

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

Solicitation

SOLICITATION NAME: 'basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement'

SOLICITATION NUMBER: 582-9-95022

SCHEDULE OF EVENTS

EVENT	DATE	Time
Issue Solicitation	7-8-09	N/A
Pre-Solicitation Conference	7-13-09	3:00PM
Deadline for Submission of Questions	7-15-09	3:00PM
Deadline for Submission of Solicitation Due Date	7-22-09	3:00PM
Expected Award of Contract	7-31-09	N/A
Expected Contract Start Date	8-3-09	N/A

PRE-SOLICITATION CONFERENCE: Attendance at the Pre-Solicitation Conference is not mandatory. A Pre-Solicitation Conference is scheduled for Monday July 13, 2009, 3:00PM Central Daylight Time. The location of the Pre-Solicitation Conference is, the TCEQ Central Office, 12100 Park 35 Circle, Austin, TX 78753, Building A , Room 114

Use this page as the Front Page of your Response

SIGN YOUR RESPONSE IN THE SPACE BELOW

Your signature binds you to everything in your Response, including the HUB Subcontracting Plan (HSP)

Failure to manually sign here will disqualify your Response

With regard to the attached Response, including the HSP, Responder certifies and agrees:

- Responder's information is complete, true and complies with all requirements in the Solicitation;
- Responder will promptly notify TCEQ of any relevant changes to the Response information;
- Response terms including prices are fixed for 120 days from due date for Response ;
- Responder affirmatively waives confidentiality of all information including email addresses;
- Responder will completely perform the terms of the Response (including the HSP and agreed amendments);
- The person signing is authorized to sign and certify this Response for the Responder.

Authorized Responder Signature

Date

Responder Printed Name

Responder Title

Company Name:		Contact Name, Title:	
Company Address:		Contact Phone, Fax:	
		E-mail:*	
Vendor ID Number:		Back-Up Contact, Title:	

*If provided, email address confidentiality is waived.

An Identification Number is required to process payment for goods/services purchased against contract awards. The Federal Employers Identification Number (EIN) will be used to establish a Payee ID Number:

PLEASE ENTER YOUR FEDERAL EIN: ____ _ □

Every vendor MUST have an EIN prior to receiving payment under an awarded contract. This is being required in an effort to minimize identity theft. For information on obtaining your EIN, you may call the IRS at 800-829-4933 or visit the following web site: <http://www.irs.gov/businesses/>

For Questions, contact the TCEQ Purchasing and Contract Officer Al Chaney at 512-239-1368 or; or email achaney@tceq.state.tx.us

For HUB questions, contact Laura Cagle at 239-1273, and/or at lcagle@tceq.state.tx.us.

Exclusive Addresses for Delivery: (LABEL **INSIDE** AND **OUTSIDE** PACKAGES)

Mail Response to: TCEQ MC182 Procurements & Contracts PO Box 13087 Austin, Texas 78711-3087	Hand-deliver Response to: TCEQ MC182 Procurements & Contracts 12100 Park 35 Circle, Bldg. A, Rm123 Austin, Texas 78753	Overnight/Express Response to: TCEQ MC182 Procurements & Contracts 12100 Park 35 Circle, Bldg. A, Rm 122 Austin, Texas 78753
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CLASS 920, ITEM 045

PROJECT DESCRIPTION: The work to be performed under this Contract consists of providing the software and services required to maintain, enhance, and expand TCEQ's basis2 Integrated Billing & Accounts Receivable (IBAR). TCEQ's IBAR consists of the basis2 custom Billing & Accounts Receivable system and custom TCEQ interface billing components including Uniform Statewide Accounting System (USAS).

ESTIMATED CONTRACT PERIOD:

The estimated Contract Period shall be in effect from effective date shown on Contract Signature Page or the latest date of the parties' signatures shown on the Contract Signature Page to (8-3-09 to- 12-31-09), subject to any renewal provisions set forth in the Special Terms and Conditions. In the event there is no Contract Signature Page, the Contract Period shall begin on the effective date of the first purchase order issued by TCEQ.

"This solicitation is being advertised under TX. Govt'. Code, Section 2155.067. The issuing office believes that the requested items are proprietary to one manufacturer and/or specifications. Only responses confirming exactly to these specifications will be considered in determining an award. The issuing office strongly encourages responses from all qualified vendors who may be to provide the specified items."

MANDATORY QUALIFICATIONS

MINIMUM MANDATORY QUALIFICATIONS

The work to be performed under this Contract consists of providing the software and services required to maintain, enhance, and expand TCEQ's participation in the **basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement** for TCEQ Prophecy basis2 Intergrated Billing & Accounts Receivable system and several dataflows and TCEQ custom billing interfaces including Texas's Comptroller's Uniform Statewide Accounting System (USAS).

Contractor will provide software upgrades, support and services required to maintain, enhance, and expand TCEQ's participation in **basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement** the TCEQ's **basis2 Integrated Billing & Accounts Receivable (IBAR) system** and related dataflows and custom agency interfaces and as necessary to comply with basis2 requirements of TCEQ including:

- basis2 software application and utilities and Oracle Reports
- Installation, training, and testing services
- Data flow and interface migration services
- Data flow and interface development, configuration, and enhancement
- Ongoing general **basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement** maintenance & support services

Contractor must demonstrate:

- Significant expertise, knowledge and programming development and maintenance experience in JAVA/J2EE, PL/SQL, XML, Oracle (9i, 10g, and 10g RAC), and basis2 application software.
- Significant expertise and knowledge of the Prophecy's basis2 application software '**basis2 Integrated Billing & Accounts Receivable (IBAR) system**, Oracle Financials, Oracle Application architecture version

12, Oracle Reports and operational details and TCEQ's interface requirements associated with TCEQ's program billing and accounts receivable file interfaces and Texas Comptroller's Uniform Statewide Accounting System (USAS).

Contractor must have the extensive knowledge and experience required to:

- Develop, customize, implement, and support the TCEQ's basis2 Billing & Accounts Receivable system and TCEQ's custom interface requirements from individual custom billing interface files originating from TCEQ Program areas and interface with Texas Comptroller's Uniform Statewide Accounting System (USAS)
- Support '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' and provided all of its maintenance
- Maintain thorough familiarity with TCEQ's business processes, source databases, data structures, data extract procedures, formatting, and interfaces related to the development and continued operation of the '**basis2 Integrated Billing & Accounts Receivable (IBAR)**' system and TCEQ's dataflows.

Contractor must provide to TCEQ:

- Answers to technical questions relating to the installation, configuration, maintenance, and enhancement of software and other custom code that Prophecy Americas Inc. has developed for TCEQ in the past, and currently resides on TCEQ's hardware.
- Technical assistance in resolving problems that occur during the normal usage of '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' and associated dataflows and interfaces.
- Debugging, configuration design, optimization and tuning of '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' and associated dataflows and interfaces.
- Software design, optimization and tuning of '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' and associated dataflows and interfaces.

Contractor must demonstrate the ability to provide the following software tools:

- Prophecy **basis2 application software and TCEQ Integrated Billing & Accounts Receivable (IBAR) system**

Full description of the above products can be accessed through the following link:

<http://www.prophecyinternational.com/index.php>

SOLICITATION CONTENTS

TCEQ Includes the items marked "X"		
The Order of documents may be different than shown here. Contact TCEQ Coordinator for missing items.		
x	Front Page	
x	Solicitation Contents Page	
x	Your Response Contents	
x	Responders Affirmations	
x	Required/Statutory Clauses	
x	Responders Preferences	
x	Purchasing Authority	
x	Responder General Instructions	
x	General Terms and Conditions	
x	Special Terms & Conditions	
x	Scope of Work	
x	Evaluation of Responses	
x	Statement of Qualifications	
x	Describe the Work Plan	
x	Price Form	
x	Work Order Section	
x	Financial Section	
	Performance Bond	
	Payment Bond	
	Letter of Credit	
x	Insurance Requirements	
x	Federal Requirement and Forms	
	HUB Requirements and Forms	
	Attachment A	
	Attachment B	
	Attachment C	
	Attachment D	
	Other	

YOUR RESPONSE CONTENTS

You must include the items marked "X"

Your Response contents must be organized with the designated index tabs and in the designated order. If the item for a tab is not applicable to your Response, insert a page marked "Not Applicable" behind the tab.

x	TAB 1	Response Front Page. The Front Page of this Solicitation is the form for the Front Page of your Response. Signing this page binds you to your entire Response. Unsigned Responses are unacceptable.
x		Addendums (If applicable)
x	TAB 2	Statement of Qualifications (SOQ)
x		Responder's Company Qualifications
x		Responder's Company Past Performance
x		Key Personnel Qualifications
x		Other Qualifications Items. Client References
x	TAB 3	Work Plan or Technical Approach. No form. This is your Plan or Approach for performing the Contract.
x	TAB 4	Response Forms. Complete and submit all designated forms.
x	4.1	Price Form. Provide all prices and other information. Complete all blanks.
x	4.2	Preferences Form
x	4.3	Federal Forms (Attached to Federal Section)
	4.4	HUB Subcontracting Plan Forms (Attached to HUB Subcontracting Plan Section)
	4.5	Other
	TAB 5	Responders should use this Tab 5 for other information required or allowed to be submitted when a location is not designated.

RESPONSE CONTENTS**TO BE SUBMITTED NOT LATER THAN 10 DAYS AFTER AWARD OF THE CONTRACT**

X	Certificate of Insurance. See <u>Insurance Section</u> . Form included.
	Performance Bond. See Financial Section. Form included.
	Payment Bond. See Financial Section.
	Letter of Credit. See Financial Section.

RESPONDER'S AFFIRMATIONS

Prospective Responders are required to affirm their compliance with particular state laws, federal, laws or Comptroller of Public Accounts (CPA), Texas Procurement and Staff Services (TPASS) rules on any solicitation documents. Responders Affirmations become part of any solicitation and are binding terms and conditions of any resulting contract or purchase order. Any misrepresentation or false statement that is deemed material by the state, is a breach of contract, which shall void or make voidable any solicitation or resulting contract. Such responders may be removed from the Centralized Master Bidders List (CMBL) or any other state bid list, in addition to being barred from participating in future contracting opportunities with the State of Texas

1. The Responder has not given, offered to give, nor intends to give at anytime hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.
2. Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004(a), the responder has not received compensation for participation in the preparation of specifications for this solicitation.
3. Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004(b), the responder certifies that the individual or business entity named in this solicitation or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
4. Pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq. neither the responder nor the firm, corporation, partnership, or institution represented by the responder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the response made to any competitor or any other person engaged in such line of business.
5. If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, the responder certifies that the individual or business entity named in this response is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any responder subject to Section 231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the response. This information must be provided prior to award.
6. Responder agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
7. Responder agrees to comply with Texas Government Code, Title 10, Subtitle D, Section 2155.4441, relating to the use of service contracts for products produced in the State of Texas.
8. Responder certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with executive head of a state agency. If Section 669.003 applies, respondent will complete the following information in order for the proposal to be evaluated:
 Name of Former Executive:
 Name of State Agency:
 Date of Separation from State Agency:
 Position with Responder:
 Date of Employment with Responder:
9. By signing this solicitation, responder certifies that if a Texas address is shown as the address of the responder, responder qualifies as a Texas Resident Responder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter C, Rule §20.32 (68).
10. Suspension, debarment, and terrorism: Responder certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that responder is in compliance with the State of Texas statutes and rules relating to procurement and that responder is not listed on the Federal Governments terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>

11. Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a response or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the solicitation or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, the responder certifies that the individual or business entity named in this solicitation is not ineligible to receive the specified contract and acknowledges that any contract resulting from this Solicitation may be terminated and payment withheld if this certification is inaccurate.
12. Pursuant to Section 2262.003 of the Texas Government Code, the state auditor may conduct an audit or investigation of the vendor or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the vendor or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the vendor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.
13. Vendor shall defend, indemnify, and hold harmless the State of Texas, its officers, and employees, and CPA, its officers, and employees and contractors, from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, including without limitation attorneys' fees and court costs, arising out of, connected with, or resulting from any acts or omissions of vendor or any agent, employee, subcontractor, or supplier of vendor in the execution or performance of any contract with vendor resulting from this Solicitation. Vendor shall coordinate its defense with the Texas Attorney General as requested by CPA. This Section is not intended to and shall not be construed to require vendor to indemnify or hold harmless the State or CPA for any claims or liabilities resulting from the negligent acts or omissions of CPA or its employees.

REQUIRED/STATUTORY CLAUSES

1. Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services for which this chapter applies must be resolved under the provisions of this chapter.
2. The Contractor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of contractor of any agent, employee, subcontractor, or supplier or contractor in the execution or performance of this contract.
3. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").
4. Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on this solicitation and may result in disqualification.
5. Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.
6. The Technology Access Clause was repealed effective September 1, 2006 and replaced by Department of Information Resources Rules as follows:

Electronic and Information Resources Accessibility Standards, as required by 1 TAC Chapter 213.
 - a. Effective September 1, 2006, state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
 - b. Vendor shall provide Texas Commission on Environmental Quality (TCEQ) with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide TCEQ with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>

PREFERENCES

See Section 2.38 of the State of Texas Procurement Manual regarding preferences at
<http://www.window.state.tx.us/procurement/pub/manual/2-38.pdf>

CHECK BELOW IF PREFERENCE IS CLAIMED UNDER 34 TAC Rule 20.38

If not checked, preference cannot be applied in the case of a tie bid.

	Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran.
	Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran.
	Services offered by a Texas Bidder that is owned by a Texas resident service-disabled veteran.
	Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran.
	Agricultural products grown in Texas.
	Agricultural products offered by a Texas bidder.
	Texas vegetation native to the region.
	USA produced supplies, materials or equipment.
	Products of persons with mental or physical disabilities.
	Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel.
	Energy efficient products.
	Rubberized asphalt paving material.
	Recycled motor oil and lubricants.
	Products produced at facilities located on formerly contaminated property.
	Products and services from economically depressed or blighted areas.
	Vendors that meet or exceed air quality standards.
	Recycled or reused computer equipment of other manufacturers.
	Foods of higher nutritional value.

PURCHASING AUTHORITY

This list shows different methods under which TCEQ is authorized to purchase goods and services. This solicitation is made under the Method with an "X" in the box. If no box is marked, or if a box appears to be marked in error, contact TCEQ so that it can make a correction.

	PROCUREMENT METHOD	SOLICITATION TYPE	TCEQ MAY NEGOTIATE & REQUEST BEST AND FINAL OFFERS (BAFOs)
	Biddable Goods and Services. Texas Government Code Chapter 2155.	Invitation For Bid (IFB)	No
	Competitive Sealed Proposals	Request for Proposal (RFP)	Yes
	Scientific & Technical Environmental Services. Section 5.2291 (b) Texas Water Code, Chapter 2254 Gov. Code, Subchapter A	Request for Proposal (RFP)	Yes
X	Automated Information Technology Services (AIS), Information Technology (IT) Commodity Purchases, Telecommunications Commodities/Services . Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter H, Rule §20.391 and Texas Government Code, Title 10, Subtitle D, Chapter 2157, Sections 2157.001 through 2157.184	Request for Offer (RFO)	Yes
	Request for Grant Application (RFGA)		Yes
	Request for Qualifications (RFQ)		Yes

RESPONDER GENERAL INSTRUCTIONS**I. Preparing the Response****1. Revisions to Schedule of Events.**

TCEQ reserves the right to change the dates in the Schedule of Events on page one upon written notification to prospective responders through a posting on the Electronic State Business Daily as an addendum.

2. Deadline for Questions. Questions and requests for clarification or interpretation of the Solicitation must be submitted in writing and delivered to the TCEQ Coordinator by fax, mail, e-mail or other delivery not later than the date of the Deadline for Questions shown on the Solicitation and Response Front Page (Front Page). All the requests must be prominently labeled with Solicitation name, Solicitation Contract Number and the Due Date for Responses on the facsimile cover sheet or mailing envelope. TCEQ shall have sole discretion as to whether to respond to such questions.**3. Solicitation Conference.** If a Solicitation Conference is scheduled for this Solicitation, the date, time and location will be shown on the Front Page. Any Solicitation Conference scheduled after release of this Solicitation will be announced in an addendum and posted on the Electronic State Business Daily (ESBD) internet site at <http://esbd.cpa.state.tx.us>. Any additional information provided at the conference will be written as Addenda and posted on the same internet site.**4. Due Date for Responses.** Responses must be delivered prior to the due date to the appropriate TCEQ address on the Front Page and must be date and time stamped. Late and/or unsigned Responses will not be considered under any circumstances. No Responses may be submitted by telegraph, facsimile, email or other electronic means. Original Responses shall not be altered, amended or withdrawn after the Due Date/Time.

It is Responder's sole responsibility to ensure timely delivery of the Response. TCEQ will not be responsible for failure of service on the part of the U.S. Postal Office, courier companies, or any other form of delivery service chosen by the Responder. Alternate or supplemental Responses must be submitted as a separate item and be identified by the Responder's name and signature and be cross-referenced to the applicable item in the Response. All costs incurred in the preparation and submission of a Response are the exclusive responsibility of Responder. TCEQ will not reimburse Responders for any cost related to response preparation or submission. TCEQ reserves the right to retain all responses, excluding proprietary documentation, regardless of which response is selected. No responses will be sent back to vendors.

Public Solicitation Opening. To the extent required by law or Texas Comptroller of Public Accounts (CPA), Texas Procurement and Support Services Division procedure, TCEQ will attempt to read aloud all responder name and addresses for each response at solicitation openings. Responder list will be made available upon written request.

5. Addenda. Responses to questions and additional information which constitute addenda to the Solicitation will be posted at <http://esbd.cpa.state.tx.us>. All addenda are part of the Solicitation. No other explanation or interpretation will be considered official or binding. TCEQ will not be bound by any changes to the Solicitation unless they are in the addenda.**6. Submission of Responses.** Prepare and submit an original (designate the original) and three (3) copies of your Response, as follows:

- sign your Response on the Front Page and designate it as the original;
- include all documents listed on the Contents Page unless marked not applicable "N/A";
- obtain any missing applicable forms from TCEQ with sufficient time to use them in the Response;
- complete the applicable forms in this Solicitation;
- create any other applicable documents;
- insert all the completed applicable documents behind the specified tabbed sections;
- check at the end of these Instructions for more details about creating and completing specific applicable documents referred to on the Contents Page, for example see, "Additional Insurance" or "Bonds";
- secure all documents in a manner that readily permits copying, i.e. binder clips or three-ring notebook;
- place Response and duplicate copies in a sealed envelope or container addressed as shown on the Front Page;
- mark the envelope / container prominently with:
 - Responder name,
 - Solicitation name,
 - Solicitation Contract number, and
 - Solicitation Due Date/Time;
- Deliver to TCEQ before the Due Date / Time by an appropriate method shown on the Front Page.

II. Additional Information**7. Changes to the Solicitation Terms and Conditions.** Do not include exceptions or changes to any of the terms and conditions of the Solicitation unless and only to the extent that exceptions are expressly allowed. If not allowed, exceptions may result in total disqualification of the Response without notice. Even if allowed, exceptions which are not advantageous to the TCEQ may result in the deduction of points in the evaluation of the Response.

8. Response Evaluation and Selection. Depending on the applicable purchasing procedure, in order to secure the best value for the state, TCEQ may take one or more of the following actions in the selection process:
- accept the highest scoring Response without changes
 - request clarifications, assurances and corrections
 - conduct discussions on Responses scoring within a competitive range and request Best and Final Offers (BAFOs)
 - change the selection criteria in BAFO
 - select the highest scoring BAFO and accept without changes or negotiate better terms.

The pricing and all terms and conditions of Responses are fixed for 120 days from receipt by TCEQ and BAFOs are fixed for sixty days. The TCEQ may award one or more Contracts for all or part of the Work. In the event that TCEQ elects to accept a Response without changes, Responder agrees that TCEQ may indicate its acceptance by issuing a purchase order to Responder that references this Solicitation, and the resulting Contract shall be formed in accordance with the terms and conditions of this Solicitation. By submitting a Response, Responder represents that Responder has full power and authority to enter into an agreement based upon this Solicitation and any Response thereto, and that the person signing the Response on behalf of the Responder is fully authorized and empowered to enter into the Contract on behalf of Responder. Responder further acknowledges that it has read the Solicitation, understands it, and agrees to be bound by it.

9. Reservation of Rights. TCEQ reserves the right to accept or reject all or any part of any response, to waive any or all of these procedures for submitting responses, to waive any formalities and/or minor technicalities, and to award by item or groups of items, whichever best serves the interests of the TCEQ. TCEQ reserves the right to cancel this procurement and withdraw this Solicitation at any time before a Response is accepted by TCEQ. TCEQ shall be the sole judge of the best interests of the TCEQ. To determine the best value Response, in addition to price, TCEQ may consider other relevant criteria, including without limitation those set forth in the Texas Government Code, Title 10, Subtitle D, Sections 2155.074, 2156.007, and 2157.003.
10. Public Information. YOUR RESPONSE IS A PUBLIC RECORD. By submitting a Response, you are affirmatively waiving confidentiality of its contents and you give permission for:
- the public disclosure of your entire Response, including any information that might otherwise be confidential by law, even if it is marked confidential, and
 - the reproduction of your Response for TCEQ purposes or in response to public information requests.
11. Noncompliant Responses. Responses which do not comply with requirements in the Solicitation and state and federal law are subject to rejection. If TCEQ opts to hold discussions for the purpose of obtaining Best and Final Offers (BAFOs), TCEQ may include in the invitation to submit BAFOs any noncompliant Responses which TCEQ deems in its sole discretion are susceptible to being made acceptable, with the exception of Responses that do not include a compliant HUB Subcontracting Plan. The BAFO must be in compliance with all requirements.
12. Issues Affecting the Response and Prices.
- Quantity and nature of the Work. The quantities represent estimated annual quantities and are provided solely for determining competitive prices. The estimates are not promises to purchase a minimum amount of goods or services. Responders are required to inform themselves of all conditions which will affect the performance or the prices. By submitting a Response, Responder expressly waives any claims that there was a misunderstanding concerning the quantities or the nature of the Work.
 - Prices include all Contractor costs. Pricing reflects the full Scope of Work set forth herein and is inclusive of all Responder costs and charges in furnishing goods and services (e.g. delivery, labor, insurance, taxes, overhead, etc.). TCEQ will have no responsibility for any charges or fees hereunder that are not specifically set forth on the Price Form.
 - Price Form completion. Responder must provide pricing broken down per unit shown on the Price Form. Unit prices shall govern in the event of extension errors. Where applicable, Solicitations may require pricing by zone, Texas highway district, COG area, or other defined geographical area. A Responder may respond to any one or more geographical areas identified in the Solicitation, but a submitted Response must be for an entire area.
13. Statutes Restricting Awards. Several state and federal rules and statutes restrict state contract awards and payments under state contracts. State statutes and rules are available on the internet at <http://www.capitol.state.tx.us/statutes/statutes.html>, and www.sos.state.tx.us, respectively. (Check the site to verify that the statutes and rules shown are current.) Some of these restrictive statutes concern:
- Persons employed by TCEQ within the preceding 12 months. Section 2252.901, Texas Government Code;
 - Persons who are delinquent in child support obligations and entities in which delinquent child support obligors own a share of 25% or more. Section 231.006, Family Code;
 - Businesses debarred from receiving government Contracts. Texas Government Code § 2155.077; 40 Code of Federal Regulations (CFR) §31.35.

14. Ties. In the case of a tie which cannot be resolved by application of one or more statutory preferences, a selection may be made by drawing lots.
15. Conflict of Interest. From the time of submittal of the Response through the date of any award of any Contract, Responder shall make continuing disclosure of apparent, potential, and actual conflicts of interest. TCEQ reserves the right to refuse to Contract with the Responder or terminate any subsequent Contract at any time on the grounds of conflict of interest which TCEQ determines in its sole discretion may materially impact Contractor's actual or apparent ability to perform services for TCEQ under this Contract.
16. Protest Procedures. An actual or prospective responder or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract by TCEQ may formally protest to the Manager, Procurements and Contracts, TCEQ. Such protests must be in writing and received in the Procurement and Contracts Section within ten (10) business days after the aggrieved person or entity knows, or reasonably should have known, of the occurrence of the action which is the basis of the protest. Copies of the TCEQ Protest Procedures will be furnished to any responder without charge upon written request to the Manager, Procurements and Contracts, TCEQ.
17. Requirements Effective Upon Selection. Unless already included with the Response, the Responder(s) selected for a Contract must submit certain documents described below. Within 10 business days after TCEQ has issued an award of a Contract pursuant to this Solicitation, the selected Responder(s) must sign and deliver to the TCEQ Coordinator identified on the first page of this Solicitation:
 - If applicable, three executed originals of the Contract,
 - Certificate of Insurance demonstrating both the basic insurance coverage described in the Contract's General Conditions article, titled, Insurance, and if applicable, additional coverage described in the Additional Insurance Section; and
 - If applicable, Performance and Payment Surety Bonds or other Financial Security required in the Contract Financial Security Section. In no case shall a selected Responder commence work until the Contract is signed by both parties and the Certificate of Insurance and any required surety bonds have been delivered and approved.
18. Historically Underutilized Business ("HUB") Subcontracting Plan ("HUB Plan"). The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. TCEQ will make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services), and commodities purchases. TCEQ may achieve the annual procurement goals by contracting directly with HUBs or indirectly through subcontracting opportunities. A HUB Plan is required in your Response if any one of the following applies:
 - The Contents table, "Your Response Documents" or the Special Instructions show a HUB Plan is required; or
 - A HUB Plan Section is included in this Solicitation; or
 - Your Response is for \$100,000 or more.

If a HUB Plan is required, failure to complete and submit it in your Response will result in disqualification. Regardless of any statements in this Solicitation, if your total price offer (Total of the Price Form) is for \$100,000 or more you are required to submit a HUB Plan with your Response. You are encouraged to seek assistance in completing the HUB Plan from the TCEQ HUB coordinator, Laura Cagle, at (512) 239-1273 or at lcagle@tceq.state.tx.us. TCEQ will respond whenever possible. TCEQ does not guarantee a response to all inquiries. The HUB Plan must demonstrate you made a good faith effort to include HUBs in Subcontract work. If there are any changes to the information in the HUB Plan after it is submitted, you must inform the TCEQ in writing.

GENERAL TERMS AND CONDITIONS

Please read the following information carefully. These General Terms and Conditions govern any Contract issued as a result of this Solicitation. Any exceptions to these terms and conditions may be cause for a response to be disqualified. Additional terms and conditions are located in **Section II, Special Terms and Conditions**. Special Terms and Conditions supersede and take precedence over all other terms and conditions when they are in conflict.

1. DEFINITIONS

The following terms shall have the meanings ascribed below when capitalized in this document:

- 1.1 "Contract" means this Solicitation, the Response, and any additional documents attached hereto and executed by TCEQ and Responder. In the event of a conflict between the terms and conditions of this Solicitation and the terms and conditions of the Response, the terms and conditions of this Solicitation shall supercede and control for all purposes.
- 1.2 "Contract Period Amount" means the maximum payment obligation for which TCEQ may become liable hereunder; the "Contract Period Amount" may be set forth on the Contract signature page or the purchase order(s) issued by TCEQ hereunder.
- 1.3 "Fiscal Year" means the period of time from September 1 until the following August 31.
- 1.4 "Nonconformity" or "Defect" means a failure of a good, service, or the Work, to conform to the specifications, drawings, samples or other descriptions set forth in this Contract or otherwise furnished or adopted by TCEQ (including any product documentation provided by Contractor).
- 1.5 "Responder" means the person or entity submitting a response to this Solicitation; "Responder" may also be referred to as "you" or "Contractor".
- 1.6 "Response" means the document(s) filed by Responder in response to this Solicitation, including all addenda and Best and Final Offers; a Response is a firm offer.
- 1.7 "Solicitation" means the entire package of solicitation documents, including attachments and any addendums.
- 1.8 "Work" means the services and incorporated goods described in the Scope of Work. The term also includes the entire completed undertaking, or the various separately identifiable parts thereof, required to be furnished by Contractor under the Contract.

2. TERM OF CONTRACT

- 2.1 Contract Period. The Contract Period is set forth on the front page of the Solicitation, and begins to run on the later of : 1) the Effective Date shown on the Contract signature page, or 2) the latest date of the parties' signatures shown on the Contract signature page. In the event that there is no Contract signature page, the Contract Period shall begin on the effective date of the first purchase order issued by TCEQ hereunder. The Contract Period ends on the Expiration Date designated on the signature page or, if not stated, August 31 of the Fiscal Year in which the Work begins.
- 2.2 Renewals. Terms and conditions with respect to Contract renewal periods, if any, are set forth in Special Terms and Conditions ("Renewal Period"). TCEQ, at its own election, may extend the Contract for one hundred and eighty (180) days beyond any expiration of a Contract Period or Renewal Period.
- 2.3 Maximum TCEQ Obligation. In the event that TCEQ selects Responder, TCEQ agrees to pay Responder the prices set forth on the agreed Price Form that becomes incorporated into the Contract. The maximum TCEQ obligation during the Contract Period will not exceed the Contract Period Amount. The maximum TCEQ obligation for any one Fiscal Year shall not exceed a stated Fiscal Year Amount for the designated Fiscal Year. There is no guaranteed minimum expenditure by TCEQ. The Contract Period Amount and the Fiscal Year Amount for a designated Fiscal Year may be amended in accordance with the terms and conditions of this Contract.
- 2.4 Orders. Orders for goods that are dated during any Contract Period or Renewal Period must be honored even if received after the Contract expiration. Pricing shall be established by the date the order is placed.
- 2.5 Service Adjustment / Contingency Requirement ("SACR"). Because of the nature of the services, TCEQ may need to make allowances for unforeseen circumstances or contingency requirements. TCEQ may in its sole discretion increase a maximum TCEQ obligation. TCEQ may increase a maximum TCEQ obligation by an amount not to exceed 100% of the original stated amount for any Fiscal Year in order to pay the Contractor to perform any service needed.

3. ACCEPTANCE OF THE WORK

TCEQ shall have the right to test and inspect goods and services purchased hereunder to ensure conformance with the Contract specifications. No payment obligation shall accrue against TCEQ prior to TCEQ's acceptance of the goods and services, which acceptance shall not be unreasonably withheld. Contractor must obtain TCEQ's acceptance of the Work in writing on a TCEQ acceptance form. The acceptance must describe the Work or the relevant portion of the Work, and must be signed by the TCEQ Project Manager and any other TCEQ officials designated on the acceptance form. No other act or omission constitutes acceptance of the Work. With the written consent of the TCEQ, prior to completion of the Work, the Contractor may submit for acceptance a portion of the Work designated by TCEQ. If the Work is accepted in portions, the Contractor shall submit the entire,

completed Work as an integrated whole for final acceptance, and the final, written acceptance establishes the acceptance date for the complete Work. In no event shall Work be deemed "accepted" except in accordance with the express terms and conditions of the Contract. In no event shall payment by TCEQ be deemed an "acceptance" of the Work.

4. CONTRACTOR'S PERFORMANCE REQUIREMENTS

- 4.1 Compliance with Law. In addition to other statutory and regulatory references specifically identified in this Contract, Contractor shall comply with all applicable laws relating to purchasing in the State of Texas in addition to all applicable laws, statutes, and other governmental provisions, regulations or standards, federal, state, and local, any of which may be modified during the term of the Contract. Contractor shall have sole responsibility for obtaining all licenses and permits necessary for the performance of the Work.
- 4.2 Observance of TCEQ Policies, Rules and Regulations. Contractor and Contractor's employees, agents and subcontractors shall at all times observe and comply with all TCEQ policies, rules and regulations in the course of performance under the Contract.
- 4.3 Claims. Contractor shall give written notice to TCEQ of any claim, demand, suit, or other action (a "Claim") asserted against Contractor which either arises under the Contract, or which could have an adverse material effect on Contractor's ability to perform thereunder. Contractor shall give written notice directly to the Manager, Procurements and Contracts, TCEQ within three (3) working days of Contractor's receipt of notice of the Claim. Such notice shall state the date of notification of the Claim, the names and addresses of the claimant(s), the basis of the Claim, and the name of each person or entity against whom the Claim is asserted.
- 4.4 Notice of Conflict of Interest. Contractor shall notify TCEQ in writing of any actual, apparent, or potential conflict of interest regarding Contractor or any related entity or individual performing or having access to information regarding any portion of the Work. Any entity with an organizational conflict of interest and any individual with a personal conflict of interest shall not take part in any way in the performance of, nor have access to any information regarding, any portion of the Work that creates the conflict of interest. TCEQ reserves the right to determine in its sole discretion whether a conflict exists and may at any time cancel all or part of the Contract on the grounds of actual, potential or apparent conflict of interest.
- 4.5 License Fees and Royalties. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work (and subsequent use of the Work by TCEQ) of any invention, design, process, product or device which is the subject of patent rights, copyrights, or other intellectual property rights held by others.

5. PAYMENT AND INVOICES

- 5.1 Invoice. Unless otherwise authorized in writing by TCEQ, Contractor shall invoice monthly for the Work that TCEQ has accepted in accordance with Contract requirements. Where TCEQ has accepted the Work in portions prior to completion of the entire body of Work, Contractor must obtain TCEQ's written consent prior to submitting an invoice. Contractor's invoice must conform to TCEQ's invoicing requirements. Invoices must show the following on the face of the invoice: Invoice number, Invoice date, TCEQ order number, Work Order Number (if any), Vendor Identification Number, Item Description (Quantity (e.g. Hours), Unit Price, Extended Price), and Period of Service. If applicable, Contractor must also include with each invoice a completed Progress Assessment Report (PAR) form, available from TCEQ, describing Contractor's subcontracting activity for the invoiced period. Failure to submit invoices in accordance with the foregoing may delay payment. Vendor shall submit an original and one copy of an itemized invoice to the following address: TCEQ, Attn: Invoices, MC 227, P.O. Box 13087, Austin, Texas 78711-3087.
- 5.2 Intergovernmental Payments. If Contractor is a Texas state agency or Texas state university, invoices must also include the RTI number for ITV payments. If the payment is to be deposited to a local account via warrant or direct deposit, the invoice must state this fact on the face of the invoice and include the agency number and the agency general ledger fund account (D23 fund account) into which the funds are to be deposited.
- 5.3 Conditional Payment. At its sole option, TCEQ may authorize partial payment(s) against the total contract amount in advance of TCEQ's acceptance of the Work ("Progress Payments"). If Progress Payments are authorized, Contractor may retain the payment only if the Work is completed and accepted by TCEQ in accordance with the Contract. A Progress Payment does not constitute acceptance or a waiver of the requirement for acceptance. Contractor agrees to return any Progress Payments within 90 days after TCEQ's written notice of rejection of the Work. In addition to other remedies in this Contract and under law, TCEQ may setoff the amount of any Progress Payment for Work subsequently rejected against other payments due.
- 5.4 Terms; Disputed Invoice. The TCEQ will incur no penalty for late payment if payment is made within thirty (30) or fewer days from receipt of goods or services or an uncontested invoice, whichever is later. TCEQ's action in making a setoff against a payment constitutes a dispute under the Prompt Payment Act and tolls the accrual of interest on the payment

until a court judgment is issued requiring payment. The TCEQ is tax exempt in accordance with Texas Tax Code, subsection 151.309.

- 5.5 Reimbursement for Authorized Costs. TCEQ will reimburse Contractor only for those reasonable, documented, and actual costs paid by Contractor in the proper performance of the Work that have been specifically quoted by Contractor in the Price Form incorporated into the Contract, unless the Price Form expressly exempts the specific cost from this requirement. Authorized travel reimbursement, including per diem, will be paid in the amount of actual costs, up to the maximum allowed by law for state employees at the time the cost is incurred. Travel from contractor's home to place of business will not be reimbursed. Reimbursement for other items will not exceed actual costs and in no case will they exceed the market price in the local area where the Work is performed. Whenever a cost is to be determined pursuant to reimbursement requirements, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to TCEQ an itemized price breakdown together with supporting documentation.
- 5.6 Retainage. TCEQ may withhold 5% or less of each payment as retainage. Release of retainage may be requested in the final invoice.
- 5.7 Final Payment. After all Work has been accepted by TCEQ and all other Contractor obligations have been met, Contractor may submit the invoice for final payment, including any retainage. The final invoice shall be accompanied (except as previously delivered) by a complete and legally effective release of TCEQ from all known and unknown claims relating to the Contract. The release must be on a form obtained from TCEQ.
- 5.8 Waiver of Claims by Contractor. Contractor's acceptance of final payment constitutes a waiver of all claims against TCEQ related to the Contract, known or unknown, other than those previously and specifically excepted in writing from release.
- 5.9 Assignment of Claims. Contractor may assign its right to be paid amounts due or to become due as a result of the performance of this Contract to a bank, trust company, or other financing entity including any Federal lending agency. Any assignment shall cover all unpaid amounts payable under this Contract. An assignment hereunder does not relieve Contractor of any contractual obligation. All assignments must be approved in writing by the Manager, Procurement and Contracts, TCEQ. Notwithstanding any contrary provision in applicable law, TCEQ shall have no liability to Contractor or to any assignee on any claim arising from TCEQ's directing payment to Contractor instead of an assignee, or to an assignee instead of Contractor.
- 5.10 TCEQ May Refuse to Make Payment. Without prejudice to any other right or remedy available to TCEQ under this Contract or applicable law, TCEQ may refuse to approve for payment any amount invoiced by Contractor or, because of subsequently discovered evidence or the results of subsequent inspections or tests, TCEQ may nullify any prior approval for payment, if in TCEQ's reasonable judgment: i) the Work does not conform to the Contract; ii) Contractor owes a debt to the State of Texas; or iii) there are other items, whether or not adjudicated, entitling TCEQ to a set-off against the amount invoiced. If TCEQ refuses to approve the full amount invoiced pursuant to this paragraph, TCEQ must give Contractor written notice stating the reason for such action. This notice may be sent from TCEQ's payment processing section, and may be sent to Contractor's regular billing or Accounts Receivable address, and need not be delivered in conformity with the notice requirements of this Contract.
- 5.11 Claims for Overcharges. Contractor hereby assigns to TCEQ any and all claims for overcharges associated with this Contract arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).

6. CONTRACTOR OVERSIGHT AND EVALUATION

- 6.1 Generally. TCEQ will monitor Contractor for programmatic and financial compliance. TCEQ shall designate a Contract Manager to monitor the provisions of this Contract. The TCEQ Contract Manager may routinely make scheduled or unscheduled visits to the location where the Work is being performed to observe performance. At the discretion of TCEQ, TCEQ may assign any responsibilities related to Contract monitoring to other TCEQ employees. Contractor agrees that in performing these acts, TCEQ is not supervising, directing, controlling or having authority over or responsibility for Contractor's performance or any failure of Contractor to comply with laws and regulations.
- 6.2 Contractor Performance Evaluations. TCEQ may perform evaluations of Contractor's performance, the results of which may be a factor in the selection criteria for future contracts. Contractor acknowledges that these evaluations are made on a subject in which TCEQ and its officers and employees have an interest or duty, and are made for the purpose of communicating with other persons having a corresponding interest or duty. TCEQ may provide this information to state agencies and upon request, to others. Contractor consents to the disclosure of any information or opinion contained in TCEQ's evaluations. The evaluations may be posted on TCEQ database and on the CPA TPASS's vendor performance database.

7. CONTRACTOR'S BOOKS AND RECORDS

- 7.1 Generally. During the Contract and for three years thereafter, Contractor shall maintain books, records, documents, and other evidence reasonably pertinent to Contractor's performance under the Contract. Contractor shall maintain all financial records in accordance with generally accepted accounting principles. Contractor shall permit representatives and agents of TCEQ, or authorized state and federal agencies, to have unrestricted access to all records, data and facilities as necessary to review, inspect, and audit all financial activities and services associated with TCEQ funds. Contractor shall provide appropriate facilities for such access and inspection. If requested by TCEQ, Contractor shall submit weekly time sheets for each person providing services on behalf of Contractor (or Contractor's Subcontractors) under the Contract. The time sheets must at a minimum describe the general task(s) and number of hours applied to each task and be submitted to the TCEQ Contract Manager on a weekly basis by noon Central Time on Monday of the following week.

8. COMMUNICATIONS, NOTICES

- 8.1 Contract Manager; Project Manager. Each party shall maintain a Contract Manager designated in writing at all times. All notices and communications required or allowed under this Contract will be delivered to a party's designated Contract Manager. Contractor shall also send a copy of any notice or communication to TCEQ, Attn: Manager, Procurements and Contracts, MC-182, P.O. 13087, Austin, Texas 78711-3087. TCEQ may also designate a Project Manager as a point of contact for technical matters. Contractor shall designate a Project Manager as set forth under "Superintendence by Contractor." The Contract Manager may also serve as the Project Manager.
- 8.2 Notices. Unless otherwise specified in writing, all notices, requests, or other communications required or appropriate to under this Contract shall be in writing and shall be deemed delivered three (3) working days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, facsimile, E-Mail, or other commercially accepted means. Notices to responder shall be sent to the address specified in the solicitation response, or at such other address as a party may notify the other in writing. Notices to TCEQ shall be addressed to the Manager, Procurement and Contracts, TCEQ.
- 8.3 Bankruptcy. If Contractor becomes the subject of a voluntary or involuntary bankruptcy proceeding, Contractor shall immediately notify TCEQ in writing and send a copy of such notification directly to TCEQ Bankruptcy Program MC-132, P. O. Box 13087, Austin, Tx 78711-3087. The Contractor's notice to the Bankruptcy Program must include the appropriate contract number(s).

9. SHIPMENT AND DELIVERY OF GOODS

- 9.1 Shipping Terms. All shipments shall be made FOB destination, Full Freight Allowed and not invoiced. Title and risk of loss transfers to TCEQ upon actual receipt by TCEQ. Delivery shall be made between the hours of 8 A.M. and 5 P.M. Central Time, Monday through Friday, excluding State holidays, unless prior approval for delivery outside of these hours has been granted by TCEQ. Each shipment must be accompanied by a packing slip. Packing slips should reflect the TCEQ purchase order or contract number, item description and brand name, package quantity, and lot number, if applicable.
- 9.2 Blanket Orders. Where blanket orders or umbrella contracts have been issued, TCEQ may in its sole discretion require Contractor to offer possible substitutes if any material or equipment becomes unobtainable during the term of the Contract. Outstanding orders are not automatically amended by an approved substitution, but must be approved in writing on an order-by-order basis. A blanket order is not a guarantee of actual purchase of any number or amount by TCEQ.
- 9.3 Delivery Schedule. Contractor shall make best efforts to meet scheduled delivery dates for shipments. In the event that delay is foreseen, Contractor shall notify TCEQ and keep TCEQ advised of the status of delivery.
- 9.4 Material Safety Data Sheet. Contractor must provide, at no cost, at least one copy of any applicable manufacturer's Material Safety Data Sheet (MSDS) with each shipment. If OSHA or Federal or State laws provide for additional requirements, those requirements are in addition to the MSDS requirement.

10. SUPERINTENDENCE BY THE CONTRACTOR

- 10.1 Contractor's Responsibility for Subcontractors. All acts and omissions of subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor (collectively, "Subcontractors") shall be considered to be the acts and omissions of Contractor. Contractor shall be fully responsible for all such acts and omissions as if they were acts and omissions of Contractor. Nothing in the Contract shall create a contractual relationship between TCEQ and any Subcontractor except in regard to any product warranties for goods supplied by a third party manufacturer and delivered to TCEQ hereunder. Nothing in the Contract creates any obligation on the part of TCEQ relating to any monies due any Subcontractor except as may otherwise be required by law.

Contractor is solely responsible for scheduling and coordinating the work of Subcontractors, and for all communications to Subcontractors.

- 10.2 Supervision of the Work. All Work is furnished and performed at Contractor's sole risk as to the means, methods, design, processes, procedures and conduct of the Work. Contractor is solely responsible for understanding the means, methods, design, processes, procedures and conduct of the Work, including control of associated hazards, to assure the safety of its performance and that of Subcontractors, and for the protection of all persons, property, premises of facilities involved in the performance, regardless of the owner of the property or premises.

- 10.3 Project Manager. Contractor shall designate and maintain a competent project manager, who shall not be replaced without written notice to TCEQ except under extraordinary circumstances. The project manager will be Contractor's representative and shall have authority to act on behalf of Contractor. All communications to or from the project manager shall be as binding as if given directly to or by Contractor. Contractor shall also maintain a superintendent capable of overseeing performance of the Work at any location where Work is performed.

11. SUBCONTRACTORS AND EMPLOYEES

- 11.1 Key Personnel and Subcontractors. The qualifications of the personnel and subcontractors named in the Response are considered to be essential to performance of the Work. Contractor shall provide TCEQ timely information on proposed substitutions of such key personnel. Proposed substitutions shall have comparable qualifications to those of the personnel or subcontractors being replaced. Contractor shall not use any subcontractor, employee, supplier or other person or organization whether initially or as a substitute, against whom TCEQ has a reasonable objection.

- 11.2 Personnel. Contractor shall provide competent, suitably qualified personnel to perform the Work. Contractor shall at all times maintain good discipline and order at the site of the Work. Contractor shall require its employees to execute any confidentiality agreements, and any other required assignments, licenses or other instruments, and to provide information related to Intellectual Property, as may be necessary to effectuate the provisions of the Contract Documents. Contractor will, upon request of the TCEQ, obtain and provide background checks on personnel assigned to a TCEQ campus.

- 11.3 Employment Practices. Contractor will not discriminate against any employee or applicant because of race, religion, color, sex, age, or national origin and it will comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Contractor will not exclude from, nor deny the benefit of, any program or activity funded hereunder (in whole or in part) to any person on the basis of race, creed, color, disability, national origin, sex, political affiliation or beliefs. Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq, as amended. Contractor shall comply with all applicable regulations of the United States Occupational Safety and Health Administration (OSHA). Violation of any of these employment practices obligations is a material breach of this Contract.

12. WARRANTIES AND CERTIFICATIONS

- 12.1 In addition to all warranties established or implied by law, Contractor hereby warrants that:

i) all goods and services provided hereunder shall conform to the specifications, drawings, samples or other descriptions set forth in this Contract or otherwise furnished or adopted by TCEQ (including any product documentation provided by Contractor), and shall be merchantable, fit for the purpose intended, of best quality and workmanship, and free from all Defects in media, material, workmanship, and quality. TCEQ shall have the right of inspection and approval, and may, at Contractor's expense, reject and return nonconforming goods or require re-performance of services which are not in conformance with the requirements of the Contract. Defects shall not be deemed waived by TCEQ's failure to notify Contractor upon receipt of goods or completion of services or by payment of invoice.

ii) all goods and services provided hereunder shall conform to standards established for such goods in accordance with any applicable federal, state, or local laws and regulations, including without limitation the Safety Standards established and promulgated under the Federal Occupational Safety and Health Administration (Public Law 91-596) and its regulations in effect or proposed as of the effective date of this Contract.

iii) all services will be performed in a professional and workmanlike manner, consistent with relevant accepted standards and practices.

The warranties set forth above are effective upon delivery to TCEQ and for twenty-four (24) months following TCEQ's acceptance (or final acceptance, as applicable) of the Work. Contractor shall, at its expense, repair or replace any good(s) and re-perform any services which are found to be or become defective. If, after notice, Contractor fails to promptly correct the Defect, TCEQ may correct the Defect without further notice and Contractor shall reimburse the TCEQ for all costs, or if TCEQ does not choose to correct the Defect, Contractor shall promptly refund to TCEQ the full purchase price paid for the Work.

- 12.2 Capacity to Perform. Contractor has the corporate authority, capability, experience and means to enter into this Contract and to provide the goods and services and perform the Work contemplated hereunder. Contractor has sufficient ownership rights in the Work to perform its obligations under the Contract.

13. INTELLECTUAL PROPERTY

- 13.1 Third Party Intellectual Property. Contractor shall not incorporate any third party intellectual property into the Work without TCEQ's prior written approval. Contractor shall bear sole responsibility for obtaining all necessary licenses and paying all applicable license and/or royalty fees and all costs incident to Contractor's use or possession in the performance of the Work or the incorporation into the Work of any third party intellectual property. In the event that Contractor incorporates any third party intellectual property into the Work, Contractor shall obtain and deliver to TCEQ at no additional cost: i) documentation sufficient to describe the ordinary use of the intellectual property, and ii) a nonexclusive, perpetual, irrevocable, fully paid-up worldwide license to use, reproduce, publish, modify, create derivative works, distribute, make, have made, sell, have sold, and publicly perform and display such third party Intellectual Property and associated user documentation, and to authorize others to do the same solely for TCEQ purposes. Contractor shall take all necessary steps to pass-through to TCEQ all warranties, representations and other service commitments applicable to third party intellectual property incorporated into the Work.
- 13.2 Work Made for Hire. Unless expressly exempted from this section by written attachment to this Contract, all work performed pursuant to the Contract, developed or prepared for the TCEQ ("Work Product"), is the exclusive property of the TCEQ. All right, title and interest in such Work Product shall vest in the TCEQ upon creation and shall be deemed to be a work made for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such Work Product may not, by operation of law, vest in TCEQ, or such Work Product may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocable assigned to TCEQ. TCEQ shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor shall execute any instruments as requested by TCEQ to effectuate the foregoing rights and protections. Contractor shall enter appropriate written agreements with its employees and subcontractors sufficient to effectuate this section.
- 13.3 License Grant. Contractor, on behalf of itself and its affiliated parties, hereby grants to TCEQ a nonexclusive, perpetual, irrevocable, fully paid-up and worldwide license to use, reproduce, publish, modify, create derivative works, make, have made, sell, have sold, rent, lease, distribute, publicly perform and display, and license others to do the same, solely for TCEQ purposes, with respect to any Work Product that for any reason is not deemed a work made for hire or otherwise owned by TCEQ hereunder.
- 13.4 TCEQ Software and Network Standards. Without the express, prior written authorization of TCEQ, Contractor shall not: i) install any software on any TCEQ equipment or device; ii) copy, remove or redistribute any software from any TCEQ equipment or device; or iii) connect a device to any TCEQ network or device. Any electronic or machine-readable files to be delivered as part of the Work, including without limitation software code, reports, specifications, documentation, spreadsheets, databases, graphics, and data files, must be delivered in the format native to an application that is identified as an Approved Application by the TCEQ Information Technology Work Group.

14. INDEMNIFICATION

- 14.1 Intellectual Property Claims. To the fullest extent permitted by law, Contractor shall indemnify, defend with counsel approved by TCEQ, and hold harmless TCEQ, and its officers, directors, employees and agents ("Indemnitees"), from and against all fines, penalties, claims, damages, losses, demands, judgments, settlements, punitive damages, costs of suit, attorneys' fees and delays to other contractors (a "Demand"), whether arising in tort or otherwise, and whether the parties are individually or jointly responsible from any damages, that arise from infringement or alleged infringement of any patent, copyright, trademark or other proprietary interest arising by or out of Contractor's performance hereunder or the use by Contractor or by Indemnitees at the direction of Contractor of any information, article, or material, whether tangible or intangible, provided that upon becoming aware of a Demand or threat of Demand under this section, TCEQ shall promptly notify Contractor and Contractor shall be given full opportunity to negotiate a settlement. In the event of a Demand or threat of Demand, Contractor shall make best efforts to obtain permission for TCEQ to continue use of the allegedly infringing information, article or material; if Contractor is unable to secure such permission, Contractor shall, at Contractor's election, either i) provide a non-infringing substitute or work-around that is substantially similar in feature and functionality to the allegedly infringing information, article or material, or ii) refund to TCEQ all amounts paid for the Work subject to amortization for a five-year product life. In all events, TCEQ shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing.
- 14.2 Generally. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless TCEQ and its representatives from and against all losses, liabilities, damages, and other claims of any type arising from the

performance of the Work by the Contractor or its subcontractors, suppliers and agents, including those arising from a defect in design, workmanship, materials, or from a breach of applicable laws, regulations, safety standards or directives regardless of whether such acts or omissions are negligently or recklessly performed. The defense of the TCEQ shall be subject to the authority of the Office of the Attorney General of Texas to represent the TCEQ. This covenant survives the termination of the Contract.

15. HISTORICALLY UNDERUTILIZED BUSINESSES

TCEQ is required to make good faith efforts to assist Historically Underutilized Businesses ("HUBs") in receiving contract awards. The goal of the program is to promote fair and competitive business opportunities for all businesses contracting with TCEQ. For contracts in the amount of \$100,000 or more, Contractor shall completely implement the HUB Subcontracting Plan (HSP) submitted with Contractor's Response. Contractor will promptly notify TCEQ in writing of any significant changes to the facts represented in the HSP, and of any resulting modifications in the HUB HSP. Failure to implement the HSP or demonstrate good faith effort in the modified HSP is cause for termination of this Contract. For any subcontractors for which HUB and federal forms were not submitted in the Response, Contractor must submit completed forms.

16. NON-DISCLOSURE

This Contract and all data and other information developed hereunder are subject to the Texas Public Information Act. Contractor shall treat, and shall require Contractor's employees and subcontractors to treat, all information provided by TCEQ hereunder that is marked or otherwise identified as "confidential" or "proprietary" ("Confidential Information") with the same degree of care, but in no case less than reasonable care, to protect such information from unauthorized disclosure as Contractor applies to Contractor's own Confidential Information. Contractor is permitted to use, copy and disclose Confidential Information to Contractor's employees and subcontractors only to the extent necessary to fulfill Contractor's obligations hereunder and only in compliance with this section.

17. OTHER LIABILITIES

The individuals signing on behalf of TCEQ and Contractor shall not be personally liable for the performance of any of the terms of this Contract, provided however, that they warrant their authority to sign on behalf of their respective entities. No member, individually or collectively, of TCEQ and no officer or director of Contractor incurs or assumes any individual or personal liability by the execution of this Contract or by reason of default in the performance of any of the terms hereof. All such liability of the employees of the State and officers and directors of Contractor, as such, is released as a condition of and in consideration of the execution of this Contract.

18. TIME DELAYS, SUSPENSION

18.1 Time is of the Essence. Contractor's timely performance is essential to this Contract.

18.2 Suspension. TCEQ may suspend all or part of the Work at any time, for any reason. TCEQ is not obligated to suspend or cancel the Work for the benefit of Contractor or any surety or other party. Contractor shall resume performance within ten (10) days of receipt from TCEQ of a notice to resume, if any. Where Contractor's performance is delayed by acts of TCEQ, Contractor's sole exclusive remedy is an extension of the Contract time limits and/or milestones and, if agreed to in writing by TCEQ prior to expiration of the Contract, an extension of the Contract Term beyond the Expiration Date to a maximum of one hundred and eighty (180) days. TCEQ shall not be required to pay any standby hourly rates during a suspension of Work, if TCEQ suspends performance of the Work because the Work is defective, or Contractor fails to supply sufficiently skilled workers or suitable materials or equipment, or fails to provide required insurance coverage, or fails to furnish or perform the Work in such a way that the completed Work will conform to this Contract.

18.3 Force Majeure. If either party is delayed in carrying out its obligations due to acts of God, labor stoppages, or other similar irresistible forces, the party shall give notice and full particulars of such delay supported by sufficient evidence, in writing, to the other party within a reasonable time after occurrence of the delay. The time of performance by the party shall be extended for such a period of time as is reasonably necessary to remedy the effects thereof. Force majeure does not include ordinary delays that are common to the industry or location.

19. TERMINATION; REMEDIES

19.1 Cancellation for Cause. In the event that Contractor fails to perform a material obligation or becomes insolvent or the subject of a voluntary or involuntary bankruptcy proceeding, TCEQ may cancel the Contract for cause, by written notice effective in ten (10) days, unless otherwise specified, after the date of such notice, unless Contractor cures such breach or provides evidence sufficient to prove to TCEQ's satisfaction that such breach does not exist within the 10-day cure period. A "material" obligation includes without limitation delivery of conforming Work, providing evidence of required insurance coverage, and compliance with HUB requirements. Cancellation for cause does not prejudice TCEQ's other remedies authorized by this Contract or by law. In the event of breach of a material obligation by Contractor, TCEQ shall be entitled to recover all actual damages, costs, losses and expenses, incurred by TCEQ as a result of the default,

including without limitation, reasonable attorney's fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate.

19.2 Cancellation for Convenience. TCEQ may cancel this Contract without cause by giving ten (10) days prior written notice of such cancellation to Contractor. In no event shall such cancellation give rise to any penalty or liability on the part of TCEQ including without limitation anticipated profits, unabsorbed overhead, or interest on borrowing. Upon receipt of such notice, Contractor shall promptly cease all Work, with such exceptions, if any, specified in the notice of cancellation. TCEQ's sole obligation hereunder, and Contractor's exclusive remedy, is payment for goods and services ordered and accepted by TCEQ hereunder. Contractor may request payment for: completed and accepted Work and timely, reasonable expenses directly attributable to cancellation.

19.3 Right of Setoff. In addition to other remedies available under this Contract or in law or equity, TCEQ may retain funds due to the Contractor as setoff against: the amount of overpayments by TCEQ or amounts obtained by the Contractor due to violations of antitrust laws.

19.4 Schedule of Remedies available to the TCEQ. In accordance with Chapter 2262, Texas Government Code, the following Schedule of Remedies applies to the Contract. In the event of Contractor's nonconforming performance, TCEQ may:

- Issue notice of nonconforming performance;
- Reject nonconforming performance and request corrections without charge to the TCEQ;
- Reject a payment request and/or suspend further payments pending acceptable revision of the nonconformity;
- Suspend all or part of the Work and/or payments pending accepted revision of the nonconformity;
- Demand restitution and recover payments where performance is subsequently determined nonconforming;
- Cancel the Contract without further obligation for payment by the TCEQ and recover previous payments;

After complying with prerequisites, file a cause of action for specific performance, rescission, damages and other relief as appropriate;

Cancel the Contract as above, re-award the Contract, and assess damages to the extent permitted by applicable law.

19.5 Cumulative Remedies. The rights and remedies provided to the TCEQ in this Contract, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available under state and federal rules, regulations, and laws and at common law.

19.6 Assurance. Whenever TCEQ in good faith has reason to question Contractor's intent or capacity to perform hereunder, TCEQ may demand, and Contractor shall provide, written assurance of Contractor's intent and/or capacity to perform. In the event that no assurance is given within the time specified after the demand is made, TCEQ may treat this failure as an anticipatory repudiation of the Contract.

20. DISPUTES; CLAIMS

20.1 Continuing the Work. Except as expressly permitted by law, Contractor shall carry on the Work and adhere to any work plan schedule hereunder during all disputes or disagreements with TCEQ unless ordered to stop the Work. No Work shall be delayed or postponed pending resolution of any disputes or disagreements.

20.2 Dispute Resolution Process. TCEQ and Contractor shall use the dispute resolution process provided for in Texas Government Code Ch. 2260 to attempt to resolve all disputes arising under the Contract. The rules of the TCEQ found in 30 Texas Administrative Code Chapter 11, Subchapter D, describe the requirements for filing a notice and claim, conducting negotiations, and requesting a hearing.

21. MISCELLANEOUS PROVISIONS

21.1 Severability of Provisions. If any provision of the Contract is held by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the remainder of the Contract shall be construed to conform to the intent of the parties.

21.2 Contract Changes. Changes to the Contract may only be made by an agreed, signed, written amendment, or by a Purchase Order Change Notice issued and signed by TCEQ. Amendments must be signed by the Contractor and TCEQ to be effective.

21.3 Publicity. Responders are prohibited from using contract award information, sales values/volumes and/or state of Texas customers in sales brochures or other promotions, including press releases, unless prior written approval is obtained from the Manager, Procurement and Contracts, TCEQ.

21.4 Sovereign Immunity. The parties agree that this Contract does not waive TCEQ's sovereign immunity or official immunity to which TCEQ's officers, employees, or agents are entitled under law relating to suit, liability, and the payment of damages.

21.5 Relationship of the Parties. Any contract resulting from this Solicitation shall not be construed as creating an employer/employee relationship, agency relationship, partnership, or joint venture. Contractor is an independent

contractor in performing the Work and shall not act as an agent or employee of TCEQ. Contractor shall be responsible for all acts and omissions of its employees and Subcontractors and for their compensation, coverages, claims and taxes.

- 21.6 Independent Contractor. Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. The contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the contractor's employees.
- 21.7 Venue. Contractor agrees that the Contract is being performed in Travis County, Texas, because this Contract has been solicited, executed, and will be administered in Travis County, Texas. The Contractor agrees that any permissible cause of action involving this contract arises solely in Travis County.
- 21.8 Funding Out. This Contract is subject to cancellation, without penalty, in whole or in part, if funds are not appropriated by the Texas Legislature, or otherwise made available to TCEQ.
- 21.9 Prohibition on Excess Obligations. Contractor acknowledges that the General Appropriations Bill, Article IX, Section 26 prohibits TCEQ from incurring an obligation in excess of the amounts appropriated to it by the Texas Legislature. TCEQ shall have no liability to Contractor for failure to pay any invoice due to a lack of appropriated funds.
- 21.10 Third Party Beneficiaries. TCEQ does not assume any duty to exercise any of its rights and powers hereunder for the benefit of third parties.
- 21.11 Disaster Recovery. Contractor shall maintain a business continuity plan designed to enable Contractor to recover normal business operations and data within seventy-two hours of any declared disaster or force majeure event.
- 21.12 Computation of Times. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a state or federal holiday, such day will be omitted from the computation. A calendar day of twenty-four hours measured from midnight to the next midnight constitutes a day. A period referred to as a "month" is the period ending on the same numerical day in the subsequent calendar month as the day on which the period began, e.g., from the 9th to the 9th, provided that if the numerical day for calculation of a period of months is greater than the number of actual days in the concluding month, the period will end on the last day of that month. A period referred to as a "week" is a period of seven days.
- 21.13 Governing Law. This contract shall be governed by, and construed and interpreted under the laws of the State of Texas, as well as federal law.
- 21.14 Public Information. The Texas Public Information Act, Tex. Gov't. Code, Chapter 552, applies to all data and information delivered to TCEQ in the course of performance of this Work. TCEQ assumes no obligation to make legal arguments in support of any claims pertaining to confidentiality, patents, trade secrets, or copyrights.
- 21.15 Waiver. With the exception of an express, written document signed with authority by TCEQ, no act or omission will constitute a waiver or release of Contractor's obligation to perform conforming Work. No waiver on one occasion, whether expressed or implied, shall be construed as a waiver on any other occasion. The making of a payment, including final payment, does not constitute acceptance of the invoiced Work nor does it constitute a waiver of the TCEQ's claims against the Contractor or its sureties.
- 21.16 Assignment. No delegation, transfer, or assignment of the duties, obligations or rights under or interests in the Contract, whether by merger, operation of law, or change in ownership of all or substantially all of Contractor's assets, will be binding on TCEQ without TCEQ's written consent. Any such assignment, delegation, or transfer made without the written consent of TCEQ is void. No transfer or assignment will release or discharge the Contractor from any duty or responsibility hereunder.
- 21.17 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by or given hereunder, as well as all continuing obligations indicated hereunder, will survive for twenty-four months beyond the termination or cancellation of the Contract.

SPECIAL TERMS AND CONDITIONS

1. Contract Term & Renewal: Contract Number **582-9-95022** will begin on AUGUST 3, 2009 or upon the earliest signature of the parties, and expires on DECEMBER 31, 2009. The contract may be renewed, with the agreement of the parties, for one additional two-year period through December 31, 2011.

2. Contract Work Plan: Prior to the start of the Work under this Contract, the Contractor will create, submit and obtain approval for a general Contract Work Plan for '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' support that shows the name, price per hour, and labor classification of each person assigned to the Work and overall commitment to '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' maintenance and support efforts. If the Contract Work Plan is acceptable, TCEQ will issue a Notice to proceed with the Contract. However, the Work of this Contract will be accomplished through the issuance of Work Orders to accomplish certain phases, tasks, subtasks, and/or the development of deliverables. The maximum amount of the Contract (\$72,450.00) is a ceiling on the amount of the Contract however nothing shall obligate the TCEQ to issue a Work Order or Work Orders for the full amount of the Contract.

3. Acceptance: The deliverables shall be of acceptable professional quality. The project documentation shall comply with the standards set by the Texas Department of Information Resources (DIR). The CONTRACTOR shall use the toolsets developed by the DIR for both the testing and acceptance phases of the Work. The web page where the toolsets may be found is at:
<http://www.dir.state.tx.us/pubs/framework/extensions/sdlc/index.htm>

4. Testing: Testing shall be conducted according to DIR guidelines and shall employ the DIR toolsets that may be found at: <http://www.dir.state.tx.us/pubs/framework/extensions/sdlc/index.htm> .

5. Sales Tax: TCEQ is not liable for Sales Taxes on the goods or services provided under this contract. Contractor will pay all Sales Taxes for goods and services required to perform this contract.

6. Antitrust: The Contractor will reimburse the State of Texas for all prices which were the result of antitrust activities in violation of State and Federal Law. (See Item No.4 of the Affirmations)

7. Warranty: The Work completed under each Work Order and under the Contract shall be of a workmanlike quality and in accord with the Scope of Work of the Contract as well as other Contract Documents. CONTRACTOR warrants and guarantees to TCEQ that all Work will be in accordance with the Contract Documents and will not be Defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

- a. Abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers, after the Work is fully complete and ready for final payment.
- b. Normal wear and tear under normal usage.

Remedies available to TCEQ are to require that the CONTRACTOR repair or replace Defective software development products/deliverables for a period of one year from the date of TCEQ acceptance.

8. Accessibility

8.1 Access by Individuals with Disabilities

Seller represents and warrants ("EIR Accessibility Warranty") that the electronic and information resources and all associated information, documentation, and support that it provides to TCEQ under this Contract (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule 206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.) To the extent Seller becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Seller represents and warrants that it will, at no cost to TCEQ, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Seller is unable to do so, then TCEQ may terminate this Contract and Seller will refund to TCEQ all amounts TCEQ has paid under this Contract within thirty (30) days after the termination date.

8.2 Accessibility Clause

The Technology Access Clause was repealed effective September 1, 2006 and replaced by Department of Information Resources Rules as follows:

Electronic and Information Resources Accessibility Standards, as required by 1 TAC Chapter 213.

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

b. Vendor shall provide Texas Commission on Environmental Quality (TCEQ) with responses to the Voluntary Product Accessibility Template (VPAT) form provided by TCEQ for reviewing compliance with the State of Texas Accessibility or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide TCEQ with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

TCEQ Technical Environment

The contractor must operate within and ensure complete compatibility with the TCEQ IT environment, described below.

1. Workstation: Minimum desktop computers will be Pentium III 933 MHz machines or better with 512 MB of RAM (within the next year) and 10 GB hard drive running Windows 2000 or XP. Monitors are 17" operating at resolution of 1024 X 768 (SVGA). There are exceptions to these standards as equipment is replaced.
2. Network OS: Novell 6.5
3. Standard Access: Local Area Network (LANs), primarily 100MB/GB fast Ethernet
4. Operating Systems: Servers are HP 9000 running PARISC/ITANIUM II HP-UX 11.xx, Windows Server 2003, or RedHat Linux 4.x.
Client OS is Windows XP.
5. Server Specifications: Minimum Dual Intel 3GHz CPU with 4GB RAM and 100 GB usable disk space.
6. Database: Oracle 10g RAC compliant
7. Email Application: Novell GroupWise 7
8. Documentation Software: Microsoft Word or Adobe Acrobat
9. Report Development: Crystal Reports v. 11
10. Application Server: J2EE environment 1.4: JBoss 4.x, IBM WebSphere 6.02 or newer
11. Web Browser: Microsoft Internet Explorer 6.x or newer.

SCOPE OF WORK

PROJECT DESCRIPTION

The work to be performed under this Contract consists of providing the software and services required to maintain, enhance, and expand TCEQ's basis2 Integrated Billing & Accounts Receivable (IBAR). TCEQ's IBAR consists of the basis2 custom Billing & Accounts Receivable system and custom TCEQ interface billing components including Uniform Statewide Accounting System (USAS).

PURPOSE AND BACKGROUND

The TCEQ requires program developer support for the agency's basis2 Integrated Billing & Accounts Receivable (IBAR). IBAR system is a basis2 application using Oracle 10g database for billing & accounting system. IBAR is able to interface with Texas Comptroller's accounting system of record Uniform Statewide Accounting System (USAS) to transmit and receive accounting information and interface with TCEQ custom Billing Interfaces for the purpose of calculating fees, invoice creation, maintenance of customer files, and invoice adjustments, which, in some cases are performed outside the IBAR system by other TCEQ systems. The basis2 IBAR system and custom interfaces were developed with contractor support. IBAR currently retrieves data from TCEQ custom Billing interfaces and transmits and retrieves files from Comptroller's USAS. The TCEQ requires contractor support to maintain, enhance, and expand TCEQ's basis2 Integrated Billing & Accounts Receivable system.

ESSENTIAL KNOWLEDGE AND EXPERIENCE

Specific support for this contract will include development and maintenance/change efforts requiring:

1. Significant expertise, knowledge and programming development and maintenance experience in JAVA/J2EE, PL/SQL, XML, Oracle (9i, 10g, and 10g RAC), and Prophecy basis2 application software.
2. Significant expertise and knowledge of the Prophecy's basis2 application software, Oracle Financials, Oracle Application architecture version 12, Oracle Reports and operational details and interface requirements associated with TCEQ's program billing and accounts receivable billing file interfaces and Texas Comptroller's Uniform Statewide Accounting System (USAS).

SOFTWARE SUPPORT AND SERVICES

1. Contractor will create, submit and obtain approval for a general Contract Work Plan for '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' support that will include the hourly labor category rates in this Contract and overall commitment to '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' maintenance and support efforts. If the Contract Work Plan is acceptable, TCEQ will issue a Notice to proceed with the Contract.
2. Over the course of the Contract, the Contractor will also submit Work Plans for a series of projects to be described in detail in Work Orders that TCEQ will issue under this Contract. Each Contractor Work Plan submitted in response to a Work Order will include a budget with careful and precise estimates for the hourly labor requirements by labor category for each task, showing the Contract hourly rates, and a calculation of the total amount charged for each task and another calculation of the total charges for all of the Work. Deliverables: Work Plan and Budget. Due within 14 days of delivery of the

Work Order.

TCEQ will issue a Notice to Proceed for each Work Order if the Work Plan is acceptable. (For the rest of this document Work Plan refers to the Work Plan submitted in response to a Work Order unless otherwise stated, e.g. Contract Work Order.) The Contractor will not start work until the Notice to Proceed is issued.

3. Contractor will implement approved Work Plans as required in the TCEQ Notice to Proceed and any additional Work Orders.

Contractor will perform the following Work in accordance with Work Orders and approved Work Plans:

Providing software upgrades, support and services required to maintain, enhance, and expand TCEQ's participation in **basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement** the TCEQ's Prophecy **basis2 Integrated Billing & Accounts Receivable (IBAR) system** and related dataflows and custom agency interfaces and as necessary to comply with basis2 requirements of TCEQ including:

- basis2 software application and utilities and Oracle Reports
- Installation, training, and testing services
- Data flow and interface migration services
- Data flow and interface development, configuration, and enhancement
- Ongoing general **basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement** maintenance & support services

4. All intellectual property rights in the source code and documentation created by Contractor are subject to the Intellectual Property License attached to this Contract..

Documentation/Copies:

Electronic copies of all text, graphics, spreadsheet files, or models used in the preparation of any documents related to the project reports, to document results and conclusions (e.g., sampling data, work files, etc.), or developed as work products under this Contract shall be supplied at the conclusion of the project or earlier, as identified in the deliverables, status reports, formal communications or as requested by the TCEQ project manager. The software standards at the TCEQ in word processing and spreadsheet software are Microsoft Office 2003 (Word, PowerPoint and Excel) and PDF formats or a software version to be specified in each Work Order. All electronic copies of documentation must be supplied in one or more of these formats or are saved in a format that can be imported in such a way that the document or spreadsheet quality does not suffer. Where conversions from one spreadsheet or one word processing format to another result in changes in the formatting that detract from the presentation quality at minimum or result in significant work in trying to restore the documents or spreadsheets to presentation quality, the work produced will not be deemed acceptable to TCEQ under this contract.

Status Reporting and Availability for Questions:

The Contractor shall provide status reports at TCEQ specified intervals using the MS Project WBS (Tracking Gantt chart) as the planned versus actual monitoring tool and ensure the following items are included in the status report and can be discussed in status meetings either in person or via telecom between Prophecy Americas, Inc and the TCEQ. Review actual accomplishments versus planned activities/tasks for the previous week and planned activities/tasks for the next week.

- Provide status of open impacts/issues and resolutions and provide recommended resolutions for newly opened impacts/issues and potential cost exposures.
- Identify potential schedule risks with recommendations to mitigate, avoid or accept, as appropriate.
- Review of any variance to planned/approved cost of any Work Order.
- Set the date for the next status meeting/review.
- Other.

The Contractor shall distribute an electronic version of each status report to the TCEQ Information Resources Division (IRD) project manager and selected key project stakeholders (names and email addresses to be provided by the TCEQ project manager) at least one full work day prior to the scheduled status review meeting.

Percentage of Work, If Any, To Be Performed by TCEQ:

Except for providing the Contractor with onsite and remote access to the TCEQ systems infrastructure and cubicle space when the Contractor is onsite, all work is expected to be preformed by the Contractor.

Quality Assurance/Quality Control (QA/QC) Procedures:

A discussion of the quality assurance/quality control procedures to be followed by the Contractor's staff shall be included in the Work Plan. All work must be completed in accordance with the QA/QC procedures specified in the Work Plan, the Contract.

Instructions to the Contractor:

The Contractor project manager shall provide TCEQ with a Work Plan document within 14 days of the date of this Work Order. The Work Plan document shall contain the following pieces of information and any others deemed necessary by TCEQ to address the intent of the Work Order (e.g., figures, tables, work products, processes, deliverables, etc.) Each of the sections shall be named or titled using the following headings:

1. **KEY PERSONNEL:** The Contractor staff to be assigned to Work Orders must be personnel who have been approved as key personnel under the contract; if a person who has not been approved is submitted, the contract procedures for approval of substitute personnel must be followed;
2. **QUALITY ASSURANCE/QUALITY CONTROL PROCEDURES;**
3. **TIME LINE:** The schedule for the project described by the Work Order (if there is a conflict with the time line included in the Work Order, the Contractor shall bring this to the attention of TCEQ staff);
4. **BUDGET:** The budget for the Work Order (the budget submitted shall be sufficiently detailed to allow TCEQ to easily determine the hours, prices, and personnel, by classification, related to each task and deliverable, and shall also include a total for the proposed Work Plan);

5. **TECHNICAL APPROACH/METHOD:** The technical approach/method for the Work Plan shall contain detailed descriptions of the tasks and deliverables and the dates that deliverables shall be provided to the TCEQ by the Contractor;
 - 5a. **PROJECT MILESTONES & WORK BREAKDOWN STRUCTURE;**
 - 5b. **TESTING PROCEDURES.** The testing procedures will include proposed turnaround times for correction of defects and criteria for acceptance.
6. **MODELS AND SOFTWARE TO BE USED BY CONTRACTOR:** Models, software, and any other tools in addition to those already specified in the Work Order to be used to complete the project described in the Work Order, and the documentation procedures where applicable (these may be at the suggestion of the TCEQ or may be part of the methodology proposed by the Contractor to complete the Work). If a substitute model is proposed, the Contractor must clearly identify that it is being proposed as a substitute. If it is not specifically approved by TCEQ as a substitute, the Contractor must use the models and software specified in the Work Order;
7. **MISCELLANEOUS INFORMATION OR ELEMENTS;**
8. **SIGNATURE BY CONTRACTOR:** The Contractor shall have the general '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' Support Work Plan and all subsequent Work Plan documents signed and dated by a person with the authority to bind the Contractor to the performance of the Work Plan (please include the title and printed name of the person signing the Work Plan). The Work Plan shall include the Contractor's company/organization name in a prominent place on the Work Plan document and the Contractor's name shall also appear above the Contractor's signature block.

The TCEQ staff shall review the Contractor's Work Plan and either provide Notice of required changes or approve the Work Plan as prepared by the Contractor. The Contractor shall provide any required changes within 10 days of TCEQ's issuing the Notice. The TCEQ will include approval of the Work Plan in a Notice to Proceed and the Contractor shall commence the Work on the date indicated in the Notice. The Contractor's Work Plan, after it is accepted, shall become an Exhibit of the Work Order and all terms and conditions in the Contract regarding the Work Order document shall also apply to the Work Plan as an Exhibit of the Work Order.

TCEQ Contacts:

TCEQ Project Manager

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Texas Commission on Environmental Quality
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TCEQ Technical Lead

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EVALUATION CRITERIA

MINIMUM MANDATORY QUALIFICATIONS

The work to be performed under this Contract consists of providing the software and services required to maintain, enhance, and expand TCEQ's participation in the **basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement** for TCEQ Prophecy **basis2 Intergrated Billing & Accounts Receivable** system and several dataflows and TCEQ custom billing interfaces including Texas's Comptroller's Uniform Statewide Accounting System (USAS).

Contractor will provide software upgrades, support and services required to maintain, enhance, and expand TCEQ's participation in **basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement** the TCEQ's **basis2 Integrated Billing & Accounts Receivable (IBAR) system** and related dataflows and custom agency interfaces and as necessary to comply with basis2 requirements of TCEQ including:

- basis2 software application and utilities and Oracle Reports
- Installation, training, and testing services
- Data flow and interface migration services
- Data flow and interface development, configuration, and enhancement
- Ongoing general **basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement** maintenance & support services

Contractor must demonstrate:

- Significant expertise, knowledge and programming development and maintenance experience in JAVA/J2EE, PL/SQL, XML, Oracle (9i, 10g, and 10g RAC), and basis2 application software.
- Significant expertise and knowledge of the Prophecy's basis2 application software '**basis2 Integrated Billing & Accounts Receivable (IBAR) system**', Oracle Financials, Oracle Application architecture version 12, Oracle Reports and operational details and TCEQ's interface requirements associated with TCEQ's program billing and accounts receivable file interfaces and Texas Comptroller's Uniform Statewide Accounting System (USAS).

Contractor must have the extensive knowledge and experience required to:

- Develop, customize, implement, and support the TCEQ's basis2 Billing & Accounts Receivable system and TCEQ's custom interface requirements from individual custom billing interface files originating from TCEQ Program areas and interface with Texas Comptroller's Uniform Statewide Accounting System (USAS)
- Support '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' and provided all of its maintenance
- Maintain thorough familiarity with TCEQ's business processes, source databases, data structures, data extract procedures, formatting, and interfaces related to the development and continued operation of the '**basis2 Integrated Billing & Accounts Receivable (IBAR) ' system and TCEQ's dataflows.**

Contractor must provide to TCEQ:

- Answers to technical questions relating to the installation, configuration, maintenance, and enhancement of software and other custom code that Prophecy Americas Inc. has developed for TCEQ in the past, and currently resides on TCEQ's hardware.
- Technical assistance in resolving problems that occur during the normal usage of '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' and associated dataflows and interfaces.
- Debugging, configuration design, optimization and tuning of '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' and associated dataflows and interfaces.
- Software design, optimization and tuning of '**basis2 Integrated Billing & Accounts Receivable (IBAR) Custom Support & Enhancement**' and associated dataflows and interfaces.

Contractor must demonstrate the ability to provide the following software tools:

- Prophecy **basis2 application software and TCEQ Integrated Billing & Accounts Receivable (IBAR) system**

Full description of the above products can be accessed through the following link:

<http://www.prophecyinternational.com/index.php>

PRICE FORM

PRICE FORM

Your Hourly Rate amount is the fixed price offer for the work under this contract. TCEQ may accept the rate price or negotiate. List all of the labor categories of the skill sets of the Key Personnel required for the Work of this contract. Insert the loaded hourly rate for all labor categories. Calculate Category Totals. Then sum up all the Category Totals to yield the Total. The Labor Category Total (Column S) equals the Estimated Hours (Column Q) multiplied by the Hourly Rate (Column R).

This Estimated Number of Hours will be used for comparison only. The Estimated Hours are a Rough Order of Magnitude - they are not a promise of hours of work under this contract.

All Unit Prices and hourly rates are loaded and must include all Offeror's cost associated with providing the service.

Labor Category	Description	Q Estimated Number of Hours	R Hourly Rate	S Category Total Q x R = S
Project Manager	Primary contact to TCEQ. Responsible for overall project oversight including adherence to project budget and schedule. Responsible for assuring project deliverables satisfy project objectives and requirements	50	\$	\$
Systems Analyst	Will provide development support	100	\$	\$

	for all technical deliverables of the project. Will provide oversight of technical architecture in accordance with node architecture.			
Developer Analyst	Will provide development support for all technical deliverables of the project.	100	\$	\$
Data Architect	Will provide Oracle data modeling, data architect, data mapping (to/from XML) and database administration support.	100	\$	\$
Developer(s)	Provide programming and development of customized modules	50	\$	\$
Reporting Consultant/Analyst	Will work with TCEQ to develop reporting specifications and provide custom Oracle reports	100	\$	\$
			\$	\$
			\$	\$
Total				\$

EVALUATION OF RESPONSES

Evaluation of Proposals

Proposals and Best and Final Offers will be scored on the basis of factors constituting the best value and best interest of the state using the following general categories for which maximum possible scores are shown:

Qualifications	70 points
Price	30 points
Total Maximum Score	100 Points

STATEMENT OF QUALIFICATIONS AND SELECTION CRITERIA SECTION

The TCEQ may consider, for the assignment of points for Qualifications, information regarding the Proposer's past performance for TCEQ, other governmental entities and businesses.

Statement of Qualifications, Past Performance, Technical Approach (No forms provided. Proposer creates this information and organizes it as follows)

TAB 1. Place the following documents behind this Tab:

- a. Front Page of the RFP, signed. Signing this page binds you to your entire Proposal.
- b. Addendums (if applicable)

TAB 2. Statement of Qualifications

I. Proposer Company Description and Organization: Place the following information behind this Tab:

1. Describe Proposer's business entity including:
 - a. Type of business organization, e.g., corporation, partnership, sole proprietorship, etc.
 - b. Date established
 - c. State of incorporation
 - d. Texas authorizations to conduct business
 - e. Location of your company headquarters
 - f. Location of relevant branch offices
 - g. Equipment and other resources you deem necessary to fulfill the requirements of the scope of work.
 - h. If not currently located in Texas, describe in detail your plan to relocate personnel and equipment to Texas in the event you are awarded this contract. Relocation would be required within thirty (30) days after award, or by August 15, 2005, whichever is later (Location in Texas is for the purpose of ensuring rapid response).
2. Proposer Company Organization: Provide a general explanation and/or chart which specifies project leadership and reporting responsibilities and indicates which team members will interface with TCEQ project management. Team members should include, at least, the Program Manager who has overall responsibility for the contract, Project Manager(s), Systems Analysts, Developer Analysts, Data Architects, Developers, Reporting Consultant/Analyst, and any other proposed personnel you deem necessary for TCEQ to evaluate your proposal. Include proposed number of

personnel by discipline to be dedicated to perform the services for TCEQ. Include the name and title of the official contact for your company and an alternate, who have the legal authority to bind the company in contractual matters.

II. Qualifications - Proposer's Key Personnel's Qualifications:

Each of the following positions must be listed and the proposed personnel described using the format below. Individual personnel may be proposed for multiple positions.

Project Manager: Primary contact to TCEQ. Responsible for overall project oversight including adherence to project budget and schedule. Responsible for assuring project deliverables satisfy project objectives and requirements

Systems Analyst: Will provide development support for all technical deliverables of the project. Will provide oversight of technical architecture in accordance with node architecture.

Developer Analyst: Will provide development support for all technical deliverables of the project.

Data Architect: Will provide Oracle data modeling, data architect, data mapping (to/from XML) and database administration support.

Developer(s): Provide programming and development of customized modules

Reporting Consultant/Analyst: Will work with TCEQ to develop reporting specifications and provide custom Oracle reports

Format: Utilize the following format to list and describe the training and experience of key personnel that will be associated with this contract. Your description must include the relevant on-site technical experience. List personnel in the order of the job titles described above.

Title: Title of Key Person (utilize a title listed above)

Relationship with the Responder: Whether employment, subcontract or other

Name: Name of Key Person

Office Location: Location of Office

Education/Certifications: Field of study, Level of education, and List of degrees/certifications including where received

Years of Experience in Relevant Field:

Years of Management Experience: # of years and experience type

Description of Experience: Provide a description of the key person's relevant experience with respect to the SOW including the number of years of experience

Description of how the Person will assist in the Performance of the Work:

III. Past Performance: Describe recent and significant instances of past performance of same or similar work. Include the following information:

Information on a minimum of one (1) and a maximum of three (3) contracts completed within the last five years or currently in progress for the same or similar work to that described in the Scope of Work. The information must include the two (2) most recent same or similar projects on which the Proposer has worked.

At least one example submitted for the Proposer must be of a completed contract. These examples may include contracts with federal, state and/or local governments, as well as commercial businesses. The Proposer shall include the following information for each contract and subcontract:

Project Name and Location. Include the names and phone numbers for Proposer's and client's project managers.

Client Information: Give name, address, and telephone number of the client. Verify this contact information prior to submitting the Proposal, and provide a secondary contact if the primary contact is frequently unavailable.

Scope of Work: Describe the project's scope of work.

Nature of Proposer's Responsibility: Describe the nature of the proposer's responsibility on the project, including whether the Proposer functioned as the prime contractor, consultant, subcontractor, or other.

Period of performance: Provide start and end dates. Was the project completed based on the original schedule? Describe any delays that occurred and how you responded to them. Describe any actions taken that accelerated performance to achieve early completion.

Dollar value of the Contract: State the dollar value of the contract.

Subcontractors: List subcontractors utilized, if any, and what they were utilized for.

Note: If Proposer has no relevant past performance history, a Proposer must affirmatively state that it has no relevant, directly-related, or similar past performance history. If a Proposer does not indicate whether past performance history exists, the Proposer's submittal may be considered ineligible for award.

Do not submit the following:

References whose names cannot be listed.

References whose names cannot be released under the Texas Open Records Act.

References who will not be willing to have their evaluations released under the Texas Open Records Act

TAB 3. Work Plan or Technical Approach: Please submit a written description of your firm's technical approach for accomplishing the scope of work that includes a description of how you firm meets the Minimum Mandatory Qualification for this solicitation.

TAB 4. Response Forms. Complete and submit all designated forms.

- 4.1 **Price:** Complete the Price Form in its entirety and submit behind this Tab.
- 4.2 Preferences Form
- 4.3 Federal Forms

DESCRIPTION OF TCEQ WORK ORDER PROCESS

Contractor will perform the Work described in the Scope of Work in accordance with written Work Orders issued by TCEQ, and the Contract Terms and Conditions including the process described in this Work Order Section. TCEQ does not guarantee any minimum amount of Work or Work Orders. The TCEQ does not guarantee any minimum amount of Work or Work Orders.

1. Work Orders

- 1.1 During the Contract Term, the TCEQ will order the Work by Work Orders for separate tasks that may or may not relate to each other and that do not necessarily form an entire discrete, separate deliverable or project.
- 1.2 The Scope of Work is intended to provide a general overview of the type of work that will be requested. The Work Orders will contain more detailed specifications of the work to be completed, as appropriate. Each Work Order shall contain a not-to-exceed amount that represents the total value of that Work Order. Unless the Work Order specifically states that a Work Plan is required, the Contractor's response to the Work Order is to begin the task as described.
- 1.3 If a Work Plan is ordered, the TCEQ will then either approve the Contractor's Work Plan or disapprove it and request modifications. If the TCEQ approves the Work Plan, the TCEQ will issue a Notice to Proceed and the Contractor must start work. (See more about Work Plans below.)
- 1.4 The Contractor will carefully read the description of the types of work that may need to be done and, then, either indicate that they can do all of the tasks independently or will be partnering or subcontracting with another company or companies to do the work. For all Work Orders issued under the Contract, the Contractor must provide services described under the Scope of Work and the Work Orders, and completion of reports ordered either for submission to meet federal or TCEQ requirements or to provide technical background needed by TCEQ staff to develop policy recommendations. The reports may contain evaluation of alternatives and recommended solutions to problems in order to aid the decision-making and policy-making functions of TCEQ staff. The specific assignment(s), which may include some or all of the tasks described in this paragraph, will be included in each Work Order.
- 1.5 Work Orders must contain, at a minimum, the following information:
 - 1.5.1 Contract number and name;
 - 1.5.2 Work order number and name;
 - 1.5.3 Maximum dollar amount for the Work Order;
 - 1.5.4 Balance remaining for the total Contract amount;
 - 1.5.5 Time Line Schedule, including the start and end dates;
 - 1.5.6 Purpose, background, and references, if applicable;
 - 1.5.7 Scope of Work for the Work Order broken out by tasks and deliverables;
 - 1.5.8 Instructions to the Contractor including format of copies, availability for questions, any work, data, models or reports to be provided by the TCEQ, required models or software to be used, anything to be supplied by the TCEQ, Quality Assurance/Quality Control procedures or other standards including but not limited to those relating to GIS, modeling, and database projects if not previously provided, and special contents of the Work Plan, testing procedures, acceptance criteria; and
 - 1.5.9 The name of the TCEQ project managers and the names of any other TCEQ staff contacts.

2. Work Plans

2.1. Original Proposed Work Plan

If a Work Plan is specified by a Work Order, fourteen (14) calendar days after receipt of a Work Order issued under the Contract, the Contractor must submit one (1) copy of a Work Plan to the designated TCEQ Contract Manager. The Work Plan must contain, at a minimum, the following:

- 2.1.1. Contractor's Project Manager and other contacts assigned to the Work Order;

- 2.1.2. Key Personnel assigned to the Work Order, with an estimate of the time to be spent by each person on each deliverable, and a current resume for key personnel, if one was not previously provided;
- 2.1.3. Time Line: A list of the tasks, deliverables, and dependencies and a schedule, including the start date and end date for each deliverable.
- 2.1.4. Contractor staff assigned to each task and estimated hours.
- 2.1.5. TCEQ staff commitments required for each task and estimated hours. This needs to include a break-out of infrastructure support and physical DBA support hours.
- 2.1.5. Technical Approach and Technical Solution: Describe the technical approach and technical solution for completing the tasks and deliverables. This must contain detailed descriptions of the methods and formats for the performance of tasks and production of deliverables, including any additional work or modification of the tasks the Contractor deems necessary in order to complete the work. Include the hours of each labor classification required to complete each task and subtask;
- 2.1.6. Work Breakdown Structure (WBS)
- 2.1.5. Quality Assurance / Quality Control Procedures: Describe the process and procedures to be performed by the Contractor to ensure the product meets the user requirements. Include proposed testing procedures, test plans, and proposed acceptance criteria;
- 2.1.6. The Work Order Budget. Calculate and provide estimates of all charges required to complete the Work Order and produce each deliverable. The budget submitted must be sufficiently detailed to allow the TCEQ to easily determine the hours, prices, and personnel by labor classification related to each deliverable. The Work Order Budget must also include prices for requested reimbursables and a total for the proposed Work Plan. Include items and item descriptions, and unit and extended prices;
- 2.1.7. Describe the process for providing the required reports to the TCEQ; and
- 2.1.8. Signature: Have the Work Plan document signed and dated by a person with the authority to bind the Contractor to the performance of the work plan, including the title and printed name of the person signing the work plan. The Work Plan must include the Contractor's company or organization name in a prominent place on the work plan document.

2.2 Revisions to Work Plan

Unless given specific written permission otherwise, the Contractor must submit revisions of the Work Plan to the TCEQ Project Manager within seventy-two (72) hours of:

- 2.2.1. When the original Work Plan is rejected or otherwise disapproved, in whole or in part, by the TCEQ Project Manager;
- 2.2.2. When directed by the TCEQ Project Manager;
- 2.2.3. Whenever the Work Order requirements are changed by appropriate Work Order amendment; and
- 2.2.4. With the approval of the TCEQ, as soon as it appears that the completion date stated in the approved Work Plan may be exceeded. The Contractor may submit recommended revisions to the Work Plan when the Contractor believes such revision is deemed desirable for optimum achievement of Contract and Work Order objectives. The Contractor must obtain TCEQ approval of every recommended revision to the Work Plan prior to implementation. A copy of each revision must be submitted to the TCEQ Project Manager.

3. TCEQ Approval of Work Plan

The TCEQ will either accept the Contractor's Work Plan or disapprove it and if desirable request modifications. The Contractor must submit an acceptable final Work Plan within fourteen days of request of modifications. If a Work Plan is ordered, the TCEQ must issue a Notice to Proceed upon approval of the Work Plan. Upon receipt of the Notice to Proceed, Contractor must begin Work on the date indicated in the Notice to Proceed. The approved Work Plan and the Notice to Proceed will become a part of the Contract Documents and all terms and conditions in the Contract apply to the Work Plan.

If the TCEQ approves a discrete portion of a Work Plan and rejects or otherwise fails to approve a portion, the TCEQ may, at its discretion, issue a Limited Notice to Proceed with a specified approved portion. This does not waive any deficiencies in the Work Plan as a whole.

4. Acceptance for Integration

The Contractor must submit the completed Work for inspection or testing for integration and final, written acceptance. If the Work forms a system, the Contractor must submit the completed system, for inspection or testing for integration and final, written acceptance. Final written acceptance fixes the acceptance date. Failure to achieve final written acceptance voids any previous acceptance of a portion of the work.

5. TCEQ Reliance on Work Plan Estimates

The Contractor must be extremely attentive to the preparation of the labor hour estimates contained in Work Plans that are prepared in response to Work Orders. The Contractor agrees to continue and to complete work assigned under a Work Order within the original estimate or budget provided in the Contractor's Work Plan unless the TCEQ agrees to an adjustment. The TCEQ budgets for and encumbers funds only up to the not-to-exceed dollar amount contained in each Work Order and, therefore, materially relies on the Contractor's diligence in the preparation of estimates submitted for approval in the Work Plans. The essence of the reliance is that partially completed work products, which could be a consequence of inadequately prepared estimates, may be of little or no use to the TCEQ. The Contractor acknowledges and agrees that the TCEQ may materially rely on these Contractor-prepared estimates.

6. Work Order Amendments.

The TCEQ may, at its discretion, amend the maximum amount of a Work Order to agree with a Work Plan revision that has been approved by the TCEQ. The TCEQ may also further amend a work order to add additional detail, requirements, or deliverables, consistent with the Contract.

7. Work Order Termination

- 7.1 Without intent to waive the requirement that time is of the essence in this Contract, in the event the Contractor does not obtain TCEQ approval of a Work Plan within thirty (30) days after the seventy-two (72) hour time limit stated in paragraph above titled Revisions to the Work Plan, the TCEQ may terminate the Contract for cause.
- 7.2 TCEQ may terminate a Work Order with ten (10) days notice for convenience or force majeure. Any termination for force majeure where the underlying cause does not meet the definition of force majeure shall automatically be deemed as a termination for convenience. Termination shall not prejudice any other right or remedy of TCEQ. Contractor may request payment for: completed and accepted Work and timely, reasonable expenses directly attributable to termination. Contractor shall not be paid for: work not performed, loss of anticipated profits or revenue, consequential damages, or other economic loss arising out of or resulting from the termination.

Ability to Meet Functional Requirement of Service

Voluntary Product Accessibility Template™
TCEQ Version 1.0 (Section 508 v 1.2)

The purpose of the Voluntary Product Accessibility Template, or VPAT™, is to assist buyers in making preliminary assessments regarding the availability of commercial "Electronic and Information Technology" products and services with features that support accessibility. Vendors should provide additional contact information to facilitate more detailed inquiries.

The following tables provide a reporting grid for various products covered by DIR Rules at 1 Texas Administrative Code (TAC) Chapter 213 [based on Section 508 Federal Rehabilitation Act and the Federal Acquisition Rules (FAR)]. There are three columns in each table:

Column one of the Summary Table describes the applicable standards at 1 TAC Ch. 213 subsections 213.10 - 17.

Column two describes the supporting features of the product or refers to the corresponding detailed table, "e.g., equivalent facilitation."

Column three contains any additional remarks and explanations regarding the product.

Note that the first column contains the lettered paragraphs of the subsections. The second column describes the supporting features of the product with regard to that paragraph. The third column contains any additional remarks and explanations regarding the product.

Voluntary Product Accessibility Template

Summary Table

Date:

Name of Product: basic2

Company contact for more Information: Prophecy America, Inc.

X= Applicable Criteria

Criteria	Supporting Features	Remarks and explanations
1 TAC Section 213.10 Software Applications and Operating Systems (Fed. Rehab. Act Section 508 Standards 1194.21)	X	
1 TAC Section 206.50 Web-based internet information and applications (Fed. Rehab. Act Fed. Rehab. Act Section 508 Standards 1194.22)		
1 TAC Section 213.11 Telecommunications Products (Fed. Rehab. Act Section 508 Standards 1194.23)		
1 TAC Section 213.12 Video and Multi-media Products (Fed. Rehab. Act Section 508 Standards 1194.24)		
1 TAC Section 213.13 Self-Contained, Closed Products (Fed. Rehab. Act Section 508 Standards 1194.25)		
1 TAC Section 213.14 Desktop and Portable Computers (Fed. Rehab. Act Section 508 Standards 1194.26)		
1 TAC Section 213.15 Functional Performance Criteria (Fed. Rehab. Act Fed. Rehab. Act Section 508 Standards 1194.31)		
1 TAC Section 213.16 Information, Documentation and Support (Fed. Rehab. Act Section 508 Standards 1194.41)		

DIR Rule 1 TAC Section 213.10
Software Applications and Operating Systems - Detail
Voluntary Product Accessibility Template

Criteria	Supporting Features	Remarks and explanations
(a) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.		
(b) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.		
(c) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The		

focus shall be programmatically exposed so that Assistive Technology can track focus and focus changes.		
(d) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to Assistive Technology. When an image represents a program element, the information conveyed by the image must also be available in text.		

(e) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.		
(f) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.		
(g) Applications shall not override user selected contrast and color selections and other individual display attributes.		
(h) When animation is displayed, the		

information shall be displayable in at least one non-animated presentation mode at the option of the user.		
(i) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.		
(j) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.		
(k) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.		
(l) When electronic forms are used, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.		

DIR Rule 1 TAC Section 206.50
Web-based Internet information and applications - Detail
Voluntary Product Accessibility Template

Criteria	Supporting Features	Remarks and explanations
(a) A text equivalent for every non-text element shall be provided (e.g., via "alt", "longdesc", or in element content).		
(b) Equivalent alternatives for any multimedia presentation shall be synchronized with the presentation.		
(c) Web pages shall be designed so that all information conveyed with color is also available without color, for example from context or markup.		
(d) Documents shall be organized so they are readable without requiring an associated style sheet.		
(e) Redundant text links shall be provided for each active region of a server-side image map.		
(f) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.		
(g) Row and column headers shall be identified for data tables.		
(h) Markup shall be used to associate data cells and header cells		

for data tables that have two or more logical levels of row or column headers.		
(i) Frames shall be titled with text that facilitates frame identification and navigation		
(j) Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.		
(k) A text-only page, with equivalent information or functionality, shall be provided to make a web site comply with the provisions of this part, when compliance cannot be accomplished in any other way. The content of the text-only page shall be updated whenever the primary page changes.		
(l) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by Assistive Technology.		
(m) When a web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies		

with § 213.10 (a) through (l).		
(n) When electronic forms are designed to be completed on-line, the form shall allow people using Assistive Technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.		
(o) A method shall be provided that permits users to skip repetitive navigation links.		
(p) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.		

Note to 1 TAC Section 213.11: The Section 508 Standards Board interprets paragraphs (a) through (k) of this section as consistent with the following priority 1 Checkpoints of the Web Content Accessibility Guidelines 1.0 (WCAG 1.0) (May 5 1999) published by the Web Accessibility Initiative of the World Wide Web Consortium: Paragraph (a) - 1.1, (b) - 1.4, (c) - 2.1, (d) - 6.1, (e) - 1.2, (f) - 9.1, (g) - 5.1, (h) - 5.2, (i) - 12.1, (j) - 7.1, (k) - 11.4.

DIR Rules 1 TAC Section 213.15
Functional Performance Criteria - Detail
Voluntary Product Accessibility Template

Criteria	Supporting Features	Remarks and explanations
(a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for Assistive Technology used by people who are blind or visually impaired shall be provided.		
(b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for Assistive Technology used by people who are visually impaired shall be provided.		
(c) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for Assistive Technology used by people who are deaf or hard of hearing shall be provided		
(d) Where audio information is important for the use of a product, at least one mode of operation and		

information retrieval shall be provided in an enhanced auditory fashion, or support for assistive hearing devices shall be provided.		
(e) At least one mode of operation and information retrieval that does not require user speech shall be provided, or support for Assistive Technology used by people with disabilities shall be provided.		
(f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.		

**DIR Rules 1 TAC Section 213.16
Information, Documentation, and Support - Detail
Voluntary Product Accessibility Template**

Criteria	Supporting Features	Remarks and explanations
Section 213.16 (a) Product Support Documentation provided to end-users shall be made available in alternate formats upon request, at no additional charge.		
Section 213.16 (b) Accessibility and Compatibility Features. End-users shall have access to a description of the accessibility and compatibility features		

of products in alternate formats or alternate methods upon request, at no additional charge.		
Section 213.16 (c) Support Services for products shall accommodate the communication needs of end-users with disabilities.		

FINANCIAL SECTION

PART 1. INSURANCE REQUIREMENTS

The contractor shall obtain and maintain during the contract term, to include any renewals, the insurance coverages of the types and in the minimum amount specified below from insurers authorized (licensed, eligible or registered) under the laws of the State of Texas. All insurance policies shall be covered by an insurer with a minimum rating of an "A" or better and "IV", of financial size capacity or greater in the most recent A.M. Best Company rating of the insurer. Additional requirements concerning insurance are contained in the Special Terms and Conditions. Cancellation, material change or change in insurance agent or carrier other than for non-payment, shall not be made until thirty (30) days after the authorized agent or the insurer notifies TCEQ in writing by certified mail at the address shown on the bottom of the TCEQ Certificate of Insurance. Any change in insurers will necessitate providing the TCEQ a new certificate of insurance. Cancellation or material change due to non-payment shall not be made until ten (10) days after the authorized agent or the insurer notifies the contractor and TCEQ in writing by certified mail at the address shown on the bottom of the TCEQ Certificate of insurance. Such notice must reference the solicitation number for the contract.

X	WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE
Coverage in the following minimum amounts for all personnel furnishing work: • bodily injury - by accident, \$100,000.00 per accident; • by disease, \$100,000.00 per employee; and • a per policy aggregate of \$500,000.00 Elective exemptions or coverages through an employee leasing arrangement will not satisfy this requirement.	
X	COMMERCIAL AUTOMOBILE LIABILITY INSURANCE
Coverage for owned, hired, and non-owned vehicles for claims of automobile bodily injury and property damage which may arise in the performance of the Contract. The minimum amounts of coverage shall be: • \$500,000.00 per person; and • \$500,000.00 per occurrence for bodily injury; • \$1,000,000.00 per occurrence for property damage; • \$1,000,000.00 per occurrence if the policy is issued for bodily injury and property damage combined.	
X	COMMERCIAL GENERAL LIABILITY INSURANCE
Coverage for claims of personal injury and bodily injury, including accidental death, and property damage which may arise from the performance of the contract. The types of coverage required are: Blanket, Broad Form Property Damage, Premises and Operations Hazards, Products and Completed Operations Hazards, Independent Contractor's, and Contractual Liability in the minimum amounts as follows: • \$500,000.00 per occurrence for bodily injury; • \$1,000,000.00 per occurrence for property damage; • \$1,000,000.00 per occurrence if the policy is issued for bodily injury and property damage combined.	
X	REQUIRED ADDITIONAL POLICY PROVISIONS
All policies of insurance shall include the following required provisions: 1. TCEQ will be notified, in writing, of the cancellation or modification of a policy at least thirty (30) days prior to the effective date of the cancellation or modification; 2. Where available, TCEQ, and its officers, and employees are named as additional insureds to the Commercial Automobile Liability Insurance and the Commercial General Liability Insurance; 3. Waiver of subrogation against the TCEQ, its officers and employees, for bodily injury (including death), property damage or any other loss arising from this contract. The waiver shall be on a form approved by TCEQ; and 4. The contractor's insurance is primary insurance with respect to the TCEQ, its officers and employees.	
	COMMERCIAL GENERAL LIABILITY ADDITIONAL COVERAGE FOR EXPLOSION, COLLAPSE AND UNDER GROUND HAZARDS
Contractor must obtain and maintain this coverage which must all be in the same amounts as those for	

Commercial General Liability listed above.
--

EXCESS LIABILITY INSURANCE (UMBRELLA)
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The contractor and subcontractor, must obtain and maintain umbrella liability insurance to provide additional coverages for all liability policies required for this contract and endorsed on the TCEQ Certificate of Insurance in an amount not less than:
--

- | |
|--|
| <ul style="list-style-type: none"> • \$1,000,000.00 in the aggregate. |
|--|

EXCESS LIABILITY INSURANCE (OTHER THAN UMBRELLA)

The Contractor and subcontractor, must provide excess liability coverage for claims of bodily injury and property damage in excess of the coverage provided by Comprehensive General Liability Insurance and Automobile Liability Insurance in an amount not less than:
--

- | |
|--|
| <ul style="list-style-type: none"> • \$1,000,000.00 in the aggregate. |
|--|

PROFESSIONAL LIABILITY INSURANCE

The contractor shall provide such coverage for financial loss resulting from errors, omissions and failure to properly coordinate the plans and specifications of the Work or Contract documents. Professional Liability Insurance shall contain a minimum net coverage of:
--

- | |
|--|
| <ul style="list-style-type: none"> • \$1,000,000.00 plus deductible exclusion, or; • 100% of the total professional gross fees under the contract, whichever is greater. |
|--|

The contractor shall require any subcontractor, which the TCEQ deems necessary, to provide Professional Liability Insurance sufficient for the protection, on the same basis as above, of the portion of the work the subcontractor performs. The compilation of the total insurance coverage required under this paragraph shall remain the responsibility of the contractor.

ENVIRONMENTAL IMPAIRMENT OR CONTRACTORS POLLUTION LIABILITY INSURANCE
--

The contractor and subcontractor, where applicable, shall provide coverage for claims of environmental impairment and pollution caused by the contractor's or subcontractor's negligence in the execution of work under the contract. The amount shall be not less than:

- | |
|---|
| <ul style="list-style-type: none"> • \$1,000,000.00 per occurrence, and; • \$2,000,000.00 in the aggregate. |
|---|

OTHER

Additional specific types of insurance policies will be listed in the Special Terms and Conditions of the solicitation.

PART 2. ADDITIONAL INSURANCE REQUIREMENTS

Only requirements marked with a "X" apply to this Contract. Any additional insurance that may be required, would be found within the Special Terms and Conditions section of this Solicitation. In the event of a conflict, the instructions found in the Special Terms and Conditions supercede those listed herein.

WHEN TO SUBMIT THE CERTIFICATE OF INSURANCE
--

SUBMIT IN THE SOLICITATION

Contractor must submit the TCEQ Certificate of Insurance in the Solicitation
--

X SUBMIT WHEN AWARDED A CONTRACT

The contractor must submit the TCEQ Certificate of Insurance upon the award of a contract, no later than 10 days afterwards, unless other guidelines are specified within the Special Terms and Conditions.
--



**CERTIFICATE OF INSURANCE FOR
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)
SOLICITATION NUMBER 582-X-XXXXX**

PRODUCER: AUTHORIZED AGENT: <u>AGENT'S PHYSICAL ADDRESS:</u> MAILING ADDRESS: CITY: _____ STATE: _____ ZIP: _____ AGENT'S PHONE #: _____	THIS CERTIFICATE NEITHER AFFIRMATIVELY OR NEGATIVELY AMENDS, EXTENDS, OR ALTERS THE COVERAGE AFFORDED BY THE POLICIES BELOW: <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:5%;">C O</th> <th style="width:75%;">COMPANIES AFFORDING COVERAGE</th> <th style="width:10%;">RATE</th> <th style="width:10%;">A.M. BEST RATING</th> </tr> <tr><td>A</td><td></td><td></td><td></td></tr> <tr><td>B</td><td></td><td></td><td></td></tr> <tr><td>C</td><td></td><td></td><td></td></tr> <tr><td>D</td><td></td><td></td><td></td></tr> <tr><td>E</td><td></td><td></td><td></td></tr> <tr><td>F</td><td></td><td></td><td></td></tr> <tr><td>G</td><td></td><td></td><td></td></tr> </table>	C O	COMPANIES AFFORDING COVERAGE	RATE	A.M. BEST RATING	A				B				C				D				E				F				G			
C O	COMPANIES AFFORDING COVERAGE	RATE	A.M. BEST RATING																														
A																																	
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D																																	
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G																																	
INSURED: CONTRACTOR: (MUST BE SAME AS IN TCEQ CONTRACT) <u>CONTRACTOR'S PHYSICAL ADDRESS:</u> <u>MAILING ADDRESS:</u> CITY: _____ STATE: _____ ZIP: _____ CONTRACTOR'S PHONE #: _____																																	
COVERAGES																																	
CO.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF DATE (MM/DD/YY)	POLICY EXP DATE (MM/DD/YY)	LIMITS																												
	GENERAL LIABILITY				GENERAL AGGREGATE	\$																											
	COMMERCIAL GENERAL LIABILITY				PRODUCT-COMP/OP AGG	\$																											
	CLAIMS MADE				PERSONAL & ADV INJURY	\$																											
	OCCUR				EACH OCCURRENCE	\$																											
	OWNER'S AND CONTRACTOR'S PROT				FIRE DAMAGE (ANY ONE FIRE)	\$																											
					MED EXP (ANYONE PERSON)	\$																											
	AUTOMOBILE LIABILITY																																
	ANY AUTO				COMBINED SINGLE LIMIT	\$																											
	ALL OWNED AUTOS				BODILY INJURY (PER PERSON)	\$																											
	SCHEDULED AUTOS				BODILY INJURY (PER ACCIDENT)	\$																											
	HIRED AUTOS				PROPERTY DAMAGE	\$																											
	NON-OWNED AUTOS																																
	EXCESS LIABILITY																																
	UMBRELLA FORM				EACH OCCURRENCE	\$																											
	OTHER THAN UMBRELLA				AGGREGATE	\$																											

		FORM					
		WORKERS' COMPENSATION & EMPLOYERS LIABILITY THE PROPRIETOR / PARTNERS/ EXECUTIVE OFFICER ARE				☐ WC STATUTORY LIMITS ☐	
		INCLUDED				EACH ACCIDENT	\$
		EXCLUDED				DISEASE - EACH EMPLOYEE	\$
						AGGREGATE	\$
		PROFESSIONAL LIABILITY /E&O					\$
		ENVIRONMENTAL IMPAIRMENT/POLLUTION LIABILITY				EACH OCCURRENCE	\$
						AGGREGATE	\$
		OTHER					\$

Description of Special Items:

TCEQ is an additional insured where required under the contract. All policies of insurance shall include a waiver of subrogation for the TCEQ, its officers and employees, for bodily injury (including death), property damage or any other loss arising from this contract. Cancellation or material change, other than for non-payment shall not be made until thirty (30) days after the authorized agent or the insurer notifies in writing by certified mail the contractor and TCEQ at the address shown below. Cancellation or material change due to non-payment shall not be made until ten (10) days after the authorized agent or the insurer notifies in writing by certified mail the contractor and TCEQ at the address shown below. Such notice must reference the Solicitation number for this contract.

I certify to the TCEQ that the policy(ies) listed above comply with the Contractor's requirements in the contract with TCEQ and the policy(ies) have been issued to the Contractor named above for the policy period indicated.

ORIGINAL SIGNATURE OF AUTHORIZED AGENT (STAMPED, TYPED, PRINTED ARE UNACCEPTABLE)

DATE

PRINTED NAME OF AUTHORIZED AGENT

ALL CORRESPONDENCE RELATED TO INSURANCE SHOULD BE MAILED TO:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
MC (MAIL CODE) 182
P.O. Box 13087
AUSTIN, TX 78711-3087

A COPY OF THIS CERTIFICATE SHOULD ALSO BE MAILED TO THE TCEQ CONTRACT MANAGER NAMED IN THE CONTRACT.

FEDERAL FORMS

FEDERAL CONDITIONS

ARTICLE 1. FEDERAL REQUIREMENTS

This Contract is funded in part with federal grant money. The following conditions apply to this Contract in addition to all other contract terms. All applicable requirements of TCEQ's federal grants and 40 CFR Parts 30 through 35 are incorporated herein by reference (TCEQ will provide copies of applicable federal grants or regulations upon request). The term "PERFORMING PARTY" as used in these *Federal Conditions* means either PERFORMING PARTY or CONTRACTOR, as applicable.

ARTICLE 2. FEDERAL INTELLECTUAL PROPERTY REQUIREMENTS

A nonexclusive, perpetual, irrevocable license to use, copy, publish, and modify any intellectual property to which rights are granted or assigned to TCEQ in this Contract are hereby also granted to, assigned to, or reserved by the Federal Government. To the extent consistent with the rights of third parties, the Federal Government shall also have the right to sell any intellectual property right it reserves or acquires through this Contract.

ARTICLE 3. ACKNOWLEDGMENT OF FINANCIAL SUPPORT

The PERFORMING PARTY shall acknowledge the financial support of the TCEQ and the U.S. EPA whenever work funded, in whole or part, by this Contract is publicized or reported in news media or publications. All reports and other documents completed as a part of this Contract, other than documents prepared exclusively for internal use within the TCEQ, shall carry the following notation on the front cover or title page:

PREPARED IN COOPERATION WITH THE
Texas Commission on Environmental Quality AND
U.S. ENVIRONMENTAL PROTECTION AGENCY

The preparation of this report was financed through grants from the U.S. Environmental Protection Agency through the Texas Commission on Environmental Quality.

If the funding source is a U.S. agency other than U.S. EPA, the name of the appropriate federal agency should be substituted.

ARTICLE 4. COST AND PRICE OF THIS CONTRACT

If this Contract was not competitively procured or if payment is based on reimbursement of actual costs, then PERFORMING PARTY shall submit cost information sufficient for a cost analysis as required by 40 CFR §31.36. This information must be submitted on forms provided by the TCEQ.

ARTICLE 5. ACCOUNTING SYSTEMS AND PROPERTY MANAGEMENT SYSTEMS

1. PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies with 40 CFR §31.20. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects.

2. PERFORMING PARTY shall have a property management system that complies with the standard of and requirements in 40 CFR §§ 31.32 through 31.33.

ARTICLE 6. RECORD DOCUMENTS, DATA, RECORDS, ACCESS, AND AUDIT

The Federal Government and its agencies will have the same rights of access to records as are granted to, assigned to, or reserved by the TCEQ under this Contract.

ARTICLE 7. DEBARMENT

On or prior to the effective date of this Contract, PERFORMING PARTY must submit a Certification Regarding Debarment, Suspension, and Other Responsibility Matters. PERFORMING PARTY must also submit a Certification Regarding Debarment, Suspension, and Other Responsibility Matters / Lower Tier for each subcontractor it employs to conduct the Work. These certifications must be submitted on forms provided by the TCEQ.

ARTICLE 8. MINORITY BUSINESS ENTERPRISES / WOMEN'S BUSINESS ENTERPRISES (MWBEs)

1. PERFORMING PARTY shall take steps to encourage participation by minority business enterprises and women's business enterprises (MWBEs) in the performance of this Contract.

2. If the *General Conditions* of this Contract do not contain a requirement that PERFORMING PARTY submit information regarding its subcontracts with Historically Underutilized Businesses (HUBs) as defined by Texas law, then PERFORMING

PARTY shall comply with the MBE/WBE requirements imposed on TCEQ in the federal grant or grants funding this Contract, and submit information regarding its subcontracts with MBE/WBEs on forms provided by the TCEQ.

3. PERFORMING PARTY agrees that qualified MWBEs shall have the maximum practicable opportunity to participate in the performance of the Work required under this Contract through possible subcontracts to carry out portions of the Work and by way of goods and/or services procurement contracts that directly support the required Work.

4. PERFORMING PARTY will submit a completed HUB PROGRESS ASSESSMENT REPORT with each reimbursement request submitted. At a minimum this report shall include the name of the MWBE, a description of the work, services or materials provided, the amount paid to the MWBE, and the name and telephone number of a contact person within the MWBE.

5. The PERFORMING PARTY shall conduct the following actions in connection with solicitations for subcontractors and for suppliers (vendors) of contract-required goods and/or services:

5.1. Place qualified MWBEs on solicitation lists for subcontractors and vendors;

5.2. Assure that at least three (3) MWBEs are solicited whenever they are potential sources for subcontractor-performed work or vendor-provided goods and/or services;

5.3. Each solicitation shall include a copy of the specifications, adequate information about the plans, Scope of Service, and requirements of the work to be subcontracted or the goods and/or services to be procured, and shall provide sufficient time to allow all interested parties the opportunity to participate effectively;

5.4. Records of solicitations for subcontractor and/or vendor services, including the responses received from potential MWBE subcontractors and vendors, shall be maintained and reported to TCEQ;

5.5. Submit explanatory information in cases where bids were not solicited prior to obtaining the services of subcontractors or vendors, or where a MWBE was low bidder but the subcontract or procurement contract was awarded to a non MWBE;

5.6. Divide total subcontractor or vendor requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such business enterprises; if sufficient subcontracting or goods and/or service provider opportunities are not available, PERFORMING PARTY shall submit explanatory information to TCEQ;

5.7. Establish delivery schedules, where requirements permit, which encourage participation by MWBEs;

5.8. Utilize the Texas General Services Commission (GSC) Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Directory (<<http://www.gsc.state.tx.us>>) and the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce (<<http://www.doc.gov>>) when searching for MWBE subcontractors and/or vendors; and

5.9. Require its subcontractors to take the actions listed in 5.1 - 5.8 of this Article in all of its subcontracts that contemplate the letting of lower-tier subcontracts.

ARTICLE 9. PROHIBITION USE OF FEDERAL FUNDS FOR LOBBYING AND LITIGATION

Contractor agrees that none of the funds paid under this Contract will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. When Contractor applies for final payment, Contractor will certify on a written form provided by the TCEQ that Contractor has complied with this provision.

EPA Project Control Number

EPA
United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters

The Prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this Offer been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public

transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three-year period preceding this application/Offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this Offer or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

☐ I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)

LOWER TIER

EPA Project Control Number

EPA
United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters

The Prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this Offer been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/Offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this Offer or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

☐ I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loan, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including Subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to the civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ORGANIZATION NAME AWARD NUMBER

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE DATE

Please check appropriate box below:

- ☐ Disclosure Form attached
- ☐ Disclosure Form Forthcoming
- ☐ Disclosure Form Not Applicable

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 USC 1352

1. Type of Federal Action: ☐] a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐] a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐] a. initial filing b. material change For Material change only: year _____ Quarter _____ date of last report _____
4. Name and Address of Report Entity ☐] prime ☐] subawardee tier _____, if known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, enter name and address of Prime: Congressional District, if known	
6. Federal Department/Agency:	7. Federal Program name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount if known: \$	
10. a. Name and address of Lobbying Entity (if individual, last name, first name, MI): (attach Continuation Sheet(s))	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): SF--LLL-A if necessary)	
11. Amount of Payment (check all that apply): \$ _____ ☐] actual ☐] planned 12. Amount of payment (check all that apply): ☐] a. cash ☐] b. in-kind; specify nature value	13. Type of Payment (check all that apply): ☐] a. retainer ☐] b. one-time fee ☐] c. commission ☐] d. contingent fee ☐] e. deferred ☐] f. other, specify: 	
14. Brief description of services performed or to be performed and date(s) of service, including officer(s), employee(s), or Member(s) contacted for Payment indicated in Item 11: (attach Continuation sheet(s) SF-LLL-A if necessary)		
15. Continuation sheet(s) SF-LLL-A attached: ☐] Yes ☐] No		

<u>16. Information requested through this form is authorized by Title 31 U.S.C. , Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</u>	Signature _____ Print Name _____ Title _____ Telephone No. _____ Date _____
--	--

Standard Form-LL

DISCLOSURE OF LOBBYING
CONTINUATION SHEET

Reporting Entity: _____ Page ____ of ____

Authorized for Local Reproduction

Standard Form - LLL-A

INSTRUCTIONS FOR COMPLETION OF SF-LL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to Title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to Subcontracts, subgrants, and contract awards under grants..
5. If the organization filing the report in Item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal Agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Offer (RFP) number, invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/Offer control number assigned by the Federal agency) Include prefixes, e.g., RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10.
 - (a) Enter the full name, address, city, state and zip code for the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.
 - (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget Paperwork Reduction Project (0348-0046), Washington, D.C. 29503.

PURPOSE AND APPLICABILITY OF THE COST OR PRICE SUMMARY
(COST OR PRICE SUMMARY IS ATTACHED BELOW)

The purpose of this form is to provide a simple form for the display of cost and price data. 40 CFR 33.290 requires the recipient to perform cost or price analysis for every procurement action, including subagreement modifications. This form is not required by EPA, but may be used at the recipient's option. If the recipient currently uses a cost and price analysis form which accomplishes the same objectives as this form, the recipient may use its own form.

INSTRUCTIONS

If this form is used, CAREFULLY READ AND FOLLOW ALL INSTRUCTIONS. Many items are not self-explanatory. Attach additional sheets if necessary.

Use only the applicable portion of this form:

Part I is applicable to all subagreements.

Part II is applicable to all subagreements requiring a cost analysis pursuant to EPA procurement regulations.

Part III is applicable to all subagreements where review is based on price comparison (i.e., price analysis).

Part IV certification will be executed as required by the instructions for each block.

PART I - GENERAL

Item 1 - Enter the name of the of the recipient as shown on the assistance agreement.

Item 2 - Enter the assistance identification number shown on the assistance agreement (or assigned to the project, if no assistance agreement has yet been executed).

Item 3 - Enter the name of the contractor or Subcontractor with whom the subagreement is proposed to be executed.

Item 4 - Enter the date of the contractor's or Subcontractor's Offer to the recipient.

Item 5 - Enter the full mailing address of the contractor or Subcontractor.

Item 6 - Give a brief description of the work to be performed under the proposed subagreement.

Part II - COST SUMMARY

This portion of the form is to be completed by the contractor (or his/her Subcontractor) with whom a subagreement is a formally advertised, competitively bid, fixed price subagreement.

Nothing in the following discussion should be interpreted as recommending the inclusion as direct costs any items normally treated as overhead costs in the firm's accounting or estimating system. 40 CFR Part 30 identifies general cost principles applicable to subagreements under EPA assistance. Pursuant to that Part, all subagreements awarded to profit-making organizations are subject to cost principles of 48 CFR 31.2. Architect engineer and construction contracts are also subject to 48 CFR 31.105.

Item 7 - Direct Labor

Direct labor costs normally include salaries at a regular time rate. Overtime premiums should be identified separately on an attachment. Incurrence of unanticipated overtime costs requires the approval of the recipient at the time of incurrence. If significant overtime is known to be needed at the time of completion of the cost review form, the reasons therefore, labor categories, rates and hours should be identified on the attachment. Also included is the cost of partners' or principals' time when they are directly engaged in services to be rendered under the subagreement. In case the full time of any employee is not to be devoted to work to be performed under the subagreement, only the cost of actual time to be applied should be included. The compensation of a partner or principal shall be included as direct cost only for the time that she/he is expected to be engaged directly in the performance of work under the subagreement

and only if it is the firm's normal practice to charge such time directly to all jobs. The rate of compensation of a partner or principal shall be commensurate with the cost of employing another qualified person to do such work, but the salary portion shall not exceed the actual salary rate of the individual concerned. Distribution of profits shall not be included in the rate of compensation.

Enter in block 7 the categories of professional or technical personnel necessary to perform each major element of work under the subagreement scope of services. Estimate hours worked for each category and extend them by the wage rates to be paid during the actual performance of the work. Current rates, adjusted for projected increases, if any should be useful for the actual categories of labor contemplated. All projected increases should be supported by recent experience or established personnel policy. Enter in the far right column the total estimated direct labor cost.

Supporting records to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

- The method of estimating proposed hours worked.
- The computation techniques used in arriving at proposed labor rates.
- The specific documents, books or other records used as factual source material to develop proposed hours worked and labor rates.
- Detailed rate computations which were used in computing the information submitted on the form.

If in block 14a, the contractor has checked "No," a brief narrative description of the methods used in arriving at items a through d above shall be included on an attached sheet.

Item 8- Indirect Costs

Indirect cost may consist of one or more pools of expenses which are grouped on the basis of the benefits accruing to the cost objectives represented by the distribution base or bases to which they are allocated. Since accounting practices vary, the use of particular groupings is not required. Neither is the use of any particular allocation base mandatory. However, it is mandatory that the method used results in an equitable allocation of indirect costs objectives which they support.

Normally, the firm's accounting system and estimating practices will determine the method used to allocate overhead costs. The firm's established practices, if in accord with generally accepted accounting principles and PROVIDED THEY PRODUCE EQUITABLE RESULTS IN THE CIRCUMSTANCES, will generally be accepted. Proposed overhead rates should represent the firm's best estimate of the rates to be experienced during the subagreement period. They should be based upon recent experience and be adjusted for known factors which will influence experienced trends.

Common overhead groupings are overhead on direct labor and general and administrative expenses. The first groupings usually include employment taxes, fringe benefits, holidays, vacation idle time, bonuses, applicable and direct labor, etc. The second generally includes the remaining costs, which, because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs. It is expected, however, that Offer groupings will correspond with the firm's normal method for accumulating indirect costs. (Under some accounting systems, the first grouping would be

included instead under item 7.) No special categorization is required, provided the results are realistic and equitable.

Direct salaries are the normal distribution base for overhead cost but in some circumstances other bases produce more equitable results. As in the case of overhead cost groupings, the method to be used will depend upon the firm's normal practices and the equity of the results produced in the circumstances.

In the case of multibranch firms, joint ventures, or affiliates, it is expected that overhead costs applicable to specific location(s) where work is to be based on cost data from the most recent fiscal periods updated to reflect changes in volume of business or operations.

Enter in block 8 the indirect cost pools normally used by the firm for allocation of indirect costs. Enter indirect cost rate for each pool and extend each one by the rate base to which it applies to arrive at the estimated indirect costs to be incurred during the actual performance of the work. If the indirect labor total from block 7 is not used as the rate base for any of the indirect cost pools, the rate base used must be explained on an attached sheet.

A brief narrative statement outlining the firm's policies and practices for accumulating indirect costs. Enter the indirect cost rate costs and the method used to compute the proposed rate or rates shall accompany the form. Include comment on the firm's policies regarding the pricing and costing of principals' time. The normal accounting treatment of principals' salaries, the annual amounts, and the hourly charge rate, if used, should be discussed.

Enter in the far right column the total estimated indirect costs.

Supporting records to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

- a. Detailed cost data showing overhead accounts, allocation bases, and rate computations for the preceding fiscal period. If more than six months of the current fiscal period have elapsed, cost data for this period should be included as one of the three period(s).
- b. Company budgets, budgetary cost data and overhead rates computations for future period(s).

Item 9 - Other Direct Costs

The following items are illustrative of costs normally included in this category of costs:

a. *Travel cost, including transportation, lodging, subsistence, and incidental expenses incurred by personnel or consultants while in travel status in connection with the performance of services required by the contract. The cost principles generally require the use of less than first class air accommodations and also limit the cost of private aircraft.*

b. *Equipment, Materials, and Supplies*

(1) Long distance telephone calls, telegraph and cable expenses to be incurred in connection with the performance of services required in connection the subagreement.

(2) Reproduction costs, including blueprints, black and white prints, ozalid prints, photographs, photostats, negatives; and express charges.

(3) Commercial printing, binding, artwork, and models.

(4) Special equipment.

c. *Subcontractors*

d. *Other Direct costs, if any, not included above.*

Enter in blocks 9a-d all other direct costs proposed. Travel costs entered must be supported by an attachment which identifies the number of staff trips proposed and the estimated cost per staff trip for both local and long distance transportation. The number of days and the rate per day must be provided to support the per diem shown. Each Subcontract and consultant agreement must be identified separately in block 9c.

Enter in the far right column on line 9e the total of all other direct costs (9a-d).

Supporting data to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

- a. *basis for other direct costs proposed.*
- b. *factual sources of costs, rates, etc., used in computing proposed amount of each cost element.*

Item 10 - Total Estimated Cost

Enter the total of all direct labor, indirect costs and other direct costs from items 7, 8, and 9.

Item 11 - Profit

A fair and reasonable provision for profit cannot be made by simply applying a certain predetermined percentage to the total estimated cost. Rather, profit will be estimated as a dollar amount after considering:

- a. *degree of risk.*
- b. *nature of the work to be performed.*
- c. *extent of firm's investment.*
- d. *Subcontracting of work, and*
- e. *Other criteria.*

The federal Acquisitions Regulation cost principles applicable to subagreements with profit-making organizations (40 CFR 31.2 and 31.105) disallow certain types of costs which are sometimes incurred by firms in the normal conduct of their business. Examples of costs which are not allowable under these costs principles include, but are not limited to, entertainment, interest on borrowed capital, and bad debits. Because the Government considers "profit" to be the excess of price over allowable costs, such computation can indicate a higher profit estimate than the firm's experienced profit as it customarily computes it.

The contractor may separately disclose to the recipient its customary computation.

Enter the dollar amount of profit in block 11.

Item 12 - Total Price

Enter the total of items 10 and 11.

Part III - PRICE SUMMARY

This portion of the form is for use by a recipient when pricecomparison, i.e. price analysis, is used for subagreement review. It may also be used by a contractor when price comparison is used as a basis for award of a Subcontract.

Item 13 - Competitor's Catalog Listings, In-House Estimates, Price Quotes

Enter sources of all competitive bids or quotes received, or catalogs used and their prices, or in-house estimates made, if appropriate, for comparison. Attach additional sheets if necessary, particularly for purchases of several different items.

Enter in the far right column the proposed price for the subagreement.

Part IV - Certifications

Item 14 - Contractor - FOR USE BY CONTRACTOR OR SUBCONTRACTOR ONLY.

Complete this block only if Part II has been completed.

Enter the specific cost principles with which the costs summary of Part II conforms. Cost principles applicable to subagreements with various types or organizations are identified in 40 CFR Part 30.4010. Cost principles applicable to subagreements with profit-making organizations are those at 48 CFR 31.2 and, for architect-engineer or construction contracts, 48 CFR 31.105.

c. (1) Describe the Offer, quotation, request for price adjustment, or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).

(2) Enter the date when the price negotiations were concluded and the contract price was agreed to. The responsibility of the subagreement is not limited by the personal knowledge of the contractor's negotiator if the time of agreement, showing that the negotiated price is not based on complete, current, and accurate data.

(3) Enter the date of signature. This date should be as close as practicable to the date when the price negotiations were concluded and the subagreement price was agreed to (not to exceed 30 days).

Item 15 - Recipient Reviewer - FOR USE BY RECIPIENT ONLY.

If required by applicable assistance regulations, the recipient must submit the signed form for EPA review prior to execution of the subagreement.

Item 16 - EPA Reviewer - FOR USE BY EPA ONLY.

 EPA	COST OR PRICE SUMMARY (see accompanying instructions before completing this form)	Form approved OMB No. 2030-0011 Approval expires 10-31-86		
PART I - GENERAL				
1. RECIPIENT	2. ASSISTANCE IDENTIFICATION NO.			
3. NAME CONTRACTOR OR SUBCONTRACTOR	4. DATE OF PROPOSAL			
5. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR (Include ZIP Code)	6. TYPE OF SERVICE TO BE FURNISHED			
TELEPHONE NUMBER(Include Area Code)				
PART II - COST SUMMARY				
7. DIRECT LABOR (specify labor categories)	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
		\$		
DIRECT LABOR TOTAL:				\$
8. INDIRECT COSTS (Specify indirect cost pool)	RATE	x BASE =	ESTIMATED COST	
		\$		
INDIRECT COSTS TOTAL:				\$
9. OTHER DIRECT COSTS				
a. TRAVEL			ESTIMATED COST	
(1) TRANSPORTATION			\$	
(2) PER DIEM			\$	
TRAVEL SUBTOTAL:			\$	
b. EQUIPMENT, MATERIALS, SUPPLIES (Specify categories)			ESTIMATED COST	
			\$	
EQUIPMENT SUBTOTAL:				
c. SUBCONTRACTS			ESTIMATED COST	

	\$		
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SUBCONTRACTS SUBTOTAL:					\$		
d. OTHER (Specify categories)					ESTIMATED COST		
					\$		
OTHER SUBTOTAL:					\$		
e. OTHER DIRECT COSTS TOTAL:						\$	
10.TOTAL ESTIMATED COST						\$	
11. PROFIT						\$	
12. TOTAL PRICE						\$	
PART III - PRICE SUMMARY							
13. COMPETITOR'S CATALOG LISTINGS, IN-HOUSE ESTIMATES, PRIOR QUOTES (Indicate basis for price comparison)						MARKET PRICE(S)	PROPOSED PRICE
						\$	
PART IV - CERTIFICATIONS							
14	CONTRACTOR OR						
14a.	HAS A FEDERAL AGENCY OR FEDERALLY CERTIFIED STATE OR LOCAL AGENCY PERFORMED ANY REVIEW OF YOUR ACCOUNTS OR RECORDS IN CONNECTION WITH ANY OTHER FEDERAL ASSISTANCE AGREEMENT OR CONTRACT WITHIN THE PAST 12 MONTHS?						
		NO (If "Yes" give name, address, and telephone number of reviewing office)					
14b.	THIS SUMMARY CONFORMS WITH THE FOLLOWING COST PRINCIPLES						

14c.	This proposal is submitted for use in connection with and in response to:	
	This is to certify to the best of my knowledge and belief that the cost and pricing data summarized herein are complete, current, and accurate as of:	(2) DATE
	I further certify that a financial management capability exists to fully accurately account for the financial transactions under this project. I further certify that I understand that the subagreement price may be subject to downward renegotiation and/or recoupment where the above cost and pricing data have been determined, as a result of audit, not to have been complete, current, and accurate as of the date above.	
(3) TITLE OF PROPOSER	SIGNATURE OF REVIEWER	DATE OF EXECUTION
15. RECIPIENT REVIEWER		
	I certify that I have reviewed the cost/price summary set forth herein and the proposed cost/price appear acceptable for subagreement award.	
TITLE OF PROPOSER	SIGNATURE OF REVIEWER	DATE OF EXECUTION
16. EPA REVIEWER		
TITLE OF PROPOSER	SIGNATURE OF REVIEWER	DATE OF EXECUTION