

# INVITATION FOR BIDS (IFB)



<b>ADDRESS - REGULAR MAIL</b>	<b>ADDRESS FOR HAND DELIVERIES-EXPRESS-OVERNIGHT</b>	<b>FAX NUMBER-</b> (The State is not responsible for equipment failure or operator error.)
Texas Workforce Commission Procurement & HUB Services 101 East 15 <sup>th</sup> Street, Room 316T Austin TX 78778-0001	Texas Workforce Commission Procurement & HUB Services 1117 Trinity Street, Room 316T Austin TX 78701	<b>512-475-3502</b> <b>Refer to Specs for acceptance of faxed bid responses.</b>
<b>REQUISITION NUMBER</b>	<b>BID OPENING</b>	
<b>2016 22155</b>	<b>Date: July 29, 2015</b>	<b>Time: 10:00 A.M. CST</b>

VENDOR NAME:	
*DBA (If Sole Owner):	
VENDOR MAILING ADDRESS:	
VENDOR BILLING ADDRESS: (If different from mailing)	
CITY, STATE, ZIP CODE	
VENDOR CONTACT PHONE NUMBER:	FAX NUMBER:
VENDOR CONTACT E-MAIL ADDRESS:	
VENDOR TEXAS IDENTIFICATION NUMBER: (issued by the Texas Comptroller of Public Accounts)	
VENDOR FEDERAL EMPLOYER IDENTIFICATION NUMBER: (issued by the Internal Revenue Service)	
*If you are a Sole Owner or Individual Recipient, enter your Social Security Number:	

**Check below to claim a preference under 34 TAC Rule 20.38:**

- |   |   |
|---|---|
| <input type="checkbox"/> Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran.<br><input type="checkbox"/> Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran.<br><input type="checkbox"/> Agricultural products grown in Texas<br><input type="checkbox"/> Agricultural products offered by a Texas bidder<br><input type="checkbox"/> Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran.<br><input type="checkbox"/> Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran.<br><input type="checkbox"/> Texas Vegetation Native to the Region<br><input type="checkbox"/> USA produced supplies, materials or equipment<br><input type="checkbox"/> Products of persons with mental or physical disabilities | <input type="checkbox"/> Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel<br><input type="checkbox"/> Energy Efficient Products<br><input type="checkbox"/> Rubberized asphalt paving material<br><input type="checkbox"/> Recycled motor oil and lubricants<br><input type="checkbox"/> Products produced at facilities located on formerly contaminated property<br><input type="checkbox"/> Products and services from economically depressed or blighted areas<br><input type="checkbox"/> Vendors that meet or exceed air quality standards<br><input type="checkbox"/> Recycled or Reused Computer Equipment of Other Manufacturers<br><input type="checkbox"/> Foods of Higher Nutritional Value |
|---|---|

**DELIVERY ADDRESS: TEXAS WORKFORCE COMMISSION**  
 301 West 13<sup>th</sup> Street  
 Fort Worth Texas 76102-46+01

LINE ITEM NO.	NIGP CLASS & ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	910-27	Full Service Contract for Trash Containers and Removal Services per the Attached specifications	12	MONTH	\$	\$
Total will be used for bid evaluation purposes						

**FAILURE TO SIGN WILL DISQUALIFY BID - SIGNATURE MUST BE IN INK**

<b>SIGN HERE:</b>	<b>SIGNATURE DATE:</b>
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# Texas Workforce Commission – Specifications for Solicitation No. 2016-22155

*Bidders should carefully study all specifications, terms and conditions prior to submitting a bid.*

1. **PURPOSE OF INVITATION FOR BIDS:** The Texas Workforce Commission (TWC) is soliciting bids to furnish, install, set in place and maintain container for trash removal service for the TWC offices located at 301 W. 13<sup>th</sup> Street, Fort Worth, Texas.
2. **AUTHORIZED PROCUREMENT CONTACT:** The individual listed below may be telephoned or faxed for clarification of this solicitation. No authority is intended or implied that the specifications may be amended or alternates accepted prior to bid opening deadline without written approval of the TWC.

Raymond Nunez, CTPM  
1117 Trinity St., Room 316T  
Austin, TX 78701  
Phone: (512) 463-2441  
Fax: (512) 475-3502  
E-Mail: [raymond.nunez@twc.state.tx.us](mailto:raymond.nunez@twc.state.tx.us)

- 2.1. This contract will be issued in accordance with Texas Government Code, Title 10, Subtitle D, Chapters 2151 through 2176 and rules of the Texas Building & Procurement Commission.
- 2.2. TWC will not be responsible for any vendor expenses relating to solicited information, bid development, or demonstrations, which may result from this procurement action. All bids and supporting material submitted become the property of the State.
- 2.3. TWC will not consider a bid from a vendor for which TWC has had to cancel a similar contract at any TWC location statewide during the previous 36-month period for failure to perform in accordance with contract specifications.
- 2.4. TWC will not pay any amounts bid and identified as insurance or taxes of any kind.
3. **TERM OF CONTRACT:** The initial contract period will begin on September 1, 2015 date of award, and end on August 31, 2016. The Awarded Vendor shall be required to have the contract in full operation within three (3) weeks of contract award and issuance of a contract Purchase Order. Prices quoted herein will remain in effect for the entire initial term of the contract.
4. **CONTRACT RENEWAL:** At the expiration of the initial contract period, this contract may be renewed annually by written agreement between both parties for up to an additional four (4) one (1) year periods, beginning on 9/1/2016 through 08/31/2020.
  - 4.1. All proposed price adjustments must be submitted in writing forty-five (45) days prior to the expiration of contract, or any extension(s) thereof, documenting requirement for price adjustment. Price adjustments are subject to TWC approval and must be in accordance with the following clause:

**PRICE ADJUSTMENT CLAUSE:** Renewal of this contract shall be for the original bid price; however, if the option to renew is exercised, TWC will permit a price adjustment upwardly or downwardly after the end of the first contractual period and each renewal period when correlated with the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, (All items) published by the Bureau Labor Statistics (BLS), Washington D.C. The initial contractual period rate may be adjusted by the latest announced change in the CPI-W for the prior 12 month period, limited to a maximum of 4% increase per contract period or any amount of decrease.
  - 4.2. Any price reductions the Awarded Vendor makes to customers other than the State shall also be passed on to the State at the same time.
5. **CONTRACT ADMINISTRATOR:** The individual listed below will monitor the performance of this contract. Any non-compliance issues will be documented in writing and presented to the

Texas Workforce Commission – Specifications for Solicitation No. 2016-22155

Awarded Vendor. It is important that all duties be performed as stated – failure to do so may result in cancellation of this contract.

Debra Sunshine  
 301 W. 13<sup>th</sup> Street  
 Fort Worth, Texas 76102-4601  
 Phone: (817) 420-1809  
 E-Mail: [debra.sunshine@twc.state.tx.us](mailto:debra.sunshine@twc.state.tx.us)

- 6. **PAYMENT:** Payment will be made monthly in arrears. The Awarded Vendor’s invoice must reflect the Contract Number and Purchase Order Number and be itemized by location.
- 7. **OFFICE RELOCATION, CLOSING:** In the event any office location indicated in these specifications should move to a new location, the contract can transfer to that new location.

8. **STATEMENT OF WORK:**

8.1. The Awarded Vendor will place trash containers at the TWC location inside of the Garage indicated and will empty the containers as specified in the table below Monday thru Friday:

LOCATION	SIZE (CUBIC YARDS)	TYPE	QTY	PICK-UP SCHEDULE
301 W 13 <sup>th</sup> Street	4 yard	Frontload	1	5 times per week

- 8.2. The containers provided will have to have wheels so that their driver can push the container out into the street where it can be hoisted up by their truck’s lifting mechanism and dumped. Once emptied the driver need to push the container back into the garage and lock the gate.
- 8.3. Awarded Vendor shall retain ownership of the containers and shall pick up the containers at the termination of the contract.
- 8.4. TWC reserves the right to request additional containers to be furnished, installed, set in place and maintained during the term of this contract at the rate bid for each container specified on the Form F-96 – Invitation for Bids or during any annual approved renewal period.
- 8.5. TWC reserves the right to request additional pick-ups at the sight at the rate bid during the term of the awarded contract or any approved renewal period. Any additional pick-ups requested by TWC will be charged separately.
- 8.6. Awarded Vendor shall furnished containers that are undamaged, insect and rodent resistant, painted, neat and leak proof.
- 8.7. Awarded Vendor shall provide periodic change outs of container, and cleaning, to maintain sanitary conditions. Awarded vendor shall keep the pick- up area clean.
- 8.8. Building opens at 7:30 a.m., if the trash pick-up is going to occur prior to our opening, then TWC will provide the driver with a gate key.
- 9. **BID RESPONSE INSTRUCTIONS:** Bids may be faxed, e-mailed, USPS mailed, or hand-delivered by the bid opening deadline date/time indicated.

**Cost Worksheet**

<b>RATE PER CONTAINER BASED ON CONTAINER PICK-UP FIVE (5) TIMES PER WEEK</b>		
<b>CONTAINER SIZE</b>	<b>MONTHLY CHARGE</b>	<b>ADDITIONAL/EXTRA PICK-UP CHARGE</b>
<b>FOUR (4) CUBIC YARD CONTAINER</b>	\$	\$

## Attachment 1: Terms and Conditions, dated 12/11/14

By responding to the solicitation or fulfilling the awarded Purchase Order (PO), the vendor agrees to the terms and conditions below, which apply to and become a part of every Texas Workforce Commission (TWC) purchase. Only mutual written exceptions will be valid. Where a purchase is made without the Invitation for Bids (IFB); Request for Offers (RFO) or Request for Proposals (RFP) process, “IFB/RFO/RFP” equates to “Purchase Order” and “Bidder/ Offeror/Proposer” equates to “Vendor”. Any specification in the solicitation that is in conflict with these standard terms and conditions takes precedence. All references to “days” shall be calendar days unless specified otherwise.

### 1. SOLICITATION RESPONSE REQUIREMENTS

- 1.1. **Written Specifications:** TWC will not be bound by any oral statement or representation contrary to the written specifications contained in the solicitation.
- 1.2. **Incomplete Responses:** Late, illegible, incomplete and/or unsigned responses may be deemed non-responsive and may not be considered.
- 1.3. **Freight:** Prices quoted are to include freight prepaid, F.O.B. Destination (Free on Board). Enter unit price on quantity and unit of measure specified - extend and show total. In case of errors in extension, unit prices shall govern.
- 1.4. **Firm Pricing:** Prices submitted are expected to be firm for TWC acceptance for thirty (30) days from the solicitation deadline. “Discount from list” offers are not acceptable unless specifically requested. Cash discounts will not be considered in determining the low offer. All cash discounts submitted will be taken if earned. Prices must remain firm for the duration of the term of the PO/contract.
- 1.5. **Ties:** In the case of tie bids, the award will be made in accordance with the preferences listed under 34 TAC Rule 20.38.
- 1.6. **Preferences:** In making an award, TWC shall apply the preferences listed at 34 Texas Administrative Code (TAC) § 20.38. For purchase or lease of computer equipment TWC shall apply a preference for manufacturers that have a computer recycling program as described in 1 TAC § 217.11.
- 1.7. **Bid Alteration/Withdrawal:** A submitted response to a solicitation cannot be altered or amended after the solicitation deadline, except by formal negotiation via the RFO/RFP processes. Any alteration made before the solicitation deadline is to be initiated by vendor or the vendor’s authorized agent. Vendors are not allowed to withdraw their submitted response after the solicitation deadline without approval by TWC.
- 1.8. **Rejection of Bids:** In accordance with Texas Government Code § 2156.008, TWC reserves the right to reject a bid in which there is a material failure to comply with specification requirements. TWC may reject all bids or parts of bids if the rejection serves the state’s best interest.
- 1.9. **Tax Exempt:** Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.
- 1.10. **Other Entities:** TWC requests that the vendor extends the same contract prices and conditions to Local Workforce Development Boards (LWDB) and Child Care Management Services (CCMS) entities contractually linked with TWC if awarded the contract.
- 1.11. **Identify All Parties:** TWC requires all business partners, equipment, support or maintenance providers who will perform under an awarded contract to be identified prior to contract award for TWC approval. Substitutions of providers shall be submitted in writing for TWC approval during the term of the agreement.
- 1.12. **No Travel:** TWC will not reimburse a vendor for travel and expenses unless specifically provided for in the contract documents. In that event, such reimbursement will not exceed the state travel reimbursement rates and limits established by the then current General Appropriations Act.

### 2. GENERAL CONDITIONS

- 2.1. **Damage to Grounds and Buildings:** Vendor shall be financially responsible for any or all damage done by its employees, agents and subcontractors to the TWC grounds and buildings. Vendor is responsible for the removal of all debris resulting from work performed under the contract.
- 2.2. **Disclosure of Information:** TWC, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records which are directly pertinent to this procurement.
- 2.3. **Texas Public Information Act:**
  - 2.3.1. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Texas Government Code, Chapter 552 (the “Public Information Act”).
  - 2.3.2. All information submitted in response to the solicitation is subject to public disclosure pursuant to the Public Information Act. In the event of a request for information pertaining to the solicitation, TWC will comply with the provisions of the Public Information Act to protect the interests of the State of Texas. The Public Information Act allows the public to have access to information in the possession of a governmental body. Therefore, the vendor must clearly identify any confidential or proprietary information on the page on which it appears in the solicitation response and reference the specific exception to disclosure in the Public Information Act. Proprietary information identified by the vendor in advance will be kept confidential to the extent permitted by state law. Any information not clearly identified as confidential or proprietary shall be deemed to be subject to disclosure pursuant to the Public Information Act.
  - 2.3.3. All information, documentation and other material in connection with the solicitation or any resulting contract will be retained by TWC for the period specified in the Records Retention Schedule created under Texas Government Code, Chapter 441. The information will not be returned to the vendor who submitted it during the retention period time.
  - 2.3.4. Vendor is required to make any public information created or exchanged with the state pursuant to any contract with TWC, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to TWC.
- 2.4. **Award of Contract:**
  - 2.4.1. Responding to a solicitation is an offer to contract with the State based upon the terms, conditions, and specifications contained in the solicitation. Submitted responses do not become contracts unless and until they are accepted and an award is made by TWC Procurement and Hub-Services and a PO is issued to the vendor.
  - 2.4.2. TWC reserves the right to negotiate price and terms with any and all vendors, to accept or reject all or any part of a vendor’s response, waive minor technicalities, to request Best and Final Offers from all or any vendors, and make an award that represents Best Value to the agency or the State.
  - 2.4.3. Subsequent to award, TWC may, at its sole option, request the vendor to negotiate contract amendments or renewals as is determined to be in the best interest of the agency or the State.
  - 2.4.4. TWC reserves the right to use a third party to negotiate price related to any Information Technology solicitation or contract.
  - 2.4.5. TWC reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items in the sole discretion of the State.
- 2.5. **Vendor Assignments:** No assignment is permitted the vendor without prior written consent of TWC. Any written request for assignment must be accompanied by written acceptance of the assignment by the assignee. Except where otherwise agreed in writing by TWC, assignment will not release

# Texas Workforce Commission – Specifications for Solicitation No. 2016-22155

vendor from its obligations pursuant to the contract.

- 2.6. **TWC Assignments:** TWC may sub-lease or assign equipment and related services provided via the contract to other entities which contract with TWC to provide agency support or services.
- 2.7. **Indemnification:** The vendor 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, 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 the contract. Vendor shall coordinate its defense with the Texas Attorney General as requested by TWC.
- 2.8. **Vendor Performance:** In accordance with Texas Government Code §§ 2155.074 and 2155.075, vendor performance may be used as a factor in the award.
- 2.9. **Force Majeure:** TWC may grant relief from performance of an awarded contract or PO, or extend a performance period, if the vendor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault of the vendor. If the vendor requests the relief, the burden of proof for the need of such relief shall rest upon the vendor, who must file a written request for such release or extension. If TWC grants such relief due to circumstances known by the agency, the agency must document such reasons in the contract file.
- 2.10. **Dispute Resolution Procedures:**
  - 2.10.1. **Procurement Disputes:** Any actual or prospective vendor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Division Director, Regulatory Integrity Division. In the case of a dispute regarding a purchase managed by the Regulatory Integrity Division, formal protest should be made to the TWC Executive Director. Such protests must be made via certified mail and received in the appropriate Director's office within ten (10) business days from the date of the announcement of the award. The written protest must include: the number of the solicitation being protested; the grounds for the protest, including a description of any alleged acts or omissions by TWC that form the basis for the protest; any written information which the protestor believes is relevant to the award; and the basis for the protestor's interest in the procurement.

TWC will make available to the protestor all requested documents not exempted from disclosure under Texas and federal law. TWC will provide copies of these documents upon payment of the fees adopted by TWC for record duplication. The protestor will be provided an opportunity for an informal meeting with the Director or his designee, to discuss the protest, however, TWC may limit the amount of time allocated for the meeting. The Director will issue the final written decision to the protestor.
  - 2.10.2. **Contract Disputes:** TWC follows the dispute resolution process provided for in Texas Government Code, Chapter 2260 to resolve contract disputes.
- 2.11. **Debt to the State:** Vendor 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.
- 2.12. **Hold-Over Provision:** In the event contract renewal negotiations are not completed prior to the contract expiration date, both parties agree that services shall be provided by the vendor and accepted by TWC, subject to all original terms and conditions of the contract, for a period not to exceed ninety (90) days following the original contract expiration date. The hold-over service costs shall be the pro-rated rates in effect immediately prior to such expiration. Such hold-over agreement shall not be interpreted to extend the term of the original contract. TWC may terminate such hold-over service by providing written notice of cancellation not less than ten (10) business days prior to the cancellation date.
- 2.13. **State Auditor Rights:** In accordance with Texas Government Code § 2262.003, vendor understands that acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through vendor and the requirement to cooperate is included in any subcontract it awards.
- 2.14. **Limitation on TWC's Liability:** TWC will not be liable for any incidental, indirect, special, or consequential damages under contract, Tort, (including negligence), or other legal theory. TWC's liability to vendor under the contract will not exceed the total charges to be paid by TWC to vendor under the contract.
- 2.15. **State Ownership:** The Parties agree that TWC will own all right, title and interest in and to the work products including deliverables, source and object code and documentation developed by the vendor in connection with the contract.
  - 2.15.1 All work products including deliverables, source and object code and documentation, in whole or in part, will be deemed works made for hire of TWC for purposes of copyright law and copyright will belong solely to TWC.
  - 2.15.2 To the extent that any such work product or deliverable does not qualify as a work made for hire under applicable law, and to the extent that the deliverable or work product includes materials subject to copyright, patent, trade secret, or other proprietary right protection, vendor agrees to assign, and hereby assigns, all right, title, and interest in and to the work products and deliverables, including without limitation all copyrights, inventions, patents, trade secrets, and other proprietary rights therein (including renewals thereof) to TWC.
  - 2.15.3 Vendor will assist TWC or its nominees to obtain copyrights, trademarks, or patents for all such work products or deliverables in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer to TWC all the right, title, and interest in and to such work products or deliverables. Vendor agrees to not assert any moral rights under applicable copyright law with regard to such work products and deliverables.
  - 2.15.4 Vendor agrees to reproduce and include TWC's copyright and other proprietary notices and product identifications provided by vendor on such copies, in whole or in part, or on any form of the work products or deliverables.
- 2.16. **License:** In accordance with 29 Code of Federal Regulations § 97.34, all appropriate State and Federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate or otherwise use, and to authorize others to use for State or Federal purposes all materials, deliverables and work products, including software and modifications thereof, and associated documentation designed, developed, or installed with Federal Financial Participation under the contract, including but not limited to those materials covered by copyright, all source and object code, instructions, files, and documentation composing the system.
- 2.17. **Most Favored Customer:** If during the term of the contract, the vendor enters into another contract with any customer for substantially similar services at prices more favorable than those provided to TWC, the contract may be amended to provide the more favorable prices to TWC.
- 2.18. **Governing Law and Venue:** The contract shall be executed in and governed, construed and interpreted under the laws of the state of Texas. Vendor agrees that proper venue for a claim arising under the contract shall be brought in a court of competent jurisdiction in Travis County, Texas.
- 2.19. **Severability:** If any provision of the contract is construed to be illegal or invalid, such provision shall be deemed stricken and deleted to the same extent and effect as if never incorporated into the contract, but all other provisions shall remain in full force and effect.

# Texas Workforce Commission – Specifications for Solicitation No. 2016-22155

- 2.20 TWC and the vendor must adhere to the directions in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism.
- This Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.Sam.gov>.
- 2.21 **No Waiver:** Nothing in this contract shall be construed as a waiver of the TWC's or the State's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the TWC or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TWC or the State of Texas under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TWC does not waive any privileges, rights, defenses, or immunities available to TWC by entering into this contract or by its conduct prior to or subsequent to entering into this contract.
- 2.22 **Redacted Electronic Copy:** Under House Bill 3430, 80th Texas Legislature, (transferring Texas Government Code § 2177.052, to Texas Government Code, Chapter 322, and redesignating it as § 322.020) and as per the following requirements, no later than two (2) business days after vendor's receipt of notice from TWC, the vendor must deliver to TWC two (2) electronic copies of its complete proposal. Vendor shall deliver these electronic copies to TWC via overnight delivery in compliance with all of the following requirements:
- 2.22.1 Two (2) compact discs (CDs), each containing a copy of vendor's response to solicitation, in searchable Portable Document Format (PDF) format, which has excised, blacked out, or otherwise redacted information from its solicitation response that vendor reasonably considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de minimis portion, if any, of vendor's solicitation response, such as social security numbers). Each CD shall also contain an Appendix for vendor's solicitation response which provides a cross reference for the location of all information redacted by vendor and a general description of the redacted information. These two (2) identical CDs should be entitled "For Public Release: Redacted Version of [Name of Vendor]'s Proposal and Exhibits. Texas Workforce Commission's RFP/RFO/IFB solicitation No. \_\_\_\_\_."
- 2.22.2 Per Texas Government Code § 322.020, the Texas Legislative Budget Board (LBB) has now implemented a major contracts database.
- 2.22.3 TWC shall upload to the LBB's contracts database the text of the complete contract (with limited redaction and appendix) no later than ten (10) days after date of contract award. By submitting a response to this solicitation, vendors acknowledge that they understand and accept this requirement. See the LBB website at <http://www.lbb.state.tx.us/>.
- 2.22.4 **American Recovery and Reinvestment Act (ARRA or the Recovery Act)**
- a) Buy American Requirements for Construction Material prohibits the use of funds appropriated for the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- b) Whistleblower Protection: Pursuant to Section 1553 of the American Recovery and Reinvestment Act, vendors shall promptly refer to the U.S. Department of Labor, Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
- 2.23 **Background Check:** Vendors must submit criminal background checks on all key personnel assigned to the services related to this solicitation, as authorized by Texas law, and at vendor expense. Key personnel are defined as personnel whose oversight and guidance is essential to the subject services. TWC may provide any finalist for a contract position a Contractor Criminal History Report Investigation Request form P33c which contractor must complete and submit back to TWC as required on the form. To obtain a facility access badge, contractor must provide TWC with either a completed form P-33c or a recent criminal background check within fifteen (15) days of contract award. TWC will not issue a Purchase Order until the criminal background check has been completed and passed.
- 2.24 **Privacy:** Vendor who has access to sensitive personally identifiable information ("Sensitive PII"), including anyone who views contracts, collects, uses, maintains, stores or destroys Sensitive PII of TWC employees, job seekers, employers, customers or partners, must safeguard that information.
- 2.24.1 Sensitive PII is anything that alone or in combination with available information can identify an individual, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience or unfairness to an individual.
- 2.24.2 Awarded vendor must have a Non-Disclosure Agreement (NDA) on file with TWC prior to handling Sensitive PII.
- 2.24.3 In order to safeguard Sensitive PII, Awarded vendor must:
- 2.24.3.1 Collect Sensitive PII only as authorized.
- 2.24.3.2 Limit the use of Sensitive PII.
- 2.24.3.3 Minimize the proliferation of Sensitive PII.
- 2.24.3.4 Secure Sensitive PII both physically and in electronic form.
- 2.24.3.5 Report suspected privacy incidents within twenty four (24) hours to the TWC Contract Manager or, email the TWC Information Security Office at [CISO@twc.state.tx.us](mailto:CISO@twc.state.tx.us).
- 2.24.4 Awarded Vendor will not transmit Sensitive PII via email or store on CDs, DVDs, thumb drives and the like without prior review and encryption protocol approved by TWC.
- 2.24.5 Failure to follow these requirements may constitute a breach of contract.
- 2.25 **Change in Law:** Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or state law or regulations are automatically incorporated into this Contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.

### 3. REQUIRED CERTIFICATIONS

By responding to this solicitation and accepting the award of a contract or purchase order, vendor certifies to the following:

- 3.1. **All Terms and Conditions Met:** that all terms and conditions listed in the solicitation will be met.
- 3.2. **U.S. Department of Homeland Security's E-Verify System:** By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine eligibility of:
- 3.2.1. All persons employed to perform duties within Texas, during the term of the Contract; and
- 3.2.2. All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.
- 3.2.3. The Contractor shall provide, upon request of TWC, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen

# Texas Workforce Commission – Specifications for Solicitation No. 2016-22155

containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

**3.2.4. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of TWC and at no fault to TWC, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that TWC must undertake to replace the terminated Contract.**

- 3.3. **Inducements:** that the vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted solicitation response
- 3.4. **Lobbying:** that no funds provided under the contract will be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with State or local legislators.
- 3.5. **Not Ineligible:** that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal department or agency.
- 3.6. **Non-Discrimination:** The vendor certifies compliance with the Rehabilitation Act of 1998 § 508, 29 U.S.C. § 794d, relating to the use of electronic and information technology for individuals with disabilities; the Housing and Urban Development Act § 3, 12 USC §1701u Sec. 1701u, relating to economic opportunities for low- and very low-income persons; Titles VI and VII of the Civil Rights Act of 1964 (Public Law 88-352); Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112); the Equal Opportunity Clause (Executive Order 11246) for any purchase in excess of \$10,000; the Americans with Disabilities Act of 1990 (Public Law 101-336); and all amendments to each..
- 3.7. **Drug-Free Workplace:** The vendor agrees to provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 (102 Stat. 4304, P.L. 100-690, Title V, Subtitle D).
- 3.8. **Franchise Tax:** The vendor is not currently delinquent in the payment of any franchise tax owed to the State of Texas, pursuant to Article 2.45, Texas Business Corporation Act.
- 3.9. **Child Support:** The vendor is not ineligible to receive the specified grant, loan, or payment under Section 231.006 of the Texas Family Code (relating to child support) and acknowledges that the contract may be terminated and payment may be withheld if certification is inaccurate.
- 3.10. **Certain Bids and Contracts Prohibited:** Under Texas Government Code § 2155.004, vendor certifies that the individual or business entity named in the solicitation response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and/or payment withheld if this certification is inaccurate.
- 3.11. **Fair Business Practices:** The vendor has not been found guilty of unfair business practices in a judicial or state agency administrative proceeding during the preceding year. The vendor further affirms that no officer of the vendor has served as an officer of any company found guilty of unfair business practices in a judicial or state agency administrative proceeding during the preceding year.
- 3.12. **Antitrust:** Neither the vendor or the firm, corporation, partnership, or institution represented by the vendor, or anyone acting for same, has violated State antitrust laws or the Federal Antitrust Laws.
- 3.13. **No Compensation:** The vendor has not received compensation for participation in the preparation of the solicitation. This section does not prohibit a vendor or contract participant from providing free technical assistance.
- 3.14. **Conflict of Interest:** Vendor has disclosed any existing or potential conflict of interest relative to the performance of the contract. Failure to do so will be grounds for contract termination.
- 3.15. **No Collusion:** Vendor has not communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- 3.16. **Prohibition on Certain Bids and Contracts related to Disasters and Hurricanes Katrina and Rita:** Under Texas Government Code § 2155.006, the vendor certifies that the individual or business entity named in response to 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.
- 3.17. **Independent Contractor:** Vendor or vendor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any contract resulting from this solicitation. Vendor and vendor's employees, representatives, agents and any subcontractors shall not be employees of TWC. Should vendor subcontract any of the services required in this solicitation, vendor expressly understands and acknowledges that in entering into such subcontract(s), TWC is in no manner liable to any subcontractor(s) of vendor. In no event shall this provision relieve vendor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this solicitation and any resulting contract.
- 3.18. **Workers' Compensation Insurance.** Vendor shall provide a Certificate of Insurance showing that a temporary employment service maintains a policy of workers' compensation insurance for all employees of the temporary employment service assigned to TWC.
- 3.19. **Felony Criminal Convictions:** Vendor represents and warrants that vendor has not and vendor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, vendor has fully advised TWC as to the facts and circumstances surrounding the conviction.
- 3.20. **Executive:** Vendor certifies they are in compliance with Texas Government Code § 669.003, relating to contracting with the executive head of a State agency. If applicable, vendor will complete the following for TWC evaluation:  
Former Executive  
Name: \_\_\_\_\_  
State Agency Name: \_\_\_\_\_  
Date Separated from  
Agency: \_\_\_\_\_  
Position with vendor: \_\_\_\_\_  
Date employed with  
vendor: \_\_\_\_\_
- 3.21. **Texas Bidder Affirmation Clause:** By submitting a response to this solicitation, vendor certifies that if a Texas address is shown as the address of the vendor, vendor qualifies as a Texas Bidder as defined in 34 TAC § 20.32(68).
- 3.22. Vendor agrees to comply with Texas Government Code § 2155.4441, pertaining to purchasing products and materials produced in the State of Texas.
- 3.23. Pursuant to Texas Family Code § 231.006 (c), vendor must provide the name and Social Security Number (SSN) of each person with at least 25% ownership of the business. This information must be provided prior to contract award.  
SSN: \_\_\_\_\_



# Texas Workforce Commission – Specifications for Solicitation No. 2016-22155

Name: \_\_\_\_\_  
SSN: \_\_\_\_\_  
Name: \_\_\_\_\_  
SSN: \_\_\_\_\_  
Name: \_\_\_\_\_  
SSN: \_\_\_\_\_  
Name: \_\_\_\_\_

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## 4. SPECIFICATIONS

- 4.1. Any catalog, brand name or manufacturer's reference used in the solicitation is descriptive only (not restrictive), and is used to indicate type and quality desired. Submitted responses containing other brands that are functionally equivalent will be considered unless TWC has advertised the solicitation as proprietary under Texas Government Code § 2155.067. If vendor takes an exception to the solicitation's specifications and vendor's response contains equivalent product, vendor is required to include additional information such as manufacturer, brand or trade name, illustrations, and specifications for the equivalent product as part of their response to the solicitation. If vendor takes no exception to the specifications, the vendor must furnish the item(s) as specified in the solicitation.
- 4.2. Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation. Written warranty is to be provided with product, and is to include the point-of-contact name, phone number, and all information needed to initiate a warranty service call.
- 4.3. **No Substitutions:** Vendor will not make any substitution to the specifications of any solicitation or PO, unless the substitution is (1) proposed to TWC in writing by the vendor, and (2) supported by the expressed written prior approval of TWC.
- 4.4. **Replacement Parts Available:** The vendor, in connection with an agreement with the manufacturer of the equipment, warrants that new or reconditioned replacement parts will be available until five (5) calendar years after the date of the award of the contract. All replacement parts must meet or exceed original manufacturer's specifications and be compatible with existing equipment.
- 4.5. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
- 4.6. Vendor guarantees product offered will meet or exceed specifications; that the product is new, in current production, including the manufacturer's standard equipment and accessories; and is qualified for full maintenance coverage, service and support at, or below, the manufacturer's standard maintenance rates.

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## 5. DELIVERY

- 5.1. Vendor is to show the number of days required to place material in the receiving location under normal conditions. Failure to state delivery time obligates vendor to complete delivery within fourteen (14) days. Unrealistically short or long delivery promises may cause vendor's response to be disregarded. Consistent failure to meet delivery promises will be grounds for termination of the contract.
- 5.2. If delay is foreseen, vendor shall give written notice to TWC who reserves the right to extend delivery date if reasons appear valid. Vendor must keep TWC advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes TWC to purchase the ordered products elsewhere and charge full increase, if any, in cost and handling to defaulting vendor. Any damages incurred by TWC as a result of the default may also be assessed to the defaulting vendor.
- 5.3. Delivery shall be made on State business days between 8:00 am and 5:00 pm, unless prior approval has been obtained from TWC.

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## 6. VALIDATION, INSPECTION & TESTS

- 6.1. Vendor agrees to provide TWC with information necessary to validate any statements made in the vendor's solicitation response, if requested by TWC. This may include, but is not limited to, allowing access for on-site observation, granting permission for TWC to verify information with third parties, allowing inspection of vendor's records, and allowing inspection of plans for compliance.
- 6.2. All goods will be subject to inspection and test by TWC to the extent practicable at all times and places. Tests may be performed on samples called for, or on samples taken from regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specification, the cost of the sample used and the cost of the testing shall be borne by the supplier. Goods that have been delivered and rejected in whole, or in part may, at TWC's option, be returned to the vendor or held for disposition at vendor's risk and expense. Latent defects may result in revocation of acceptance.

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## 7. INVOICING INSTRUCTIONS

- 7.1. Invoices must be submitted to TWC according to the instructions on the PO to the named individual and the address indicated on the PO. Invoice must show TWC as the receiving agency.
- 7.2. Submit invoice in duplicate. Upon request, one copy will be returned when making payment.
- 7.3. Invoices must include the name and address of vendor, which must be identical to the information stated on the PO.
- 7.4. The TWC PO number and date of the PO must be shown on all invoice copies.
- 7.5. Invoice must have description of each item. Item numbers must be shown to correspond with the item numbers on the PO.
- 7.6. Quantity and date delivered, unit of measure specified and total price of each item must be shown, all prices extended on the invoice, with all extensions on the invoice totaled, and the grand total shown.
- 7.7. Discounts, if applicable, must be stated, extended, and deducted to arrive at a Net Total for the invoice.
- 7.8. Trade-in values must be stated on the invoice.

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## 8. PAYMENT

- 8.1. TWC will incur no penalty for late payment if payment is made within thirty (30) days of acceptance of goods or services, or within thirty (30) days of receipt of an uncontested invoice submitted according to the instructions on the PO, whichever comes last.
- 8.2. In no event shall use of the product by TWC, for any purpose during any phase of the acceptance testing, constitute acceptance of any product by TWC.
- 8.3. Prior to any payment being made, the goods or services being invoiced must have been received and accepted by TWC.

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## 9. PATENT INFRINGEMENT

- 9.1. Vendor must defend, at its expense, any action brought against TWC that is based on a claim that goods supplied by the vendor, or the use of such goods, infringes a United States patent, copyright or trade secret.
- 9.2. Should the goods, or use of the goods, become the subject of a claim of infringement of a United States patent, copyright or trade secret, TWC may require the vendor to procure for TWC the right to continue using the goods, to replace or modify the same to remove the infringement, or to accept return of the goods.

# Texas Workforce Commission – Specifications for Solicitation No. 2016-22155

9.3. Vendor agrees that for the exclusive use by TWC for State business, TWC is free to reproduce without royalty, all manuals, publications, maintenance programs, diagnostics and documentation pertaining to any product developed as a result of the contract.

## 10. TERMINATION PROVISIONS

- 10.1. TWC reserves the right to immediately terminate any PO or contract resulting from or connected to this solicitation, in whole or in part, without recourse or penalty for breach of contract by the vendor.
- 10.2. TWC reserves the right to terminate for convenience any PO or contract resulting from or connected to this solicitation, in whole or in part, without recourse or penalty upon TWC within thirty (30) days written notice, including but not limited to the following reasons:
  - 10.2.1. Failure to obtain or sustain funding from either Federal or State funding sources.
  - 10.2.2. Amendment or judicial interpretation of State or Federal laws or regulations that render fulfillment of the contract substantially unreasonable, impossible, or unnecessary.
- 10.3. In the event of termination of the contract due to lack of funding or for the convenience of TWC, an equitable settlement will be made based on the respective interests of the parties as of the date of termination.
- 10.4. TWC expressly reserves any and all legal remedies to which it may be entitled to collect related to any and all damages directly or indirectly resulting from breach of contract, by the vendor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf the vendor.
- 10.5. TWC shall retain ownership of all work products including deliverables, source and object code, and documentation in whatever form that they exist. In addition to any other provision, the vendor shall transfer title and deliver to the TWC any partially completed work products, deliverables, source and object code, or documentation that the vendor has produced or acquired in the performance of the contract.

## 11. INFORMATION TECHNOLOGY (IT) PURCHASES:

- 11.1. During the term of the contract, the vendor must notify TWC whenever an engineering change is made that may affect TWC's use of the product. It will be the sole option of TWC to accept the change.
  - 11.2. Vendor represents that the product and all its elements, including, but not limited to, documentation and source code, meet the standards issued by the American National Standards Institute.
  - 11.3. Vendor agrees that TWC owns the source code to any jointly-developed application(s) resulting from the contract.
  - 11.7 As required by 1 TAC, Chapter 213:
    - 11.4.1 Effective September 1, 2006 State agencies 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.
    - 11.4.2 Vendor shall provide TWC 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 of 1973, as amended (29 USC § 794d)), or indicate that the product/services 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 TWC 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/>.
    - 11.4.3 TWC will use either VPAT or the Buy Accessible Wizard to assess the degree of accessibility of a proposed product when making the procurement decision.
  - 12.7 Vendor shall follow Web Content and Accessibility Guidelines. (WCAG 2.0) as applicable for new websites, applications or redesigns.
  - 13.7 Texas Health and Safety Compliance
    - 11.4.1 Vendor hereby certifies its compliance with Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 TAC, Chapter 328.
    - 11.4.2 Failure of a vendor to provide this certification shall render the vendor ineligible to participate in the bidding process. TWC shall reject the related bid and not evaluate it.
  - 14.7 Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC, Chapter 202.
  - 15.7 As required by 1 TAC § 217.12, vendors of network hardware or software, as applicable, procured or leased by a state agency must certify that the network hardware or software has undergone independent certification testing for known and relevant vulnerabilities in accordance with Section 2059.060 of the Texas Government Code. When the TWC Executive Director or his or her designated representative(s) determines that it is in the best interests of the agency to proceed with a purchase or lease of network hardware or software, he or she will grant an exemption to the required certification. Each exemption will provide a justification for the exemption, including relevant cost avoidance, reduction of undue burden, the intended usage or risk assessment of potential vulnerabilities.
12. **\*\*\*NOTE TO VENDORS: Any terms and conditions attached to a vendor's solicitation response will not be considered unless the vendor specifically refers to them on the face of the first page of their response.**
13. **\*\*\*WARNING: Such terms and conditions may result in disqualification of the submitted vendor's response. (e.g. responses with the laws of a State other than Texas, requirements for prepayment, limitations on remedies, etc.)**