Permian Basin – 1 Policy

U.T. Rio Grande Valley - 25 Policies

U.T. San Antonio – 1 Policy

UTHSC-Houston - 15 Policies

UTMB Galveston - 73 Policies

UTMDACC - 45 Policies

#### TWIA - 1 Master policy with 50 locations

U.T. Austin – 27 Locations (All are Marine Science Institute in Port Aransas)

U.T. Rio Grande Valley - 13 Locations

UTMB Galveston - 8 Locations

UTHSC-Houston - 1 Location

Each year, University anticipates adding 3-5 new NFIP policies and adding 3-5 locations to currently purchased TWIA policies. These decisions will be derived in part by broker recommendations.

#### **UT MB Galveston Named Windstorm Deductible Buydown**

UT MB Galveston purchases a \$50,000,000 Named Windstorm deductible buydown policy to reduce the \$100,000,000 deductible applicable to its main campus under the master property insurance plan limit. This policy is applicable to Galveston Island only locations and is effective April 1, 2016 to April 1, 2018. A limit reinstatement premium protector is also purchased.

#### **UT MDACC Excess Wind Placement**

UT MDACC purchases a \$100,000,000 Named Windstorm policy excess of the \$250,000,000 master property insurance plan limit. This policy is applicable to the UT MDACC locations only and is effective April 1, 2016 to April 1, 2017.

#### **Additional Property Policies Currently Purchased**

Standalone Named Windstorm Policy for a single apartment building in Brownsville, TX.

Three (3) separate Deductible Buydown Policies for individual buildings located in Houston, Austin, and San Antonio.

Each year, University anticipates adding a small number of new property policies to meet specific contractual or other risk management needs. These decisions will be derived in part by broker recommendations.

#### Current Values April 1, 2016- April 1,2017

Institution	FY 2016 Insured Property Values		FY 2016 Business Income Values		FY 2016 Total Insured Values	
U.T. Arlington	\$	1,683,722,660	\$	52,078,018	\$	1,735,800,678
U.T. Austin	\$	7,822,863,255	\$	270,574,736	\$	8,093,437,991
U.T. Dallas	\$	1,379,360,139	\$	64,610,130	\$	1,443,970,269
U.T. El Paso	\$	1,167,702,841	\$	43,001,340	\$	1,210,704,181
U.T. Permian Basin	\$	367,311,682	\$	8,772,280	\$	376,083,962
U.T. Rio Grande Valley	\$	916,911,181	\$	36,999,694	\$	953,910,875
U.T. San Antonio	\$	1,482,188,749	\$	57,473,875	\$	1,539,662,624
U.T. Tyler	\$	313,212,576	\$	13,317,750	\$	326,530,326
UTSWMC	\$	3,533,032,699	\$	576,709,141	\$	4,109,741,840

UTMB Galveston	\$ 3,194,252,181	\$ 263,570,000	\$ 3,457,822,181
UTHSC-Houston	\$ 1,678,649,549	\$ 423,580,000	\$ 2,102,229,549
UTHSC-San Antonio	\$ 1,492,559,346	\$ 187,824,210	\$ 1,680,383,556
UTMDACC	\$ 5,272,596,223	\$ 1,193,992,449	\$ 6,466,588,672
UTHSC-Tyler	\$ 381,881,701	\$ 37,833,615	\$ 419,715,316
U.T. System	\$ 86,514,253	\$ 500,000	\$ 87,014,253
TOTALS	\$ 30,772,759,035	\$ 3,230,837,238	\$ 34,003,596,273

#### **Risk Management Services**

Below are estimated numbers of campus visits and services to be performed in a year. Actual visits and services may vary.

#### Campus Visits - 15

**Building Surveys** – 108 buildings surveyed, total insured value \$6,225,535,304 **Current Markets on Master Property Insurance Placement:** North American Retail, E&S, London, Bermuda.

### University's Current Builder's Risk Program Design – Effective November 1, 2013 – November 1, 2016

University provides a Master Rolling Builder's Risk Program for its fourteen Institutions and System Administration. The program provides coverage for physical loss or damage to the work, buildings or other structures, soft costs, and delay in completion with an overall \$300,000,000 program limit. Any project that is bound as a part of the program within the effective period is covered for up to forty-eight (48) months. Current broker is compensated based on a commission subject to an annual cap.

Each project is afforded dedicated limits under the program. Since November 1, 2013, forty-eight (48) construction/renovation projects have been added to the program with limits totaling \$1,962,451,040. These projects have ranged from \$5 million in insured values to nearly \$230 million.

A \$25,000 AOP per occurrence deductible is in places for projects valued at less than or equal to \$50 million. For projects valued at more than \$50 million and for renovation projects, the AOP deductible is \$50,000. For Flood Zones A, V, and D, the per occurrence deductible is \$250,000. For Flood Zones B and X500, the per occurrence deductible is \$100,000. The applicable AOP deductible applies for all other Flood Zones. The Named Windstorm deductibles are as follows: 2%/\$250,000 minimum for Harris County, TX, 3%/\$250,000 minimum for Galveston, TX, 2%/\$250,000 minimum and \$1,000,000 maximum for all other Tier 1 counties, and the applicable AOP deductible for all other locations.

#### **UTMB Ike Master Builder's Risk Program**

University obtained a Builder's Risk program for Hurricane Ike-related permanent repair and mitigation work beginning in 2010. The current policy term is June 18, 2013 – February 2, 2017.

This policy provides coverage in the form of an "underlying" master property insurance plan that insures the fire (\$5 million) and named windstorm (\$50 million) deductibles applicable to University's Plan already in place for all University institutions. Coverage applies only for reconstruction/mitigation work, does not encompass coverage for construction of new buildings, and is specific only to UTMB. Six carriers participate in the current policy.

Deductibles are \$25,000 for most perils. The deductible for Flood is \$50,000 per occurrence, except:

• 5% of the values per Project Work Order affiliated with the Project Worksheet or Construction Value at Risk at the time of loss per Affected Building or Structure, whichever is less, subject to a minimum of \$500,000 and maximum of \$5,000,000 per occurrence as respects the peril of Flood in Special Flood Hazard Areas. The deductible for Named Windstorm (including storm surge) is:

5% of the values per Project Work Order affiliated with the Project Worksheet or Construction Value at Risk at the time of loss per Affected Building or Structure, whichever is less, subject to a minimum of \$250,000 per occurrence as respects the peril of Named Windstorm.

#### **UT MDACC JOC Builder's Risk Program**

UT MDACC also purchases an annual Builder's Risk policy for job order contracted renovation work occurring at existing buildings at the UTMDACC campus locations in Houston, TX, Bastrop, TX, and Smithville, TX. The total limit of the policy is \$13,000,000 for an estimated 160 projects, half valued at less than \$15,000 and the other half valued at \$15,000 or more.

#### APPENDIX SIX

## SECURITY CHARACTERISTICS AND FUNCTIONALITY OF CONTRACTOR'S INFORMATION RESOURCES

The specifications, representations, warranties and agreements set forth in Proposer's responses to this **APPENDIX SIX** will be incorporated into the Agreement.

"Information Resources" means any and all computer printouts, online display devices, mass storage media, and all computer-related activities involving any device capable of receiving email, browsing Web sites, or otherwise capable of receiving, storing, managing, or transmitting Data including, but not limited to, mainframes, servers, Network Infrastructure, personal computers, notebook computers, hand-held computers, personal digital assistant (PDA), pagers, distributed processing systems, network attached and computer controlled medical and laboratory equipment (i.e. embedded technology), telecommunication resources, network environments, telephones, fax machines, printers and service bureaus. Additionally, it is the procedures, equipment, facilities, software, and Data that are designed, built, operated, and maintained to create, collect, record, process, store, retrieve, display, and transmit information.

"University Records" means records or record systems that Proposer (1) creates, (2) receives from or on behalf of University, or (3) has access, and which may contain confidential information (including credit card information, social security numbers, and private health information ("PHI") subject to Health Insurance Portability and Accountability Act ("HIPAA") of 1996 (Public Law 104-191), or education records subject to the Family Educational Rights and Privacy Act ("FERPA").

#### **General Protection of University Records**

- 1. Describe the security features incorporated into Information Resources (ref. **Section 5.3.4** of the RFP) to be provided or used by Proposer pursuant to this RFP.
- 2. List all products, including imbedded products that are a part of Information Resources and the corresponding owner of each product.
- 3. Describe any assumptions made by Proposer in its proposal regarding information security outside those already listed in the proposal.

Complete the following additional questions if the Information Resources will be hosted by Proposer:

- 4. Describe the monitoring procedures and tools used for monitoring the integrity and availability of all products interacting with Information Resources, including procedures and tools used to, detect security incidents and to ensure timely remediation.
- 5. Describe the physical access controls used to limit access to Proposer's data center and network components.
- 6. What procedures and best practices does Proposer follow to harden all systems that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed?

- 7. What technical security measures does the Proposer take to detect and prevent unintentional, accidental and intentional corruption or loss of University Records?
- 8. Will the Proposer agree to a vulnerability scan by University of the web portal application that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed? If Proposer objects, explain basis for the objection to a vulnerability scan.
- 9. Describe processes Proposer will use to provide University assurance that the web portal and all systems that would hold or process University Records can provide adequate security of University Records.
- 10. Does Proposer have a data backup and recovery plan supported by policies and procedures, in place for Information Resources? If yes, briefly describe the plan, including scope and frequency of backups, and how often the plan is updated. If no, describe what alternative methodology Proposer uses to ensure the restoration and availability of University Records.
- 11. Does Proposer encrypt backups of University Records? If yes, describe the methods used by Proposer to encrypt backup data. If no, what alternative safeguards does Proposer use to protect backups against unauthorized access?
- 12. Describe the security features incorporated into Information Resources to safeguard University Records containing confidential information.

Complete the following additional question if Information Resources will create, receive, or access University Records containing PHI subject to HIPAA:

13. Does Proposer monitor the safeguards required by the HIPAA Security Rule (45 C.F.R. § 164 subpts. A, E (2002)) and Proposer's own information security practices, to ensure continued compliance? If yes, provide a copy of or link to the Proposer's HIPAA Privacy & Security policies and describe the Proposer's monitoring activities and the frequency of those activities with regard to PHI.

#### **Access Control**

- 1. How will users gain access (i.e., log in) to Information Resources?
- 2. Do Information Resources provide the capability to use local credentials (i.e., federated authentication) for user authentication and login? If yes, describe how Information Resources provide that capability.
- 3. Do Information Resources allow for multiple security levels of access based on affiliation (e.g., staff, faculty, and student) and roles (e.g., system administrators, analysts, and information consumers), and organizational unit (e.g., college, school, or department? If yes, describe how Information Resources provide for multiple security levels of access.
- 4. Do Information Resources provide the capability to limit user activity based on user affiliation, role, and/or organizational unit (i.e., who can create records, delete records, create and save reports, run reports only, etc.)? If yes, describe how Information Resources provide that capability. If no, describe what alternative functionality is provided to ensure that users have need-to-know based access to Information Resources.

- 5. Do Information Resources manage administrator access permissions at the virtual system level? If yes, describe how this is done.
- 6. Describe Proposer's password policy including password strength, password generation procedures, password storage specifications, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

Complete the following additional questions if Information Resources will be hosted by Proposer:

- 7. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that would have access to the environment hosting University Records to ensure need-to-know-based access?
- 8. What procedures and best practices does Proposer have in place to ensure that user credentials are updated and terminated as required by changes in role and employment status?
- 9. Describe Proposer's password policy including password strength, password generation procedures, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

#### **Use of Data**

Complete the following additional questions if Information Resources will be hosted by Proposer:

- 1. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that have access to the environment hosting all systems that would hold or process University Records, or from which University Records may be accessed, to ensure that University Records will not be accessed or used in an unauthorized manner?
- 2. What safeguards does Proposer have in place to segregate University Records from system data and other customer data and/or as applicable, to separate specific University data, such as HIPAA and FERPA protected data, from University Records that are not subject to such protection, to prevent accidental and unauthorized access to University Records?
- 3. What safeguards does Proposer have in place to prevent the unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of University Records?
- 4. What procedures and safeguards does Proposer have in place for sanitizing and disposing of University Records according to prescribed retention schedules or following the conclusion of a project or termination of a contract to render University Records unrecoverable and prevent accidental and unauthorized access to University Records? Describe the degree to which sanitizing and disposal processes addresses University data that may be contained within backup systems. If University data contained in backup systems is not fully sanitized, describe processes in place that would prevent subsequent restoration of backed-up University data.

#### **Data Transmission**

1. Do Information Resources encrypt all University Records in transit and at rest? If yes, describe how Information Resources provide that security. If no, what alternative methods are used to safeguard University Records in transit and at rest?

Complete the following additional questions if Information Resources will be hosted by Proposer:

- 2. How does data flow between University and Information Resources? If connecting via a private circuit, describe what security features are incorporated into the private circuit. If connecting via a public network (e.g., the Internet), describe the way Proposer will safeguard University Records.
- 3. Do Information Resources secure data transmission between University and Proposer? If yes, describe how Proposer provides that security. If no, what alternative safeguards are used to protect University Records in transit?

#### **Notification of Security Incidents**

Complete the following additional questions if Information Resources will be hosted by Proposer:

- 1. Describe Proposer's procedures to isolate or disable all systems that interact with Information Resources in the event a security breach is identified, including any systems that would hold or process University Records, or from which University Records may be accessed.
- 2. What procedures, methodology, and timetables does Proposer have in place to detect information security breaches and notify University and other customers? Include Proposer's definition of security breach.
- 3. Describe the procedures and methodology Proposer has in place to detect information security breaches, including unauthorized access by Proposer's and subcontractor's own employees and agents and provide required notifications in a manner that meets the requirements of the state breach notification law.

#### **Compliance with Applicable Legal & Regulatory Requirements**

Complete the following additional questions if Information Resources will be hosted by Proposer:

- 1. Describe the procedures and methodology Proposer has in place to retain, preserve, backup, delete, and search data in a manner that meets the requirements of state and federal electronic discovery rules, including how and in what format University Records are kept and what tools are available to University to access University Records.
- 2. Describe the safeguards Proposer has in place to ensure that systems (including any systems that would hold or process University Records, or from which University Records may be accessed) that interact with Information Resources reside within the United States of America. If no such controls, describe Proposer's processes for ensuring that data is protected in compliance with all applicable US federal and state requirements, including export control.
- 3. List and describe any regulatory or legal actions taken against Proposer for security or privacy violations or security breaches or incidents, including the final outcome.

#### **APPENDIX SEVEN**

# DISCLOSURE OF INTERESTED PARTIES (Texas Ethics Commission Form 1295)

This is a sample of the Texas Ethics Commission's FORM 1295 – DISCLOSURE OF INTERESTED PARTIES. Please use the Texas Ethics Commission electronic filing web page (at <a href="https://www.ethics.state.tx.us/whatsnew/elf\_info\_form1295.htm">https://www.ethics.state.tx.us/whatsnew/elf\_info\_form1295.htm</a>) to complete the most current Disclosure of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and University.

	CERTIFICATE OF INTE	FORM <b>1295</b>						
	Complete Nos. 1 - 4 and 6 if the Complete Nos. 1, 2, 3, 5, and 6	OFFIC	DE USE ONLY					
1	Name of business entity filing form, a entity's place of business.	ess						
2	Name of governmental entity or state which the form is being filed.							
3	Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.							
4	Name of Interested Party	City, State, Country	Natu	re of Interest	(check applicable)			
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5	5 Check only if there is NO Interested Party.							
6	AFFIDAVIT	I swear, or affirm, under penalty of perjury	, that the	e above disclos	ure is true and correct.			
	Signature of authorized agent of contracting business entity							
AFFIX NOTARY STAMP / SEAL ABOVE								
	Sworn to and subscribed before me, by the said							
of, 20, to certify which, witness my hand and seal of office.								
	Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath							
	ADD	ADDITIONAL PAGES AS NECES	SAR	1				

Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Adopted 10/5/2015

#### Request for Proposal No. ORM05232016

# Selection of a Vendor to Provide Property Insurance Broker and other Risk Management Services related to the assessment and management of University's property risk and exposure

Submittal Deadline: June 15, 2016

Questions and Responses

All questions submitted by potential Proposers in compliance with the RFP are listed below in bold. Questions were submitted in writing prior to the deadline or were asked verbally during the Pre-Proposal Conference on June 1, 2016. The questions are presented as they were posed from potential Proposers. In some instances, questions were edited by University for clarity. Responses were prepared by University and are provided directly below the question in regular text.

#### Can the HSP be sent in advance to the HUB department for review?

Yes, the HUB office is available to do a courtesy review of the HSP, and will send comments back to the proposer as part of the courtesy review. If the proposer would like to submit their HSP for a courtesy review, the HUB department asks to receive the HSP at least two (2) days before the RFP submittal deadline to allow adequate time for review. Proposers are still required to submit the HSP with their proposal by the submittal deadline. The courtesy review does not count as the submission.

#### Who is the HUB contact person for this RFP?

Amy Nemetz

Email: <a href="mailto:anemetz@utsystem.edu">anemetz@utsystem.edu</a>

Phone: 512-499-4485

Please note that proposers can contact Ms. Nemetz at any time throughout the RFP process for HUB assistance.

#### What HUB vendors currently work on the program?

There are not currently any HUB vendors performing services as part of the current contract.

#### If proposal is sent by Fedex to address on RFP will it be accepted?

Yes, a proposal sent via Fedex will be accepted if it is received by University and stamped by the submittal deadline specified in Section 2.4.

#### Who is the current broker, and which office takes the lead on University's program?

Beecher Carlson, Atlanta office

How would you recommend the claim handling expenses be addressed when it comes to Broker compensation for services?

Proposers are encouraged to review the RFP, specifically Appendix Two, Exhibit A Scope of Work, D Claims Handling, and propose compensation for claims handling services in Section 6.1.4. It is acceptable to propose alternative compensation structures, such as compensation that varies based on number/size/etc. of claims, for consideration.

#### Do you rely on your current Broker for claims handling support?

University does not believe that a response to this question is needed to allow for an adequate response to the RFP. Proposers should prepare their responses based upon the information provided in the RFP.

What is the broker doing when it comes to loss control? Is the carrier, broker, or a third party performing loss control services? How is the current broker being compensated?

University does not believe that a response to this question is needed to allow for an adequate response to the RFP. Proposers should prepare their responses based upon the information provided in the RFP.

Please confirm UT's self-funded portion of the program. The diagram says 7% of 75x25 as well as the portion between \$250,000 institution and policy deductibles.

Named Windstorm: Self-fund the first \$50 million and 7% of \$75 million layer excess of \$25 million, up to \$100 million. All Other Perils: Self-fund the first \$5 million and 7% of \$75 million layer excess of \$25 million.

Please confirm the UTMB three year aggregate windstorm deductible buydown structure/term.

a. The diagram shows the three year deductible buydown is \$50M excess of \$50M, up to \$75M (scale at the left)?

UTMB buys down \$50 million excess of \$50 million, up to \$100 million. The \$75 million line indicates where the UT Share contribution takes place on a systemwide basis.

b. The policy term in appendix five, 2 of 4 shows two years.

The original three year term expired in 2015. UTMB has extended the coverage through 2018.

Please provide a detailed schedule including limits, deductibles and carriers. Please provide a list of all participating insurers.

University's current program structure is not relevant; as it may not necessarily represent the best value going forward. Proposers are encouraged to develop a proposal that presents the best value to University based upon the information provided in the RFP.

Please provide a statement of locations/values (SOV) with designations (or definitions) for CAT (catastrophe) locations exposed/covered by separate programs (Named Wind/NFIP/TWIA)

University does not believe that a response to this question is needed to allow for an adequate response to the RFP. Proposers should prepare their responses based upon the information provided in the RFP.

Please provide a schedule showing effective dates and limits for the NFIP flood policies by location.

Generally, UTMB NFIP policies listed in Appendix Five renew on 6/1. The majority of the remaining NFIP policies renew on 4/1. Limits vary by policy, but the majority of policies are written for the maximum limits of \$500,000 per building and \$500,000 for contents. All underwriting information will be provided to the selected vendor. Proposer should prepare their responses based upon the information provided in the RFP.

Please provide a detailed loss history including: date of loss, cause of loss, location of loss, ground up loss (separated by PD and BI?), deductible applicable at time of loss, net loss.

University does not believe that a response to this question is needed to allow for an adequate response to the RFP. Proposers should prepare their responses based upon the information provided in the RFP.

Please provide a copy of the current insurance coverage form.

University does not believe that a response to this question is needed to allow for an adequate response to the RFP. The coverage form will be provided to the selected vendor. Proposer should prepare their responses based upon the information provided.

Is terrorism currently placed through the property placement (TRIA) or on a standalone basis?

Terrorism is placed on a stand-alone basis.

Please confirm whether international intermediary fees (ex. Lloyds brokers) shall be included in the fees proposed. Please confirm whether U.S. domestic wholesale fees/commissions shall be included in the fees proposed.

If Proposer intends to use an owned intermediary/wholesaler, Proposer's response should describe the services to be performed by the owned intermediary/wholesaler as well as the qualifications of the key personnel. Any anticipated fees/commissions earned by owned

intermediaries should be included in the fees proposed and should be specifically described. Any anticipated fees/commissions earned by non-owned intermediaries/wholesalers related to policy placement should not be included in Proposer's Fees, but should be described and noted separately.

The use of wholesale brokers can enhance market penetration. However, some retail brokers rely on wholesale brokers more than others, and can use those resources to supplement modeling, engineering and/or income while other brokers perform those referenced services in-house. How is this being managed to evaluate competitive proposals?

All costs required to provide the services specifically described in the Scope of Work should be described in the fees proposed, regardless of whether the services are performed in house or by a third party. See question above regarding wholesaler fees/commissions for policy placement services.

Does the current solicitation scope of work mirror the services currently being provided by the incumbent broker? If not, what services are being provided under the current contract?

University does not believe that a response to this question is needed to allow for an adequate response to the RFP. Proposers should prepare their responses based upon the information provided in the RFP.

What is the current compensation structure? Flat fee or commission? If Flat Fee, what is the current fee?

University does not believe that a response to this question is needed to allow for an adequate response to the RFP. Proposers should prepare their responses based upon the information provided in the RFP.

#### Are the Scored Criteria in Section 2.3 weighted?

The following weights will be applied to the Scored Criteria in Section 2.3.1:

2.3.1.1 the cost of goods and services;	10%
2.3.1.2 the reputation of the Proposer and of the Proposer's goods or services;	5%
2.3.1.3 the quality of the Proposer's goods or services;	35%
2.3.1.4 the extent to which the goods or services meet the University's needs;	20%
2.3.1.5 the Proposer's past relationship with the University;	10%
2.3.1.6 the total long-term cost to the University of acquiring the Proposer's goods or	services
	10%
2.3.1.7 The Proposer's exceptions to the terms and conditions set forth in <b>Section</b> RFP.	4 of this <b>10%</b>