



Texas Workforce Commission

BET Beverage and Snack Vending Machine Services

This BET Beverage and Snack Vending Machine Services contract ("Contract") is between the Texas Workforce Commission (TWC), and: Oneta Company, DBA El Valle Canteen, LLC (Contractor). TWC and Contractor may be jointly referred to as "the Parties" or "Parties" and individually as "the Party" or "Party."

I. CONTACTS AND CONTACT INFORMATION OF THE PARTIES

TWC:

Address: 101 East 15th Street, Room 316T
City and Zip: Austin, Texas 78778-0001
Contact Person: Shalon Hornsby
Title: BET Vending Service Specialist
Telephone: 512-533-7137
E-mail Address: shalon.hornsby@twc.texas.gov
Contract Manager: Melanie Torres, CTCM
Telephone: 737-667-5131
E-mail Address: melanie.torres@twc.texas.gov

CONTRACTOR:

Address: 401 James Richardson Closner Unit B
City and Zip: La Feria, TX 78559
Contact Person: Robert Ontiveros
Title: General Manager
Telephone: 956-797-5710
E-Mail Address: Robert.Ontiveros@onetacc.com

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II. PURPOSE AND SCOPE

The purpose of this Contract is for TWC to partner with Contractor to furnish all labor, equipment, materials, and services required to provide Beverage and Snack Vending Machine Services in support of the TWC Business Enterprises of Texas (TWC-BET) program in the Rio Grande City Area. Services shall be provided in accordance with Request for Proposal (RFP) #320-23-00168.

Any alterations, additions, or deletions to the terms of this award required by changes in federal or state law or by regulations are automatically incorporated into this award without written amendment hereto, and shall become effective on the date designated by such law or regulation.

Contractor agrees to provide services in compliance with all applicable State laws, regulations, and rules, and in accordance with the provisions of this Contract consisting of the following parts, listed in order of precedence, which are hereby incorporated as part of this Contract and constitute promised performances by Contractor:

- This Contract 3123ADM105;
- ATTACHMENT 1 – TWC Terms & Conditions (12/2022);
- ATTACHMENT 2 – RFP 320-23-00168;
- ATTACHMENT 3 – Area Site Location Listing;
- ATTACHMENT 4 – Vending Price List; and,
- ATTACHMENT 5 – Contractor Proposal.

III. CONTRACT PERIOD

This Contract is effective 08/04/2023 or on the signature of both parties, whichever is later (“Effective Date”), through 07/31/2025 (“Termination Date”).

IV. RENEWAL

TWC may, at its option, amend the Contract for purposes of extending the Contract term for up to one (1) additional two (2) year period. Prior to the onset of any renewal period, Contractor shall be required to provide evidence that all required insurance and sureties are current and will remain enforce throughout the Contract term. This Contract may also be extended for up to three (3) months during any changeover period as defined herein.

V. LEGAL AUTHORITY

Pursuant to its authority under Texas Labor Code § 355.016, TWC is authorized to enter into this Contract.

VI. DEFINITIONS

- A. Conflict of Interest:** A situation that creates a risk that professional judgment or actions will be unduly influenced by a personal interest or relationship and creates substantial conflicts with the proper discharge of duties required by a contract and the public interest.
- B. Service Site:** The premises where the TWC-BET vending services are performed.
- C. TWC Vending Specialist:** The TWC staff person within TWC-BET assigned to interact with Contractor.

VII. PAYMENT RATES AND TERMS

- A.** Part 4 of Contractor's Proposal is herein incorporated into this Contract.
- B.** Contractor must pay all State, federal, and local taxes, including sales taxes on vended products, that may be assessed against its equipment or merchandise while in or upon the service site, as well as all State, federal, and local taxes assessed in connection with the operation of its vending services upon the service site. Sales taxes deducted must conform to the rules of the Texas Comptroller of Public Accounts regarding food sales, which require only 50% sales tax payment on perishable food items. Contractor must not deduct taxes greater than 50% of the total sales tax rate on perishable items (34 Tex. Admin. Code (TAC) §3.293, Food; Food Products; Meals; Food Service and Texas Tax Code, §§151.007, 151.314, 151.315). Contractor must comply with all State, federal, and local laws and regulations governing the preparation, handling and serving of food, and to procure and keep in effect all necessary licenses, permits, and food handler's cards required by law.

VIII. SCOPE OF WORK

A. Contractor Responsibilities:

1. Contractor must install, service, and maintain all vending machines in a first-class operating condition with respect to cleanliness and mechanical or electrical operations.

2. Contractor must correct any defects, problems, violations, or conditions relative to the vending machines that may prove hazardous or detrimental to the health and safety of the public in accordance with the requirements in Section VIII.C.11.
 - a) TWC-BET OR SERVICE SITE RESERVES THE RIGHT TO DISCONNECT FROM ITS POWER SOURCE ANY MACHINE DEEMED BY TWC-BET OR SERVICE SITE TO REPRESENT A SAFETY OR HEALTH VIOLATION OR HAZARD, UNTIL THE NECESSARY CORRECTIONS ARE MADE BY CONTRACTOR
3. CONTRACTOR'S TITLE TO VENDING MACHINES AND EQUIPMENT: All equipment and automatic vending machines installed, and all products offered for sale by Contractor are the property of Contractor. TWC will have no interest in said products, vending machines, and/or other Contractor equipment.
4. Contractor must establish a reimbursement system for each service site and provide to TWC-BET a copy of its refund and/or reimbursement system for each service site. Signs indicating that the Contractor is not responsible for refunds are not acceptable. Refunds must be made each time the machine is serviced.
5. Contractor must maintain a refund log.
6. The Contractor must submit to the TWC-BET Vending Specialist and to the service site, the service schedule for each machine within ninety (90) days of contract execution.
7. Contractor is responsible for maintaining meter readings and accurate dollar sales data.
8. Contractor must allow TWC-BET access to all machine meters during regular business hours.
9. Contractor must permit authorized representatives of TWC-BET to accompany Contractor's employees during cash collection and counting and to randomly examine the receipts of the vending machines operated by Contractor.
10. Contractor must schedule and conduct regular inspections of service sites, as proposed in the Contractor's proposal.
11. Contractor's inspections must include a review of meter sales trends versus dollars collected.
12. Contractor must provide TWC-BET Vending Specialist with the dates of all machine installations, removals, and machine type changes.
13. If the service site requests that the Contractor remove machines due to the service site moving or no longer needing machines, the Contractor must notify the TWC-BET immediately or a penalty

equal to the estimated monthly gross sales average shown in the Service Site Locations listing in Attachment 3 and on each subsequent contract renewal date may be assessed.

14. The Contractor must comply with all State, federal, and local laws and regulations governing the preparation, handling and serving of food.
15. The Contractor shall procure and maintain all necessary licenses, permits, and food handler's cards required by law.
16. The Contractor must provide adequate vending services to achieve customer satisfaction.
17. The Contractor must hire all employees necessary for the performance of the requirements of this Contract. The Contractor must comply with all applicable State, federal and local laws and regulations pertaining to the wages and hours of employment of its employees. The Contractor, in performing the requirements of this Contract, must not discriminate against any employee or applicant for employment based on race, color, religion, sex, national origin, age, disability, or veteran status (i.e., protected class).
18. Contractor shall ensure its employees comply with any health examination as city, State, or federal authority may require in connection with their employment. The Contractor must maintain a staff of properly trained and experienced personnel to ensure satisfactory performance of the Contract.
19. All employees of Contractor must abide by any dress code rules of the service site where the vending machines are located. All Contractor employees must be clean and always present a professional appearance.
20. The Contractor must observe and comply with all regulations of the service sites, including but not limited to those regarding smoking, parking, and security.
21. When applicable, the Contractor must submit and comply with service site regulations pertaining to background checks to install and service machines.
22. The Contractor must keep all records on file for a period of seven (7) years from the end date of the contract. The Contractor must, upon reasonable notice, give TWC staff the right to inspect, examine, and audit, during normal business hours, such Contractor's business records as are directly or indirectly relevant to the financial arrangements set forth in this Contract.
23. The Contractor is responsible for the rotation and adequate supply of products.

24. The Contractor must keep its machines and all adjacent areas neat and sanitary. The Contractor must clean spills that occur while filling or cleaning its machines, clean the front of its machines each time the Contractor restocks or services them, and remove packaging and waste from affected areas following each service call.
25. The Contractor must maintain its service sites, where the vending services are performed, in a safe operating condition such that no employee of the Contractor or customer is exposed to or subjected to any unsafe situation that would violate Title 29 U.S.C., Chapter 15, Occupational Safety and Health Act, including but not limited to the general duty and the specific duty clauses thereof, or any similar federal, State, or local law or regulation.
26. The Contractor may not add or remove machines without the express written approval of TWC-BET. All additions or deletions will be made in writing by TWC through written notice with a revised Service Site Locations listing. The Contractor must provide the TWC-BET Vending Specialist with the installation or removal dates of all machines.
27. Contractor shall request in writing from the TWC-BET Director or the TWC-BET Vending Specialist any vend rate adjustments, changes in the commission rates reflected in the RFP document, service site additions or deletions, and changes in the number or type of vending machines. Contractor's requests must be approved in writing by the TWC-BET Director or the TWC-BET Vending Specialist.
28. COMPLIANCE: In performing the requirements of this Contract, the Contractor must comply with all applicable State, federal, and local laws, including but not limited to occupational safety and health, employment opportunity, immigration and naturalization, the Americans with Disabilities Act, State tax law, and State insurance law.
29. The Contractor may request an evaluation of the sales volume of a specific machine to determine profitability and possible removal. This evaluation must be for a minimum of ninety (90) days but may be longer at the option of TWC-BET. The sales figures used to determine profitability will come from the Sales and Commissions Reports. TWC-BET will notify the service site if the Contractor has requested removal of a specific machine and those sales of the machine have been evaluated. TWC-BET will determine if a machine must be removed and will inform the Contractor.

30. Contractor may not place vending machines/security cages/etc. in a location where they may restrict vehicle or pedestrian traffic. Vending machines/security cages/etc. must be accessible as prescribed in the Texas Accessibility Standards (TAS) and the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and must conform to all requirements of Texas Government Code Chapter 469. The Contractor must obtain all locks necessary to secure vending machines/security cages/etc.
31. Contractor must pay the TWC-BET all commissions as proposed by Contractor though this Contract.

B. Products

1. All product types must be offered year-round, including products containing chocolate. The Contractor must maintain fresh products in its vending machines and must comply with any State, federal and local laws and regulations concerning the storage and transport of candy and snacks.
2. Products not listed in this Contract must be approved, in writing, by the TWC-BET Director or the TWC-BET Vending Specialists before they may be placed in any vending machine.
3. TWC-BET may add new products and/or new categories of products to the contract at any time.
4. Lower vend prices on drink machines are only permitted with prior written approval of the TWC BET Director or the TWC-BET Vending Specialist.
5. If the Contractor or subcontractor is a national brand vendor, they must provide up to two (2) items of a competing brand, should there be customer demand.
6. All products listed in this Contract must be made available upon customer demand.

C. Vending Machines

1. Vending machines must contain only products that provide expiration dates on each package and no products will be sold beyond these dates.
2. Vending machines must contain only prepackaged, standard vending machine products.
3. Vending machines must be furnished new or refurbished, and each machine must be refinished or refurbished as necessary to keep units in working order, exteriors free of rust and major dents, all knobs and labels present, with no scratched or stained glass. TWC-BET and service sites will be the sole judges of the appearance of the machines. Machines must be replaced upon request of TWC-BET;

4. Vending machines must be equipped with coin change makers and dollar bill validators. Contractors may choose to provide cashless options such as card readers, mobile wallets, etc. in addition;
5. Vending machines must meet the specifications established by State, federal and local laws as well as those established by the National Automatic Merchandising Association (NAMA) and the National Sanitation Foundation (NSF). All electrically operated equipment must be installed in accordance with the standards of the National Electrical Code (NEC). All electrical items must meet all applicable Occupational Safety and Health Administration (OSHA) standards and regulations and bear the appropriate listing from Underwriters Laboratories (UL), Factory Mutual Research Corporation (FMRC), National Electrical Manufacturers Association (NEMA), and/or the Federal Communications Commission (FCC);
6. Vending machines must be in compliance with Texas Government Code, Title 10, Subtitle D, §2165.058, Energy-Saving Management: Vending Machines; Energy-Saving Device Required, as follows:
 - a) Exception: This section does not apply to a vending machine that contains a perishable food product, as defined by Texas Civil Practice and Remedies Code, §96.001.
 - b) An entity that owns or operates a vending machine located in a building owned or leased by the State must activate and maintain any internal energy-saving or energy-management device or option that is already part of the machine or contained in the machine.
 - c) An external energy-saving or energy-management device must be used for each vending machine that:
 - (1) Is located in a building owned or leased by the State;
 - (2) Operates with a compressor; and
 - (3) Does not have an activated and operational internal energy-saving or energy-management device or option.
 - d) An entity that owns or operates a vending machine subject to this section will be responsible for any expenses associated with the acquisition, installation, or maintenance of an energy-saving device required by this section.

- e) The State may impose an administrative fine on an entity that operates a vending machine subject to this section in an amount not to exceed \$250 per year for each machine found to be in violation of this section or rules adopted by the State under this section.
 - f) The State may adopt and enforce additional rules relating to the specifications for and regulation of energy-saving devices required by this section.
7. Vending machines must not allow force vend (e.g., if an item is sold out, the customer must be able to get his or her money back by depressing the coin return instead of having to select another product);
 8. Vending machines must not display advertising;
 9. Vending machines must be equipped with a conspicuous professional-looking sign or decal (handwritten signs or decals are NOT acceptable) prominently placed on the front of the machine, displaying the Contractor name, telephone number, and customer refund procedural information for lost money or receipt of inferior product from the vending machine. Approved identification signs are not considered advertising;
 10. Vending machines must be equipped with professional-looking labels or tags for each product selection and vend price (handwritten labels or tags are NOT acceptable).
 11. Vending machines must be repaired or serviced as needed and when requested by the TWC-BET or service site. Some service sites may require service five (5) to seven (7) days per week. All repair, service, or customer complaint responses must be made within 24 hours of notice to the Contractor. If for any reason the repair or service cannot be made within 24 hours, the Contractor must contact the TWC-BET Vending Specialist immediately. The Contractor must notify the TWC-BET Vending Specialist if consistent complaint issues are experienced;
 12. Combination machines may be utilized. Contractor must notify the TWC-BET in writing as to the type of machine combination prior to installation. Meter readings must still be submitted;
 13. Vending machines must be provided and serviced at all locations on the Service Site Locations;
 14. Vending machines may not be removed without prior authorization from the TWC-BET Director or TWC-BET Vending Specialist in accordance with Section VIII.F. If a machine is removed without prior authorization from the TWC-BET, Contractor must reinstall the machine. TWC-BET may assess a penalty equal to the estimated monthly gross sales average listed on Attachment

- 3 - Service Site Locations and with each subsequent contract renewal date for each month the equipment is not at the service site;
15. Vending machines must be equipped with non-resettable counters (meters) that monitor the number of vends and/or dollar sales. The readings from these counters must be sufficient for a TWC-BET audit of the dollar amount of sales. These amounts will be verified by TWC-BET.
- a) Single-price machines must be equipped with non-resettable vend meters wherein Ending Meter Reading less Beginning Meter Reading less Test Vends yields Units Sold; Gross Sales divided by Sales Tax Rate yields Net Sales; and Gross Sales less Net Sales equals Sales Tax Dollars (e.g., Gross Sales \$300.00. Sales Tax Rate 8.25%. Convert 8.25% to decimal [0.0825] and add 1 [1.0825]. Divide Gross Sales [\$300.00] by Sales Tax Rate factor [1.0825], resulting in Net Sales [\$277.14]). To calculate Sales Tax, subtract Net Sales [\$277.14] from Gross Sales [\$300.00], resulting in \$22.86 Sales Tax collected). Net Sales is the figure on which commissions must be paid; and
- b) Multiple-price machines must be equipped with non-resettable dollars sold meters wherein Ending Dollars Sold less Beginning Dollars Sold less Test Vends equals Gross Sales; Gross Sales divided by Sales Tax Rate yields Net Sales; and Gross Sales less Net Sales equals Sales Tax Dollars (e.g., Gross Sales \$300.00 Sales Tax Rate 8.25%. Convert 8.25% to decimal [0.0825] and add 1 [1.0825]. Divide Gross Sales [\$300.00] by Sales Tax Rate factor [1.0825], resulting in Net Sales [\$277.14]. To calculate Sales Tax, subtract Net Sales [\$277.14] from Gross Sales [\$300.00], resulting in \$22.86 Sales Tax collected). Net Sales is the figure on which commissions must be paid.

D. Special Locations (as applicable)

1. Texas Department of Criminal Justice Prisons: All prisons must be serviced twice per week and may require servicing on weekends. The visitation areas must be serviced on either Thursdays or Fridays, and the employee areas must be serviced on either Mondays or Tuesdays.
- a) Delivery/service technicians must wait for an escort for fifteen (15) minutes only; after fifteen (15) minutes, Contractor must notify TWC-BET Vending Specialist.

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- b) TWC-BET Vending Specialist will contact the prison administration office to inquire as to the delay and determine if an escort may be secured or if the delivery/service technician(s) must depart.
- c) Contractor must notify the prison warden's office prior to moving any vending equipment within a prison or removing any vending equipment from a prison.

E. TWC Responsibilities

1. TWC-BET assumes no responsibility for protection of machines against damage or the unauthorized removal of machines or any parts or contents thereof.
2. Unless otherwise stipulated in this Contract, TWC-BET may, without cost to Contractor, provide Contractor with the necessary space for the operation of the services required in this Contract and will furnish, without cost to Contractor, all service sites and utilities reasonable and necessary for the efficient performance of the Contract.
3. TWC-BET will grant to Contractor the exclusive right to operate Vending Machine Services listed on or added to the Area Site Location Listing, pursuant to this Contract.
4. TWC-BET will grant to Contractor the exclusive right to sell to employees, guests, and other persons at the service sites, food products, nonalcoholic beverages, and other such products as approved by TWC-BET at the service site.
5. TWC-BET shall inform Contractor of vend rate adjustments, changes to the products to be sold, commission rates, and service site additions or deletions in writing.
6. TWC-BET shall respond to Contractor's written request for vend rate adjustments, changes to the products to be sold, commission rates, and service site additions or deletions in writing.

F. Adding or Deleting Service Sites

1. TWC-BET reserves the right to amend the Contract by adding or deleting service sites listed in the Service Site Listing. If service site(s) are deleted, Contractor must continue to service all other service sites. All additions or deletions will be made in writing by TWC-BET through an amendment to the Contract with a revised Service Site Listing. Contractor must provide to TWC-BET Vending Specialist the installation or removal dates of all machines.

2. TWC-BET reserves the right to add service sites within 30 miles of any service site listed in the Service Site Listing by amendment to this Contract. Contractor must provide the additional services within thirty (30) calendar days of the effective date of the amendment under the same terms and conditions as specified in this Contract.
3. Service sites may request additional services. After completion of a feasibility study and discussion, Contractor must provide the additional vending equipment within thirty (30) calendar days of notice, at the same prices and percentages and under the same terms and conditions as specified in this Contract.

G. Changeover Period

1. All machines must be delivered and installed no later than 30 calendar days after the beginning date of the Contract.
2. Contractor must coordinate the exact delivery schedule with the outgoing vendor, service site, and BET Vending Specialist. Incoming contractor must submit TWC-BET Vending Specialist Contractor's proposed plan to execute coordination, including service site surveys.
3. Contractor must provide TWC-BET Vending Specialist with the final changeover schedule for all machines not less than thirty (30) calendar days prior to the beginning date of the Contract. TWC-BET Vending Specialist will assist Contractor in resolving any disputes.
4. When Contractor is the outgoing vendor, Contractor must provide the proposed changeover schedule to TWC-BET Vending Specialist no less than forty-five (45) calendar days prior to the expiration date of the current Contract term.

IX. Reports, Commissions, and Penalties

- A. Sales and Commissions Report:** The Sale and Commissions Report (Report) must document meter readings and other sales and commissions information for all machines by service site. The Contractor must submit this Report on a monthly basis to https://webp.twc.state.tx.us/bep_sac/sac/login.asp no later than the first day of the second following month (i.e., if the reporting period ends on the last day of February, reports are due April 1) If the first day of the second following month falls on a weekend or a postal holiday, reports are due on the following TWC-BET workday. The Report must be submitted prior to submitting

commission payments. Report information must reflect a calendar month, with meter readings submitted for the beginning and end of that calendar month. Only vending information reported in this manner will be accepted by TWC. Failure to provide the information in the requested manner may result in penalties being assessed.

- B.** All transactions are the sole responsibility of Contractor. If Contractor subcontracts any portion of the Contract, Contractor must submit the Report(s). TWC-BET WILL NOT ACCEPT THE REPORT(S) FROM ANY SUBCONTRACTOR(S). Failure to comply will result in penalties being assessed (reference Section IX.C).
- C.** During the Contract term, if for any reason Contractor does not report sales and commissions by the due dates, TWC-BET will compute an average sales figure based on reported sales for the past six (6) months, and Contractor will be required to pay commissions based on that average. When Contractor obtains the unreported sales and commissions, and if they are more or less than the computed six (6)-month average, Contractor must adjust the next month's Report accordingly.

IF THE CONTRACTOR DOES NOT FOLLOW THESE REPORTING INSTRUCTIONS TWC-BET RESERVES THE RIGHT TO ASSESS THE FOLLOWING PENALTIES:

1. Failure to accurately report any of the following information on the Report may result in assessment of a penalty equal to the estimated monthly gross sales average stated in Attachment 3 of this Contract:
 - a) Machine number
 - b) Machine type
 - c) Beginning meter reading
 - d) Ending meter reading
 - e) Gross sales
 - f) Sales tax dollars
 - g) Commission percentage
 - h) Commission paid
2. If a meter malfunctions and meter readings are not reported using money collected, sales must still be reported. Failure to report sales may result in assessment of penalties equal to the estimated monthly gross sales average listed in Attachment 3 - Service Site Listing on the due

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date for proposals for RFP # 320-23-00168 and on each subsequent contract renewal date per machine

3. If sales and commissions are not being reported on a machine, Contractor must provide justification in the Comments section of the Report, or a penalty may be assessed equal to the estimated monthly gross sales average listed Attachment 3 - Service Site Listing on the due date for proposals for RFP # 320-23-00168 and on each subsequent contract renewal date per machine.
- D.** All penalty payments are due ten (10) calendar days after the date of the notice of assessment and are payable to TWC-BET by separate check per penalty. If penalty payments are not received within ten (10) calendar days, an additional \$20.00 penalty will be assessed.
- E.** Contractor shall submit commission payment check(s) to TWC Accounts Payable at the following address:

TEXAS WORKFORCE COMMISSION

Accounts Payable

PO Box 322

Austin, TX 78767

Contractor must attach documentation that includes the Contractor name, sales and commission month and year for which payment is being submitted, the service area, contract number, and the amount of the check. Separate commission payments must be sent for each contract area.

- F.** Commission payments must be received by TWC-BET no later than the fifth day of the second following month (i.e., if the reporting period ends on the last day of February, commission payments are due no later than April 5). If the fifth day of the second following month falls on a weekend or a postal holiday, payments are due on the following TWC-BET workday. The monthly Report must be submitted prior to submitting the commission payments. If either the Report or a commission payment is received after its due date, the Contractor is subject to a late penalty of 3% of that month's gross sales. If the payment received does not equal the amount on the Report, the Contractor is subject to a late penalty of 3% of that month's gross sales. This penalty must be paid by separate check within 10 days of notice by TWC-BET and must be accompanied by the delinquent commission payment and/or Report, if not previously submitted. If commission payments and penalties are not received by the end of the calendar month in which the report was due, an

additional penalty of 3% of that month's gross sales plus \$20.00 will be assessed to the Contractor. If these commission payments and penalties are not paid by the end of the month following the month in which the report was due, the TWC-BET may cancel the Contract in its entirety and exercise the performance bond.

- G. After the expiration date of its Contract, the Contractor must submit payment(s) per the procedures established above. TWC-BET may exercise the performance bond if payments are not submitted on time under the terms and conditions of the Contract.
- H. TWC-BET will notify the Contractor of any payment returned by a financial institution. Payment must then be made by cashier's check or money order within ten (10) days from date of notification. All future payments must be in the form of a cashier's check or money order.

X. Performance Bond

- A. Contractor must procure and maintain enforce a performance bond in the amount which is equal to one (1) month average sales for the service sites at the time of proposal due date for RFP # 320-23-00168. The purpose of the performance bond is to ensure that all performance responsibilities, monetary or otherwise, of Contractor and its agents that are expressed in the Contract will be satisfactorily fulfilled. This includes Contractor's defaulting on the Contract. **The original bond must be delivered to TWC-BET Vending Specialist prior to the installation of any machines or the commencement of any services.** Subcontractors are not responsible for providing bonds to TWC.
- B. The following instruments may be submitted to TWC in lieu of a performance bond:
 - a. Surety or blanket bond from a company chartered or authorized to do business in Texas;
 - b. Irrevocable letter of credit issued by a financial institution subject to the laws of Texas.
- C. Performance bond or any instrument submitted in lieu of a performance bond must be effective on the beginning date of the Contract and must not expire until six (6) months after the expiration date of the Contract (e.g., if the initial contract term is 6/1/2017-5/31/2019, the bond/surety term must be 6/1/2017-11/30/2019.) This applies to any renewal periods exercised by TWC and ensures that all monthly sales, commissions, and Reports have been submitted and paid in full.

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- D. Performance bonds completed (signed) by an out-of-Texas surety require a countersignature and a 7-digit license number by a Texas resident agent of a company chartered or authorized to do business in Texas or a copy of a reciprocal agreement between states.
- E. A separate performance bond must be provided for each Contract awarded and must reference the Contract number for which the bond is provided.
- F. All references to the performance bond by Contractor must reference the effective dates of the Contract and the TWC Contract number in lieu of or in addition to the bonding company's number.
- G. Performance bonds must be made payable to TWC. TWC may delay the installation of vending equipment if a bond or an approved alternative surety is not received.
- H. Any default or breach of the Contract may result in exercise of the performance bond by TWC.

XI. Insurance Requirements

- A. The Contractor must provide a certificate of insurance or binder to TWC **within fourteen (14) days after the date of notice of award. The RFP number or Contract number must appear on the certificate.** All required insurance must remain in force throughout the term of the Contract
- B. If the required insurance coverage policies expire during the term of the Contract and any subsequent Contract extensions, Contractor must provide TWC's Contract Manager with a new insurance certificate and renewal policies at least thirty (30) business days prior to the expiration of the existing insurance coverage. The certificate must show that the terms and financial amounts of the insurance coverage comply with the Contract requirements and will become effective as of the expiration date and time for the existing coverage
- C. The Contractor shall notify the TWC Contract Manager within five (5) business days of any cancellation, non-renewal, or material change in insurance terms that affects required insurance coverage. In the event that the Contractor fails to keep in effect at all times the required insurance coverage, TWC may, in addition to any other remedies it may have, terminate the Contract, subject to the provisions of the Contract.
- D. The Contractor is responsible for any deductible or self-insured retention requirements in the required insurance coverage.

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- E. Minimum Insurance Coverage:** Contractor shall maintain insurance coverage in accordance with the statutory limits and the requirements provided in Attachment 1 - TWC Standard Terms and Conditions, Section 3.19.
1. **Commercial Automobile Liability:** Contractor shall also maintain Commercial Automobile Liability coverage to include any automobile, including hired and non-owned automobile, liability of \$1,000,000 combined single limit for each accident.
- F. All policies must:**
1. Be issued by companies authorized to do business in Texas with an A.M. Best Company rating of A VII or higher;
 2. Be written on a primary and non-contributory basis with any other insurance coverage;
 3. Include a Waiver of Subrogation Clause;
 4. Include the following language: "It is a condition of this policy that the Contractor must furnish written notice to TWC-BET Vending Specialist, 101 E. 15th St., Austin TX 78778, thirty (30) calendar days in advance of the effective date of any reduction in or cancellation of this policy";
 5. Name TWC as an Additional Insured (except Worker's Compensation Insurance); and,
 6. Name TWC as a Certificate Holder.
- G.** The Contractor must furnish TWC with Original Copies of all required certificates of Insurance prior to the installation of any machines or the commencement of any operations.
- H.** Failure to maintain the required insurance may result in cancellation of the Contract.
- I. SUBCONTRACTOR INSURANCE REQUIREMENTS:** If the Contractor uses a subcontractor, the Contractor shall ensure that all subcontractors maintain the required insurance. The Contractor must possess certified copies of its subcontractors' policies and make them available for review by TWC-BET, upon request. **Do not send subcontractors' policies to TWC.**

XII. Termination of Contract

- A.** The Termination provisions of the Attachment 1 – TWC Standard Terms and Conditions, Section 10, apply to this Contract.
- B.** Upon written notice of Contract termination from TWC, the Contractor must:
1. Pay all money that may be due to TWC-BET in full within five (5) business days of termination of this Contract if the Contract is terminated for any reason prior to the Termination Date of the Contract or any renewals;
 2. Remove all vending equipment within thirty (30) days after the date specified on the notification letter for all service sites in the Contract area or service sites specified by TWC; and,
 3. Provide written notice of removal dates for all equipment before any machine is removed. If a machine is removed prior to the written removal date, TWC may exercise the performance bond.
- C.** In the event equipment is not removed within thirty (30) days after the Contract is terminated or expired, TWC-BET may remove equipment to storage for a maximum of thirty (30) days. The Contractor will be notified of equipment's removal and storage. The Contractor is responsible for removal and storage costs of all equipment. At the end of the storage period, machines will be prepared for sale according to State procedures. Following vending equipment sale, TWC will issue a check to the Contractor in the amount of sale proceeds, less the removal, storage, and sale cost.
- D.** Contractor must vacate all parts of the service site(s) occupied by the Contractor, remove its vending machines and equipment, and return the premises to the TWC-BET, together with any equipment furnished by the TWC-BET pursuant to this Contract, in the same condition as when originally made available to the Contractor, excepting reasonable wear and tear within thirty (30) days of the Termination Date of this Contract or any renewal. First Priority for removal of equipment should be given to service sites with security concerns and service sites with numerous vending machines.
- E.** Contractor must supply the TWC-BET Vending Specialist the proposed removal schedule within seven (7) days of a termination notification and prior to the removal of equipment.
- F.** Contractor may terminate any Contract resulting from this RFP by providing one hundred twenty (120) days advance written notice to TWC.

1741929308-3-000
14 Digit Payee I.D. Number

3123ADM105
Contract Number

XIII. SIGNATURES:

Contractor hereby acknowledges that it has read and understands this entire Contract. All oral or written agreements between the parties hereto relating to the subject matter of this Contract that were made prior to the execution of this Contract have been reduced to writing and are contained herein. Contractor agrees to abide by all terms and conditions specified herein and certifies that the information provided to the Commission is true and correct in all respects to the best of its knowledge and belief.

The obligations of the TWC under this Contract are expressly contingent upon the availability of funds for such purposes. This Contract shall not be binding until expressly approved by the Executive Director of the TWC, or the Executive Director’s designee.

TEXAS WORKFORCE COMMISSION

CONTRACTOR REPRESENTATIVE

Cheryl Fuller

Darin Duecker, General Manager

Signature

Signature

Cheryl Fuller

Darin Duecker

Print Name

Print Name

Director, Vocational Rehabilitation Services

General Manager

Title

Title

8/4/2023

8/4/2023

Date

Date

ATTACHMENT 1 – TWC Terms & Conditions (12/2022)

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/Proposal, equates to "Purchase Order" or "Contract" and "Bidder/ Offeror/Proposer/Respondent/Contractor" equates to "Vendor." Any specification in the solicitation that conflicts with these standard terms and conditions takes precedence. All references to "days" shall be calendar days unless specified otherwise.

*****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 its response.**

*****WARNING: Such terms and conditions may result in disqualification of the submitted Vendor's response (e.g., responses with a requirement to apply the laws of a State other than Texas.)**

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 one hundred eighty (180) 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.

The default Firm Pricing timeframe in this section may be superseded by specific Firm Pricing timeframes in the solicitation or in other parts of the contract.

- 1.5. Ties:** In the case of tie bids, the award will be made in accordance with the preferences listed under 34 Texas Administrative Code (TAC) § 20.306.
- 1.6. Preferences:** In making an award, TWC shall apply the preferences listed at 34 TAC §20.306. 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 initialed 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 extend 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

ATTACHMENT 1 – TWC Terms & Conditions (12/2022)

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. Certain Construction Liability Claims:** TWC will comply with the provisions of Texas Government Code, Chapter 2272 in the event that a claim for damages arises to which that chapter applies.

- 2.2. Damage to Grounds and Buildings:** Vendor shall be financially responsible for any or all damage done by its employees, agents and subcontractors to TWC grounds and buildings. Vendor is responsible for the removal of all debris resulting from work performed under the contract.

- 2.3. 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.

2.4. Texas Public Information Act:

- 2.4.1.** 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").

- 2.4.2.** 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 that applies. 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.

- 2.4.3.** 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.

- 2.4.4.** In accordance with Texas Government Code § 2252.907, 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.

2.5. Award of Contract:

- 2.5.1.** 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 or a fully executed contract is issued to the Vendor.

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- 2.5.2.** 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.
- 2.5.3.** 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.
- 2.5.4.** TWC reserves the right to use a third party to negotiate price related to any Information Technology solicitation or contract.
- 2.5.5.** 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.
- 2.6. Changes in Ownership:** During the term of the Contract or any extension or renewal thereof, the Vendor shall notify TWC in writing of any substantial change in the ownership or control of the Vendor as soon as possible, but no later than thirty (30) days before its occurrence.
- 2.7. Vendor Assignments:** No assignment is permitted by 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 Vendor from its obligations pursuant to the contract. TWC will comply with the provisions of Texas Government Code § 2262.056, when applicable, by providing notice to the Legislative Budget Board of a proposed assignment prior to approval of the assignment.
- 2.8. 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.
- 2.9. INDEMNIFICATION:**
- 2.9.1. ACTS OR OMISSIONS: VENDOR SHALL INDEMNIFY AND HOLD HARMLESS TWC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**
- 2.9.2. INFRINGEMENTS: VENDOR SHALL INDEMNIFY AND HOLD HARMLESS TWC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD-PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE**

ATTACHMENT 1 – TWC Terms & Conditions (12/2022)

DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

2.9.2.1. VENDOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (1) USE OF THE PRODUCT OR SERVICE BY TWC FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (2) ANY MODIFICATION MADE BY TWC TO THE PRODUCT WITHOUT VENDOR'S WRITTEN APPROVAL, (3) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE VENDOR PURSUANT TO TWC'S SPECIFIC INSTRUCTIONS, (4) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TWC, OR (5) ANY USE OF THE PRODUCT OR SERVICE BY TWC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.

2.9.2.2. IF VENDOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TWC PROVIDES VENDOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, VENDOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TWC, SHALL), AT VENDOR'S SOLE OPTION AND EXPENSE; (1) PROCURE FOR TWC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (2) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALITY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TWC'S USE IS NON-INFRINGEMENT.

2.9.3. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY:

2.9.3.1. VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TWC SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2.9.3.2. VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS TWC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE

ATTACHMENT 1 – TWC Terms & Conditions (12/2022)**FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

- 2.10. Vendor Performance:** In accordance with Texas Government Code §§2155.074, 2155.075, 2156.007, 2157.003 and 2157.125, Vendor performance may be used as a factor in the award.
- 2.11. 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.
- 2.12. Dispute Resolution Procedures:**
- 2.12.1. Procurement Disputes:** In accordance with Texas Government Code, § 2155.076, TWC has adopted rules for resolving vendor protests relating to the solicitation, evaluation, or award of a contract for goods and/or services. See 40 TAC, Chapter 800, subchapter H. Such protests must be made via email to twcvendor@twc.texas.gov and/or mail and received in the Director of Business Operations' office within ten (10) business days from the date the protestant knew or should have known of the occurrence of the action that is protested, but not later than ten (10) business days of the date of the announcement of the award. The protest must be in writing and contain: (1) the identifying name and number of the Solicitation being protested; (2) identification of the specific statute or regulation that the Protestant alleges has been violated; (3) a specific description of each act or omission alleged to have violated the statutory or regulatory provision identified above in (2) above; (4) a precise statement of the relevant facts including: (A) sufficient documentation to establish that the protest has been timely filed; and (B) a description of the resulting adverse impact to the Protestant; (5) a statement of the argument and authorities that the Protestant offers in support of the protest; (6) an explanation of the action the Protestant is requesting from the Agency; (7) a statement confirming that copies of the protest have been mailed or delivered to any other Interested Party known to the Protestant; and (8) the protest must be signed by an authorized representative for the Protestant and the signature notarized. 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 Director will issue the final written decision to the protestor. TWC may move forward with a Solicitation or contract award without delay, in spite of a timely filed protest, to protect the best interests of the Agency or the state.
- 2.12.2. Contract Disputes:** Disputes arising under this Contract shall be resolved in accordance with the dispute resolution process provided in Chapter 2260 of the Texas Government Code.
- 2.13. 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.
- 2.14. Hold-Over Contract Extension:** 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. During the hold over extension period, service costs shall be provided at the

ATTACHMENT 1 – TWC Terms & Conditions (12/2022)

pro-rated rates, as applicable, in effect immediately prior to expiration of the original contract period and all other terms and conditions shall remain in effect. TWC may terminate such hold over extension period by providing written notice of cancellation not less than ten (10) business days prior to the cancellation date.

- 2.15. Records Retention:** Vendor and any subcontractor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents relevant to showing that any payments under this Contract were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Vendor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later. If Vendor chooses not to preserve contracting information for the retention period required by this section, Vendor agrees to provide at no cost to TWC all contracting information related to the Contract that is in the custody or possession of Vendor or any of its subcontractors.
- 2.16. Agency's Right to Audit:** Vendor and any subcontractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to this Contract, including but not limited to work papers, reports, books, records, and supporting documents. Vendor and any subcontractors shall provide TWC with any information that TWC deems relevant to any investigation or audit. Vendor must retain all work and other supporting documents pertaining to this contract, for the purposes of inspecting, monitoring, auditing, or evaluating by TWC. For the purpose of this section, TWC's right to audit extends to any agency of the Federal government or State of Texas authorized by law or TWC, including an investigation or audit by the State Auditor.
- 2.17. State Auditor:** Pursuant to Texas Government Code §2262.154, the State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. The 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, 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, an 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 and any subcontractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all requested information and materials. Vendor's failure to comply with this section shall constitute a material breach of contract and shall authorize TWC and the State of Texas to immediately assess appropriate damages for such failure.

Vendor shall ensure that this provision concerning the State's authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards.

- 2.18. 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.
- 2.19. 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.
- 2.19.1.** 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.

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- 2.19.2.** 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.
- 2.19.3.** Vendor will assist TWC or its nominees (including but not limited to the State of Texas) 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.
- 2.19.4.** 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.
- 2.20. License:** In accordance with 2 C.F.R. §200.315, 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.
- 2.21. 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 at TWC's discretion to provide the more favorable prices to TWC.
- 2.22. Governing Law and Venue:** The contract shall be executed in and governed, construed and interpreted under the laws of the state of Texas, without regard to the conflicts of law provisions. 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.
- 2.23. Survival:** Expiration or termination of the contract for any reason does not release Vendor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.
- 2.24. 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.
- 2.25. Block Terrorism:** 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>
- 2.26. 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

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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.

2.27. Redacted Electronic Copy: Texas Government Code § 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 an electronic copy of its complete proposal. Vendor shall deliver these electronic copies to TWC via email in compliance with all of the following requirements:

2.27.1. An email 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). The email 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. The PDF 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. _."

2.27.2. Per Texas Government Code § 322.020, the Texas Legislative Budget Board (LBB) has now implemented a major contracts database.

2.27.3. TWC shall upload to the LBB's contracts database the text of the complete contract (with limited redaction and appendix) no later than thirty (30) 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/>.

2.28. American Recovery and Reinvestment Act (ARRA or the Recovery Act): 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.

2.29. Build America, Buy America Act (BABAA):

2.29.1. Buy America Requirements for Infrastructure projects prohibits the use of federal funds for any project for the construction, alteration, maintenance, or repair of Infrastructure unless all of the iron, steel, manufactured products, and construction materials used in the project are produced and/or manufactured in the United States.

For the purpose of this section, "Infrastructure" means the structures, facilities and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property in the United States.

2.29.2. Waiver: The Head of the funding Federal Agency or designee may issue a waiver to the Buy America requirements in limited circumstances including (i) compliant iron, steel, manufactured products, and or construction materials are not available; (ii) utilizing compliant iron, steel, manufactured products, and or construction materials will increase the cost of the overall project by more than 25 percent; (iii)

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for a reason determined to be in the public interest based on criteria established by the funding Federal agency; or (iv) to address exigent circumstances.

Vendors seeking a waiver from the BABAA Buy America preference must submit a waiver request along with written justification to TWC. Waivers requested will be considered on a case-by-case basis. TWC will inform the Vendor if there is already a waiver in effect covering Vendor's waiver request along with the existing waiver's parameters. If TWC agrees with the waiver request, TWC will submit the request to the responsible federal agency. Upon receiving the federal agency response, TWC will inform the Vendor whether the request was rejected or granted in whole or part.

- 2.29.3. Certification:** Vendor certifies that it will comply with the provisions of BABAA (Public Law 117-58, §§ 70901-70952) for Infrastructure Projects.
- 2.29.4. Pass-Through Requirement:** Vendor must pass BABAA compliance obligations to any subcontractors for Infrastructure projects paid for with federal funds. Vendor shall require the subcontractor to certify compliance as a condition of any applicable subcontract.
- 2.30. Whistleblower Protection:** Pursuant to 41 U.S.C. § 4712, Vendors may not discharge, demote, or discriminate against employees for reporting information that employee reasonably believes is evidence of gross mismanagement of a federal grant or contract, gross waste of federal funds, abuse of authority relating to a federal grant or contract, a substantial and specific danger to public health or safety, or a violation of a law, rule, or regulation relating to a federal contract or grant. Employees subject to adverse action in violation of this section may file a complaint with the Office of the Inspector General no later than three years from the date of the adverse action. Vendors must provide written notification of these whistleblower protections to employees performing on covered contracts.
- 2.31. 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 Vendor must complete and submit back to TWC as required on the form. To obtain a facility access badge, Vendor 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.
- 2.32.** To the extent that Vendor's staff are provided access to and workspace within TWC buildings, Vendor's staff will abide by TWC policies and procedures expressed in Chapter 1 of the Texas Workforce Commission Personnel Manual in existence and as amended from time to time.
- 2.33. 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 (including any employees of the State of Texas), must safeguard that information.
- 2.33.1.** 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.
- 2.33.2.** Awarded Vendor must have a Non-Disclosure Agreement (NDA) on file with TWC prior to handling Sensitive PII
- 2.33.3.** In order to safeguard Sensitive PII, Awarded Vendor must:
- 2.33.3.1.** Collect Sensitive PII only as authorized.
 - 2.33.3.2.** Limit the use of Sensitive PII.

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- 2.33.3.3. Minimize the proliferation of Sensitive PII.
 - 2.33.3.4. Secure Sensitive PII both physically and in electronic form.
 - 2.33.3.5. Report suspected privacy incidents within twenty-four (24) hours to the TWC Contract Manager or, email the TWC Information Security Office at CISO@twc.texas.gov.
 - 2.33.3.6. Not transmit or store Sensitive PII in a server or storage device that is located in a foreign country.
 - 2.33.3.7. 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.
 - 2.33.3.8. Failure to follow these requirements will constitute a breach of contract.
- 2.34. **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.
- 2.35. **Davis-Bacon Act:** Vendors on all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act (40 U.S.C. §§3141-3144) as supplemented by the Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.")
- 2.36. **Anti-Kickback:** Vendor will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) and "Regulations Governing Contractors and Subcontractors" (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").
- 2.37. **Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701-3708):** For all contracts in excess of \$100,000 that involve the employment of mechanics and laborers, Vendor shall comply with 40 U.S.C. §§3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
- 2.38. **Environmental Protection:** Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.).
- 2.39. **Contracting Information Responsibilities:** If this contract has a stated value equal to or in excess of \$1 million or results in the expenditure of an amount equal to or in excess of \$1 million in public funds, in accordance with Texas Government Code §552.372, Vendor agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirement applicable to TWC for the duration of the Contract, (2) promptly provide to TWC any contracting information related to the contract that is in the custody or possession of the Vendor on request of TWC, and (3) on termination or expiration of the contract, either provide at no cost to TWC all contracting information related to the contract that is in the custody or possession of the Vendor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to TWC. Except as provided by Texas Government Code §552.374(c), the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the contract and Vendor agrees that the contract may be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 2.40. **Disaster Recovery Plan:** In accordance with 13 TAC § 6.94(a)(9), Vendor shall provide to TWC the description of its business continuity and disaster recovery plans.
- 2.41. **Media Releases:** Vendor shall not use TWC's name, logo, or other likeness in any press release, marketing material, or other announcement without TWC's or the relevant state agency's prior written approval. TWC does not endorse any vendor, commodity, or service.

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Vendor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the solicitation response, or the services to which they relate without the prior written consent of the relevant state agency, and then only in accordance with explicit written instruction from the relevant state agency. Vendors must obtain written approval from the TWC Contract Manager not more than fifteen (15) business days and not less than five (5) business days prior to any media release related to this Contract.

2.42. Specific Conditions for Disclosing Federal Funding in Public Announcements: The parties agree that all statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, the parties shall clearly state:

2.42.1. the percentage of the total costs of the program or project which will be financed with Federal money;

2.42.2. the dollar amount of Federal funds for the project or program; and,

2.42.3. the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

2.43. Prohibition of Text Messaging and E-mailing While Driving During Official Federal Grant Business: The parties and their employees and representatives are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately-owned vehicle during official contract business, or from using government supplied electronic equipment to text message or email when driving. The parties must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009.

2.44. All work performed and Services provided under this Contract shall be performed in the United States.

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. Vendor represents and warrants that all statements and information prepared and submitted in this Proposal are current, complete, true, and accurate. Submitting a Proposal with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Proposal and any resulting contract.

3.2. All Terms and Conditions Met: that all terms and conditions listed in the solicitation will be met.

3.3. By submitting the Proposal, Vendor represents and warrants that the individual submitting this document and the documents made part of this Proposal is authorized to sign such documents on behalf of the Vendor and to bind the Vendor under any contract that may result from the submission of this Proposal.

3.4. U.S. Department of Homeland Security's E-Verify System: By entering into this Contract, the Vendor 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:

3.4.1. All persons employed to perform duties within Texas, during the term of the Contract; and

3.4.2. All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.

3.4.3. The Vendor shall provide, upon request of TWC, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3)

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most recent hires that match the criteria above, by the Vendor, and Vendor's subcontractors, as proof that this provision is being followed.

- 3.4.4. 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 Vendor shall also be responsible for the costs of any re-solicitation that TWC must undertake to replace the terminated Contract.**
- 3.5. Inducements/Dealings with Public Servants:** Pursuant to Texas Government Code § 2155.003, the Vendor affirms it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted solicitation response.
- 3.6. Lobbying:** that the Vendor will not and has not used any federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Vendor certifies that it shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL. Further, Vendor certifies 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.
- 3.7. Not Ineligible:** that neither the Vendor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participating in this contract by any state or federal agency.
- 3.8. Non-Discrimination:** The Vendor agrees that no person will, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits or be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Vendor certifies compliance with Sections 504 and 508 of the Rehabilitation Act(29 U.S.C. §§ 794, 794d); the Housing and Urban Development Act § 3 (12 USC §1701u); Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e); Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal contract Compliance Programs, Equal Employment Opportunity Department of Labor.;" the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101); and all amendments to each.
- 3.9. Drug-Free Workplace:** The Vendor agrees to provide a drug-free workplace in compliance with the Drug- Free Workplace Act of 1988 (41 U.S.C., Chapter 81, Subtitle IV).
- 3.10. Franchise Tax:** The Vendor is not currently delinquent in the payment of any franchise tax owed to the State of Texas, pursuant to Chapter 171, Texas Tax Code.
- 3.11. Child Support:** The Vendor is not ineligible to receive the specified grant, loan, or payment under Texas Family Code § 231.006 (relating to child support) and acknowledges that the contract may be terminated, and payment may be withheld if certification is inaccurate. 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.
- 3.12. 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.

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- 3.13. Fair Business Practices:** The Vendor has not been found to have engaged in 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 to have engaged in unfair business practices in a judicial or state agency administrative proceeding during the preceding year.
- 3.14. Antitrust Affirmation:** Affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor have violated any federal antitrust law; and (3) neither I nor any representative of the Vendor have directly or indirectly communicated any of the contents of this Response to a competitor of the Vendor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Vendor.
- 3.15. 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.
- 3.16. 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.
- 3.17. Prohibition on Certain Bids and Contracts related to Disasters and Hurricanes Katrina and Rita:** Under Texas Government Code § 2155.006 and § 2261.053, 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.
- 3.18. 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 or the State of Texas. Should Vendor subcontract any of the services required in this solicitation, Vendor expressly understands and acknowledges that in entering into such subcontract(s), TWC or the State of Texas are 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.
- 3.19. Insurance Requirements: (The default insurance requirements in this section may be superseded by specific insurance requirements in the solicitation or in other parts of the contract).** Vendor certifies it maintains insurance coverage in accordance with statutory limits and these requirements:

Workers Compensation: Statutory Limits

Employers Liability: Each Accident \$1,000,000

Disease – Each Employee \$1,000,000

Disease – Policy Limit \$1,000,000

Commercial General Liability:

Occurrence based:

Bodily Injury and Property Damage

Each occurrence limit: \$1,000,000

Aggregate limit: \$2,000,000

Medical Expense each person: \$5,000

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Personal Injury and Advertising Liability: \$1,000,000

Products/Completed Operations Aggregate Limit: \$2,000,000

Damage to Premises Rented to You: \$50,000.

NOTE: The required coverage is to be with companies licensed in the state of Texas with an "A" rating from A.M. Best and authorized to provide the corresponding coverage.

- 3.20. 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.
- 3.21. Restricted Employment for Former State Officers or Employees Under Texas Government Code §572.069:** Vendor certifies that it has not employed and will not employ a former TWC or state officer or employee who participated in a procurement or contract negotiations for TWC or the State of Texas involving Vendor within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
- 3.22.** Vendor certifies that both of the following statements are true and correct, and that the Vendor understands that making a false statement is a material breach of the contract and is grounds for termination of contract award:
- 3.22.1.** Vendor is current in Unemployment Insurance taxes, Payday and Child Labor law monetary obligations, and Proprietary School fees and assessments payable to the State of Texas, to the extent applicable.
- 3.22.2.** Vendor has no outstanding Unemployment Insurance overpayment balance payable to the State of Texas.
- 3.23. Entities that Boycott Israel:** In contracts worth \$100,000 or more in value, if Vendor is a Company as defined by Texas Government Code § 808.001 with 10 or more full-time employees, and Vendor is not a sole proprietorship, Vendor represents and warrants that, pursuant to Texas Government Code § 2271.002, Vendor does not boycott Israel and will not boycott Israel during the term of any contract executed with TWC.
- 3.24. Prohibition on Contracts with Companies Boycotting Certain Energy Companies, Texas Government Code Chapter 2274:** In contracts worth \$100,000 or more in value, if Vendor is a Company with 10 or more full-time employees, Vendor verifies that it does not boycott energy companies as defined in Texas Government Code § 2274.001(1) and will not boycott energy companies during the term of this contract.
- 3.25. Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries, Texas Government Code, Chapter 2274:** In contracts worth \$100,000 or more in value, if Vendor is a company with 10 or more full-time employees, Vendor verifies, that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and Vendor will not discriminate against a firearm entity or firearm trade association during the term of this contract.
- 3.26. Prohibition on Contracts or Other Agreements with Certain Foreign-Owned Companies in Connection with Critical Infrastructure in this State, Texas Government Code, Chapter 2274:** If this contract involves Vendor accessing critical infrastructure as defined in Texas Government Code § 2274.0101, Vendor certifies that Vendor is not:
- (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia or a designated country as defined in § 2274.0101(4); or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly

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controlled by the government of China, Iran, North Korea, Russia or other designated country as defined in § 2274.0101(4); or

- (2) headquartered in China, Iran, North Korea, Russia, or other designated country as defined in § 2274.0101(4).
- (3) This provision applies regardless of whether the Vendor's or its parent company's securities are publicly traded, or the Vendor or its parent company is listed on a public stock exchange as a Chinese, Iranian, North Korean, or Russian company or a company of a designated country.

3.27. Foreign Terrorist Organizations: Vendor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code § 2252.152.

3.28. COVID-19 Vaccine Passport Prohibition: Under Section 161.0085 of the Texas Health and Safety Code, Vendor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Vendor's business. Vendor acknowledges that such a vaccine or recovery requirement would make Vendor ineligible for a state-funded contract.

3.29. Executive: Vendor certifies it is 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: _____

3.30. Buy Texas: Vendor agrees to comply with Texas Government Code §2155.4441, pertaining to purchasing products and materials produced in the State of Texas.

3.31. Texas Bidder Affirmation: Vendor certifies that if a Texas address is shown as the address of the Vendor on this solicitation response, Vendor qualifies as a Texas Bidder as defined in Texas Government Code § 2155.444(c).

3.32. Human Trafficking: Under Texas Government Code §2155.0061, Vendor certifies that the individual or business entity named in this bid 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. Further, Vendor acknowledges that TWC may not award a contract to person convicted of on any offense related to the direct support of promotion of human trafficking during the five-year period preceding the date of award and that if TWC determines that Vendor is ineligible to have accepted the contract, TWC may immediately terminate the contract without further obligation to Vendor.

3.33. Trafficking in Persons: The parties acknowledge the requirements of 2 C.F.R., Part 175, including the U.S. Department of Education's modifications to these requirements, and agree to comply with the requirements regarding trafficking in persons.

3.34. Disclosure of Prior State Employment: In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Vendor certifies that it does not employ an individual who has been employed by TWC or another agency at any time during the two (2) years preceding submission of the solicitation response or, in the alternative, Vendor has disclosed in its solicitation response the following: (a) the nature of the previous employment with TWC or the other agency; (b) the date employment was terminated; and (c) the annual rate of compensation for the employment at the time of termination.

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- 3.35. Former Agency Employees:** In accordance with Texas Government Code § 2252.901, Vendor represents and warrants that none of its employees, including but not limited to those authorized to provide services under the contract were former employees of TWC during the twelve (12) month period immediately prior to the date of execution of the contract.
- 3.36.** If the contract is for professional services as described by Chapter 2254 of the Texas Government Code, Vendor represents and warrants that if a former employee of TWC was employed by Vendor within one year of the employee's leaving the Agency, then such employee will not perform services on projects with Vendor that the employee worked on while employed by the TWC in accordance with Section 2252.901 of the Texas Government Code.
- 3.37.** Vendor represents and warrants that if selected for award of a contract as a result of this solicitation, Respondent will submit to Agency a Certificate of Interested Parties, prior to contract execution as required by Texas Government Code §2252.908.
- 3.38. Cybersecurity Training:** Vendor represents and warrants that it will comply with the requirement of Texas Government Code §2054.5192 relating to cybersecurity training and required verification of completion of the training program. Specifically, if Vendor or any Vendor employee or subcontractor employee has access to a state computer system or database, Vendor shall ensure that Vendor, or any Vendor employee or subcontractor employee completes a cybersecurity training program certified under Texas Government Code §2054.519 as selected by TWC. The cybersecurity training program must be completed by Vendor during the term of the contract and during any renewal period. Vendor shall verify completion of the cybersecurity training to the TWC point of contact.
- 3.39. Computer Equipment Recycling Program:** Vendor hereby certifies its compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act located in Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 TAC, Chapter 328. 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.
- 3.40. Television Equipment Recycling Program:** Vendor certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.
- 3.41. Changes to Financial Condition:** Vendor warrants it will notify TWC in writing of a change in financial condition during the contract term and any renewal thereof at the time the change occurs or is identified. For the purposes of this section, examples of a substantial change in financial condition are events such as insolvency, bankruptcy, or receivership.

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.

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- 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 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.
- 4.7. Projects Using Iron or Steel Products:** Pursuant to Texas Government Code §2252.202, iron or steel products produced through a manufacturing process and used in the project must be produced in the United States.

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.

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.

7. INVOICING INSTRUCTIONS

- 7.1.** Invoices must be submitted to TWC according to the instructions on the PO and emailed to APPO@twc.texas.gov.
- 7.2.** Invoices must include:
 - 7.2.1.** Vendor's name; mailing address and e-mail (if applicable); telephone number and correct remittance address, including city, state, and zip code;

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- 7.2.2.** the name and telephone number of a person designated by the Vendor to answer questions regarding the invoice;
- 7.2.3.** TWC's name, agency number, and delivery address;
- 7.2.4.** TWC PO number;
- 7.2.5.** contract number or other reference number, if applicable;
- 7.2.6.** a valid Texas identification number (TIN) issued by the comptroller;
- 7.2.7.** an itemized description of the goods or services, in sufficient detail to identify the order or authorization, which relates to the invoice;
- 7.2.8.** unit numbers corresponding to the amount of the invoice, unit cost, and total amount being billed;
- 7.2.9.** discounts, if applicable, must be stated, extended, and deducted to arrive at a Net Total for the invoice;
- 7.2.10.** if submitting an invoice after receiving an assignment of a contract, the TIN of the original contractor and the TIN of the successor vendor;
- 7.2.11.** other relevant information supporting and explaining the payment requested, if necessary; and
- 7.2.12.** any other information required by applicable state and federal laws, rules, and regulations.

8. PAYMENT

- 8.1.** Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 governs remittance of payment and remedies for late payment and non-payment.
- 8.2.** 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.
- 8.3.** 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.
- 8.4.** Prior to any payment being made, the goods or services being invoiced must have been received and accepted by TWC.
- 8.5.** The vendor must be notified of an error or disputed amount in an invoice submitted for payment not later than the 21st day after receipt of the invoice. Notification to the vendor must include the following: (1) Detailed statement of the amount of the invoice, which is disputed, (2) TWC may withhold payments no more than 110 percent of the disputed amount.

9. PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS

- 9.1. VENDOR SHALL INDEMNIFY, SAVE AND HOLD HARMLESS THE STATE OF TEXAS FROM AND AGAINST CLAIMS OF PATENT, TRADEMARK, COPYRIGHT TRADE SECRET OR OTHER PROPRIETARY RIGHTS, VIOLATIONS OR INFRINGEMENTS ARISING FROM THE STATE'S OR VENDOR'S USE OF ACQUISITION OF ANY SERVICES OR OTHER ITEMS PROVIDED TO THE STATE OF TEXAS BY VENDOR OR OTHERWISE TO WHICH THE STATE OF TEXAS HAS ACCESS AS A RESULT OF VENDOR'S PERFORMANCE UNDER THIS CONTRACT, PROVIDED THAT THE STATE SHALL NOTIFY VENDOR OF ANY SUCH CLAIM WITHIN A REASONABLE TIME OF THE STATE'S RECEIVING NOTICE OF ANY SUCH CLAIM. IF VENDOR IS NOTIFIED OF ANY CLAIM SUBJECT TO THIS SECTION, VENDOR SHALL NOTIFY TWC OF SUCH CLAIM WITHIN FIVE (5) BUSINESS DAYS OF SUCH NOTICE. NO SETTLEMENT OF ANY SUCH CLAIM SHALL BE MADE BY VENDOR WITHOUT TWC PRIOR WRITTEN APPROVAL. VENDOR SHALL REIMBURSE THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, JUDGMENTS OR ANY OTHER AMOUNTS, INCLUDING BUT NOT**

ATTACHMENT 1 – TWC Terms & Conditions (12/2022)

LIMITED TO, ATTORNEY'S FEES AND COURT COSTS, ARISING FROM SUCH CLAIM. VENDOR SHALL PAY ALL REASONABLE COSTS OF THE STATE'S COUNSEL AND SHALL ALSO PAY COSTS OF MULTIPLE COUNSEL, IF REQUIRED TO AVOID CONFLICTS OF INTEREST.

- 9.2. Should the goods, or use of the goods, become the subject of a claim of infringement of a United States patent, trademark, copyright, trade secret or other proprietary rights, 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.
- 9.3. Vendor represents that it has determined what licenses, patents and permits are required under this contract and has acquired all such licenses, patents and permits.
- 9.4. Vendor agrees that for the exclusive use by TWC or the State of Texas for State business, TWC and the State of Texas are 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. The contract shall not be construed as creating a debt on behalf of TWC in violation of Article III, § 49a of the Texas Constitution. Vendor understands that all obligations of TWC under the contract are subject to the availability of state funds.
- 10.2. **Termination for Cause:** 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.
- 10.3. **Termination for Convenience:** TWC reserves the right to terminate any PO or contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) days' advance written notice, if TWC determines that such termination is in the best interest of the state.
- 10.4. In the event of such termination under 10.2 or 10.3, Vendor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TWC and the State of Texas shall be liable for payments limited only to the portion of work TWC expressly authorized in writing and which Vendor has completed, delivered to TWC, and which has been accepted by TWC in writing. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TWC and the State of Texas shall have no other liability, including no liability for any costs associated with the termination.
- 10.5. 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 of the Vendor.
- 10.6. 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.

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- 11.4.** As required by 1 TAC, Chapters 206 and 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, Chapters 206 and 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 completed 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)). Vendors not supplying a URL to its completed VPAT must provide TWC with a report that addresses the same accessibility criteria in substantively the same format. Additional information on obtaining a copy of the VPAT is located at <https://www.itic.org/policy/accessibility/vpat>.
 - 11.4.3.** TWC will use the completed VPAT to assess the degree of accessibility of a proposed product when making the procurement decision.
- 11.5.** Vendor shall follow Web Content Accessibility Guidelines (WCAG). Vendor shall follow the most recent official W3C Recommendation for WCAG in effect at the time of publication of the RFP. The current version of the WCAG guidelines is available on the W3C Accessibility Standards website (<https://www.w3.org/WAI/standards-guidelines>).
- 11.6.** 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 sanitize 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/or services, in accordance with 1 TAC, Chapter 202 or NIST 800-88.
- 11.7.** In accordance with Texas Government Code § 2054.138, and to the extent that the Vendor is authorized to access, transmit, use, or store data for the agency, Vendor agrees to meet the security controls put in place by the Agency to protect Agency data. The Vendor agrees to provide the Agency evidence that the Vendor meets the security controls required by the contract annually or more often as requested by the Agency.
- 11.8. Cloud Computing State Risk and Authorization Management Program (TX-RAMP):** Pursuant to Texas Government Code § 2054.0593(d)-(f), relating to cloud computing state risk and authorization management program, Vendor represents and warrants that it complies with the requirements of the state risk and authorization management program and Vendor agrees that throughout the term of the contract it shall maintain its certifications and comply with the program requirements in the performance of the contract.

12. ADDITIONAL TERMS

- 12.1. Abortion Provider and Affiliate Transactions Prohibited:** Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Texas Government Code § 2273.003 and that payments made by Agency to Respondent and Respondent's receipt of appropriated funds under the contract are not prohibited by Article IX, § 6.24 of the General Appropriations Act.
- 12.2. Binding Effect:** The contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees and delegates.
- 12.3. Federal Occupational Safety and Health Law:** Respondent represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

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- 12.4. Immigration:** Respondent represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
- 12.5. Legal and Regulatory Actions:**
- 12.5.1.** Respondent represents and warrants that it is not aware of and has received no notice of any threatened or pending material civil or criminal litigation involving the Respondent or the individuals or entities included in the Response, nor has Respondent or the individuals or entities included in the Response received any final judgment, entered into any settlement agreement, or been placed under consent decree stemming from material civil or criminal litigation within the five (5) calendar years immediately preceding the submission of the Response. "Material Litigation" means any action, suit, proceeding, inquiry, or investigation—including civil investigative demand—against Respondent or the individuals or entities included in the Response by or before any arbitrator, court, tribunal, or governmental authority that a reasonable person knowledgeable of the applicable industry would believe would or could (i) impair Respondent's performance under the contract, (ii) relate to the solicited or similar goods or services, (iii) result in a substantial change in Respondent's financial condition, or (iv) otherwise be relevant to Agency's consideration of the Response.
- 12.5.2.** If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such threatened, pending, or resolved Material Litigation.
- 12.5.3.** Respondent represents and warrants that it shall notify Agency of any threatened or commenced Material Litigation in writing within five (5) days of its occurrence and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.
- 12.6. License:** Respondent hereby grants to Agency a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to Respondent; and (b) to sublicense any or all such rights to third parties.
- 12.7. Limitation on Authority:** Respondent shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in the contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expense or liability of any kind on behalf of Agency or the State of Texas.
- 12.8. No Third-Party Beneficiaries:** The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.
- 12.9. Use of State Property:** Respondent is prohibited from using State Property for any purpose other than performing Services authorized under the contract. State Property includes, but is not limited to, Agency's office space, identification badges, Agency information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Agency-issued software, and the Agency Virtual Private Network (VPN client)), and any other resources of Agency. Respondent shall not remove State Property from the continental United States. In addition, Respondent may not use any computing device to access Agency's network or e-mail while outside of the continental United States. Respondent shall not perform any maintenance services on State Property unless the contract expressly authorizes such services. During the time that State Property is in the possession of Respondent, Respondent shall be responsible for (i) all repair and replacement charges incurred by Agency that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Respondent's use of State Property

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that exceeds the contract scope. Respondent shall fully reimburse such charges to Agency within ten (10) days of Respondent's receipt of Agency's notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to Agency under contract, at law, or in equity.

- 12.10. Refund:** Vendor will promptly refund or credit within thirty (30) days any funds erroneously paid by TWC which are not expressly authorized under the contract.
- 12.11. Subcontractors:** Vendor may not subcontract any or all of the work and/or obligations due under the contract without prior written approval of the TWC. Subcontracts, if any, entered into by the Vendor shall be in writing and be subject to the requirements of the contract. Should Vendor subcontract any of the services required in the contract, 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 performed under all subcontracts are rendered in compliance with the contract

ATTACHMENT 2 – RFP Number 320-23-00168



TEXAS WORKFORCE COMMISSION

**REQUEST FOR PROPOSALS (RFP)
RFP # 3202300168**

**Beverage and Snack Vending Machine Services
for Rio Grande City, TX Area**

Date of Release: March 14, 2023

Proposal Due Date/Time: April 5, 2023, 3 p.m. (CT)

NIGP Class/Item Codes:

**961-15 Concessions, Catering, Vending: Mobile & Stationary
931-88 Vending Machine Maintenance, Repair, Installation or Removal**

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1. General Information

1.1. Purpose

The Texas Workforce Commission (TWC) is interested in establishing a contract, in the Rio Grande City area, with qualified Respondents capable of furnishing all labor, equipment, materials, and services required to provide Beverage and Snack Vending Machine Services in support of the TWC Business Enterprises of Texas (TWC-BET) program.

1.2. TWC Point of Contact

The sole point of contact for inquiries concerning this RFP is:

Texas Workforce Commission
Rebecca Stone, CTCD
Procurement & HUB Services
VendorProposals@twc.texas.gov

All communications relating to this RFP must be directed to the TWC point of contact. All communications between Respondents and other TWC staff members concerning this RFP are strictly prohibited.

Failure to comply with these requirements may result in proposal disqualification.

1.3. Procurement Schedule

The following table represents the RFP procurement schedule. All dates are subject to change at the discretion of TWC.

Procurement Schedule	
RFP release date	March 14, 2023
Respondent questions due	March 22, 2023, 3p.m. (CT)
TWC posts responses to Respondent questions	March 29, 2023
Proposals due	April 5, 2023, 3p.m. (CT)
Anticipated contract start date:	July 1, 2023

1.4. Respondent Questions Regarding this RFP

Submit questions using Attachment 1 - Respondent Questions & Answers Template, no later than March 22, 2023, by 3:00 p.m. (CT). Include the RFP Section and Page for each question. TWC will post all Questions & Answers and, if appropriate, an Amended RFP to the Electronic State Business Daily (ESBD) by March 29, 2023.

1.5. Contract Type and Term

TWC intends to award a single revenue-generating contract in the Rio Grande City, TX area to a successful Respondent based on the Scope of Work contained herein. The initial contract term for any contract resulting from this RFP will be for two (2) years. TWC may, at its option, amend the Contract for purposes of renewing the contract term for one (1) additional two (2) year period. Prior to the onset of any renewal period, Contractor shall be required to provide evidence that all required insurance and sureties are current and will remain in force throughout

the contract term. Any contract resulting from this RFP may also be extended for up to three (3) months during any changeover period as defined herein.

1.6. Addenda to the RFP

TWC reserves the right to amend the RFP at any time. In the event that TWC amends or otherwise alters this RFP, TWC shall post all addenda to the RFP on the Electronic State Business Daily (ESBD) website at <http://www.txsmartbuy.com/sp>. It is the responsibility of prospective Respondents to periodically check the ESBD for updates regarding the RFP prior to submitting a proposal. A Respondent's failure to rely on information contained in any addendum issued by TWC will not release the Successful Respondent from performing all services in accordance with the RFP.

1.7. Certifications

By signing and submitting the Execution of Offer form, Respondent attests to its compliance with the Certifications contained in Section 3 of the TWC Standard Terms and Conditions embedded in Section 1.8 of this RFP.

1.8. TWC Standard Terms and Conditions

Contracts resulting from this solicitation will include the TWC Standard Terms and Conditions embedded below.



Terms and
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1.9. Costs Incurred

Respondents understand that issuance of this RFP in no way constitutes a commitment by TWC to award a contract or to pay any costs incurred by a Respondent in the preparation of a response to this RFP. TWC is not liable for any costs incurred by a Respondent prior to issuance of or entering into a formal agreement, contract, or purchase order. Costs of developing proposals, preparing for or participating in oral presentations and site visits, or any other similar expenses incurred by a Respondent shall be borne by the Respondent, and will not be reimbursed in any manner by TWC.

1.10. Definitions

Whenever the following terms are used in any part of this RFP the intent and meaning shall be interpreted as follows:

- A. **Addendum** means an amendment or modification of the specifications issued by TWC and made available to prospective Respondents on the ESBD through the RFP.
- B. **Contract** means the written agreement executed by TWC and the Contractor dictating the relationship of the Parties. The Contract may consist of the terms provided in the RFP issued by TWC and any addenda thereto, and TWC-accepted portions of the Respondent's proposal and any revised proposal or best and final offer if applicable.
- C. **Contractor** means the individual; partnership or corporation awarded a Contract resulting from this RFP.
- D. **Days**, as referenced in this RFP, means calendar days unless otherwise specified.

E. **Respondent** means the individual, partnership, corporation, or other entity that submits a proposal in response to this RFP.

2. **Proposal Instructions and Requirements**

2.1. **Questions and Comments**

All questions and comments regarding this RFP must be submitted to the TWC Point of Contact indicated in Section 1.2. Questions must reference the appropriate RFP page and section number and must be submitted by the deadline set forth in Section 1.3. TWC may elect not to respond to questions received after the deadline. At TWC's discretion, responses to Respondent questions will be posted to the ESBD at <http://www.txsmartbuy.com/esbd>. TWC reserves the right to amend answers prior to the due date/time for proposals.

Respondents must notify TWC of any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error in the RFP by the deadline for submitting questions and comments. If a Respondent fails to notify TWC of these issues, it will submit a proposal at its own risk, and if awarded a contract: (1) shall have waived any claim of error or ambiguity in the RFP or resulting contract, (2) shall not contest TWC's interpretation of such provision(s), and (3) shall not be entitled to additional compensation, relief or time by reason of the ambiguity, error, or its later correction.

2.2. **Proposal Due Date/Time and Location**

Submit the proposal to TWC no later than **3:00 p.m. (CT)** on **April 5, 2023** to the following email addresses:

- TO: vendorproposals@twc.texas.gov
- Subject Line: **RFP BET Vending Machine Services Rio Grande City**

TWC is not responsible for proposals received late, illegible, incomplete, or otherwise considered disqualified due to failure of electronic equipment or operator error.

TWC will accept email submissions ONLY.

2.3. **Proposal Form, Contents, and Organization**

Respondents are required to complete the applicable Proposal Forms, Tabs A and B. Use the Proposal Forms A and B located with this solicitation on the ESBD for the Rio Grande City Service Area.

Please note the following regarding the contents and organization of your proposal:

The proposal shall be organized as follows:

TAB A	Completed Proposal Form
TAB B	Include a list of machines available for use under the contract that shows each machine's serial and/or machine number and place behind this TAB B. Also, include a brochure(s) identifying each vending machine type that will be supplied.

2.4. Modifications or Withdrawal of Proposal

Prior to the proposal submission deadline set forth in Section 1.3 and 2.2, a Respondent may: (1) withdraw its proposal by submitting a written request to the TWC Point of Contact prior to submission deadline; or (2) modify its proposal by submitting a written amendment to the TWC Point of Contact prior to the submission deadline. When amending its Proposal, Respondent must include, in writing, the section(s) of its submission that will be replaced or removed by the amendment.

TWC may request proposal modifications at any time.

2.5. Right to Reject Proposals

TWC may reject without further consideration a proposal that does not include one or more of the required documents or all the information requested by the RFP.

TWC reserves the right to waive minor technicalities in a proposal and award a Contract that is in the best interest of the State of Texas. A “minor technicality” is an omission or error that, in TWC’s determination, if waived or modified when evaluating proposals, would not give a Respondent an unfair advantage over other Respondents or result in a material change in the proposal or RFP requirements. When TWC determines that a proposal contains a minor technicality, it may at its discretion provide the Respondent with the opportunity to correct.

2.6. Additional Information

By submitting a Proposal, the Respondent grants TWC the right to obtain any information from any lawful source, including the Comptroller’s Vendor Performance Tracking System (VPTS), regarding the past history, practices, conduct, ability, and eligibility of the Respondent to supply goods and/or services and to fulfill requirements under this Solicitation, and the past history, practices, conduct, ability and eligibility of any director, officer, or key employee of the Respondent. By submitting a Proposal, the Respondent releases from liability and waives all claims against any party providing information about the Respondent at the request of TWC.

TWC may contact references provided in response to this Solicitation. TWC may contact Respondent’s clients or solicit information from any available source, including the Comptroller’s VPTS.

Any information received may be grounds for disqualification if that information, in TWC’s sole discretion, suggests that the Respondent may perform poorly if selected.

2.7. Use of Subcontractors

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of the Respondent. No subcontract under the contract shall relieve the Respondent of the responsibility for ensuring the requested services are provided. Respondents planning to subcontract all or a portion of the work to be performed shall identify proposed subcontractors as indicated in the Proposal Form (see 2.3 above).

During the contract term, Contractor may add subcontractors with the prior written approval of TWC. The Contractor is responsible for the performance of any subcontractor, including services as specified in the scope of work, terms and conditions, submission of the Sales and Commissions Reports, and insurance requirements. The Contractor must provide a copy of any subcontracting agreements to the TWC-BET prior to execution for approval and upon request.

3. Proposal Evaluation and Award

3.1. TWC will use a formal evaluation process to select the successful Respondent. TWC will consider capabilities or advantages that are clearly described in the proposal, which may be confirmed by through technical discussions with qualified Respondents. TWC may determine that certain proposals receiving the highest or most satisfactory evaluations are within the competitive range for further consideration. Discussions may be carried out with Respondents that are within the competitive range, after which revised proposals may be requested. Discussions may be conducted for purposes of:

- a. Clarifying and discussing any aspect of a proposal.
- b. Obtaining clarification of proposal ambiguities.
- c. Requesting modifications to a proposal.
- d. Providing instructions for submitting a revised proposal.

TWC may select a proposal for award without any discussions or may elect to hold discussions with only the single most highly qualified Respondent. TWC may but is not required; to permit Respondents to prepare one or more revised offers therefore Respondents are encouraged to treat their original proposals as Best and Final Offers (BAFO).

3.2. Evaluation Criteria

Evaluation of proposals will be based on the following criteria and corresponding relative weights.

Commission Percentage	50%
Technical Approach	40%
Respondent Past Performance	<u>10%</u>
	100%

At a minimum, responses that have exceptions to TWC's Terms and Conditions will have points deducted from the scoring item related to exceptions to TWC's Terms and Conditions. TWC will review the exceptions taken to TWC Terms and Conditions and grade accordingly:

- a. No exceptions taken = 0 points
- b. Few [1-10] exceptions taken = negative 3 points
- c. Many [more than 10] exceptions taken= negative 5 points

3.3. Bonds and Insurance Submittal

The Successful Respondent will be responsible for providing the following documents to TWC within thirty (30) days after receipt of the Notice of Award issued by TWC.

1. Performance bond (or approved equivalent) as specified in Section 6 of this RFP.
2. Insurance Certificate meeting all requirements as specified in Section 7 of this RFP.

Failure to submit official copies of the required documents may result in disqualification of the proposal.

3.4. Delivery and Pre-work Instructions

The TWC-BET Vending Specialist shall provide pre-work instructions to the Contractor after award and prior to delivery and work. Instructions may be provided in person or telephonically and will include a discussion of contract documents, submittal procedures, and contract administration. The Contractor's representative(s) must discuss, plan, and schedule the required service delivery with the TWC-BET Vending Specialist and/or other designated TWC-BET staff.

**TWC-BET Vending Specialist
Texas Workforce Commission
4800 North Lamar Blvd #111
Austin TX 78723
Telephone: (512) 377-0561**

4. Scope of Work

4.1. Contractor Responsibilities:

- 4.1.1 The Contractor must install, service, and maintain all vending machines in a first-class operating condition with respect to cleanliness and mechanical or electrical operations.
- 4.1.2 The Contractor must correct any defects, problems, violations, or conditions relative to the vending machines that may prove hazardous or detrimental to the health and safety of the public in accordance with the requirements in section 4.3.11.
 - 4.1.2.1. TWC-BET OR SERVICE SITE RESERVES THE RIGHT TO DISCONNECT FROM ITS POWER SOURCE ANY MACHINE DEEMED BY THE TWC-BET OR SERVICE SITE TO REPRESENT A SAFETY OR HEALTH VIOLATION OR HAZARD, UNTIL THE NECESSARY CORRECTIONS ARE MADE BY THE CONTRACTOR.
- 4.1.3 CONTRACTOR'S TITLE TO VENDING MACHINES AND EQUIPMENT: All equipment and automatic vending machines installed, and all products offered for sale by the Contractor are the property of the Contractor. TWC will have no interest in said products, vending machines, and/or other Contractor equipment.
- 4.1.4 The Contractor must establish a reimbursement system for each service site and provide to the TWC-BET a copy of its refund and/or reimbursement system for each service

- site. Signs indicating that the Contractor is not responsible for refunds are not acceptable. Refunds must be made each time the machine is serviced.
- 4.1.5 The Contractor must maintain a refund log.
 - 4.1.6 The Contractor must submit to the TWC-BET Vending Specialist and to the service site, the service schedule for each machine within ninety (90) days of contract execution.
 - 4.1.7 The Contractor is responsible for maintaining meter readings and accurate dollar sales data.
 - 4.1.8 The Contractor must allow the TWC-BET access to all machine meters during regular business hours.
 - 4.1.9 The Contractor must permit authorized representatives of the TWC-BET to accompany the Contractor's employees during cash collection and counting and to randomly examine the receipts of the vending machines operated by the Contractor.
 - 4.1.10 The Contractor must schedule and conduct regular inspections of service sites, as proposed in the Contractor's proposal.
 - 4.1.11 The Contractor's inspections must include a review of meter sales trends versus dollars collected.
 - 4.1.12 The Contractor must provide the TWC-BET Vending Specialist with the dates of all machine installations, removals, and machine type changes.
 - 4.1.13 If the service site requests that the Contractor remove machines due to the service site moving or no longer needing machines, the Contractor must notify the TWC-BET immediately or a penalty equal to the estimated monthly gross sales average shown in the Service Site Locations listing in Part 5, Proposal Tab A and on each subsequent contract renewal date may be assessed.
 - 4.1.14 The Contractor shall pay all State, federal, and local taxes, including sales taxes on vended products, that may be assessed against its equipment or merchandise while in or upon the service site premises, or in connection with the operation of its vending services upon the service site premises. Sales taxes deducted must conform to the rules of the Texas Comptroller of Public Accounts regarding food sales, which require only 50% sales tax payment on perishable food items. The Contractor must not deduct taxes greater than 50% of the total sales tax rate on perishable items (Title 34 Texas Administrative Code (TAC) §3.293, Food; Food Products; Meals; Food Service and Texas Tax Code, §§151.007, 151.314, 151.315).
 - 4.1.15 The Contractor must comply with all State, federal, and local laws and regulations governing the preparation, handling and serving of food.
 - 4.1.16 The Contractor shall procure and maintain all necessary licenses, permits, and food handler's cards required by law.
 - 4.1.17 The Contractor must provide adequate vending services to achieve customer satisfaction.
 - 4.1.18 The Contractor must hire all employees necessary for the performance of the requirements of this RFP. The Contractor must comply with all applicable State, federal and local laws and regulations pertaining to the wages and hours of employment of its employees. The Contractor, in performing the requirements of this RFP, must not discriminate against any employee or applicant for employment based on race, color, religion, sex, national origin, age, disability, or veteran status (i.e., protected class).

- 4.1.19 Contractor shall ensure its employees comply with any health examination as city, State, or federal authority may require in connection with their employment. The Contractor must maintain a staff of properly trained and experienced personnel to ensure satisfactory performance of the contract.
- 4.1.20 All employees of Contractor must abide by any dress code rules of the service site where the vending machines are located. All Contractor employees must be clean and always present a professional appearance.
- 4.1.21 The Contractor must observe and comply with all regulations of the service sites, including but not limited to those regarding smoking, parking, and security.
- 4.1.22 When applicable, the Contractor must submit and comply with service site regulations pertaining to background checks to install and service machines.
- 4.1.23 The Contractor must keep all records on file for a period of seven (7) years from the end date of the contract. The Contractor must, upon reasonable notice, give TWC staff the right to inspect, examine, and audit, during normal business hours, such Contractor's business records as are directly or indirectly relevant to the financial arrangements set forth in this RFP.
- 4.1.24 The Contractor is responsible for the rotation and adequate supply of products.
- 4.1.25 The Contractor must keep its machines and all adjacent areas neat and sanitary. The Contractor must clean spills that occur while filling or cleaning its machines, clean the front of its machines each time the Contractor restocks or services them, and remove packaging and waste from affected areas following each service call.
- 4.1.26 The Contractor must maintain its service sites, where the vending services are performed, in a safe operating condition such that no employee of the Contractor or customer is exposed to or subjected to any unsafe situation that would violate Title 29 U.S.C., Chapter 15, Occupational Safety and Health Act, including but not limited to the general duty and the specific duty clauses thereof, or any similar federal, State, or local law or regulation.
- 4.1.27 The Contractor may not add or remove machines without the express written approval of TWC-BET. All additions or deletions will be made in writing by TWC through written notice with a revised Service Site Locations listing. The Contractor must provide the TWC-BET Vending Specialist with the installation or removal dates of all machines.
- 4.1.28 Contractor shall request in writing from the TWC-BET Director of the TWC-BET Vending Specialist any vend rate adjustments, changes in the commission rates reflected in the RFP document, service site additions or deletions, and changes in the number or type of vending machines. Contractor's requests must be approved in writing by the TWC-BET Director or the TWC-BET Vending Specialist.
- 4.1.29 COMPLIANCE: In performing the requirements of this RFP, the Contractor must comply with any and all applicable State, federal, and local laws, including but not limited to occupational safety and health, employment opportunity, immigration and naturalization, the Americans with Disabilities Act, State tax law, and State insurance law.

- 4.1.30 The Contractor may request an evaluation of the sales volume of a specific machine to determine profitability and possible removal. This evaluation must be for a minimum of ninety (90) days but may be longer at the option of TWC-BET. The sales figures used to determine profitability will come from the Sales and Commissions Reports. TWC-BET will notify the service site if the Contractor has requested removal of a specific machine and those sales of the machine have been evaluated. TWC-BET will determine if a machine must be removed and will inform the Contractor.
- 4.1.31 Contractor may not place vending machines/security cages/etc. in a location where they may restrict vehicle or pedestrian traffic. Vending machines/security cages/etc. must be accessible as prescribed in the Texas Accessibility Standards (TAS) and the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and must conform to all requirements of Vernon's Texas Civil Statutes, Article 601(b). The Contractor must obtain all locks necessary to secure vending machines/security cages/etc.
- 4.1.32 Contractor must pay the TWC-BET all commissions as proposed by Contractor through this RFP.

4.2. Products

- 4.2.1 All product types must be offered year-round, including products containing chocolate. The Contractor must maintain fresh products in its vending machines and must comply with any State, federal and local laws and regulations concerning the storage and transport of candy and snacks.
- 4.2.2 Products not listed in the Vending Price List in Part 4 of Proposal, Tab A must be approved, in writing, by the TWC-BET Director or the TWC-BET Vending Specialists before they may be placed in any vending machine.
- 4.2.3 TWC-BET may add new products and/or new categories of products to the contract at any time.
- 4.2.4 Lower vend prices on drink machines are only permitted with prior written approval of the TWC BET Director or the TWC-BET Vending Specialist.
- 4.2.5 If the Contractor or subcontractor is a national brand vendor, they must provide up to two (2) items of a competing brand, should there be customer demand.
- 4.2.6 All products listed in this RFP must be made available upon customer demand.

4.3. Vending Machines:

- 4.3.1 Vending machines must contain only products that provide expiration dates on each package and no products will be sold beyond these dates.
- 4.3.2 Vending machines must contain only prepackaged, standard vending machine products.
- 4.3.3 Vending machines must be furnished new or refurbished, and each machine must be refinished or refurbished as necessary to keep units in working order, exteriors free of rust and major dents, all knobs and labels present, with no scratched or stained glass. TWC-BET and service sites will be the sole judges of the appearance of the machines. Machines must be replaced upon request of TWC-BET;
- 4.3.4 Vending machines must be equipped with coin change makers and dollar bill validators. Contractors may choose to provide cashless options such as card readers, mobile wallets, etc. in addition.
- 4.3.5 Vending machines must meet the specifications established by State, federal and local laws as well as those established by the National Automatic Merchandising Association (NAMA) and the National Sanitation Foundation (NSF). All electrically operated equipment must be installed in accordance with the standards of the National Electrical Code (NEC). All electrical items must meet all applicable Occupational Safety and

Health Administration (OSHA) standards and regulations and bear the appropriate listing from Underwriters Laboratories (UL), Factory Mutual Research Corporation (FMRC), National Electrical Manufacturers Association (NEMA), and/or the Federal Communications Commission (FCC).

- 4.3.6 Vending machines must be in compliant with Texas Government Code, Title 10, Subtitle D, §2165.058, Energy-Saving Management: Vending Machines; Energy-Saving Device Required, as follows:
- 4.3.6.1 Exception: This section does not apply to a vending machine that contains a perishable food product, as defined by Texas Civil Practice and Remedies Code, §96.001.
 - 4.3.6.2 An entity that owns or operates a vending machine located in a building owned or leased by the State must activate and maintain any internal energy-saving or energy-management device or option that is already part of the machine or contained in the machine.
 - 4.3.6.3 An external energy-saving or energy-management device must be used for each vending machine that:
 - A. Is located in a building owned or leased by the State;
 - B. Operates with a compressor; and
 - C. Does not have an activated and operational internal energy-saving or energy-management device or option.
 - 4.3.6.4 An entity that owns or operates a vending machine subject to this section will be responsible for any expenses associated with the acquisition, installation, or maintenance of an energy-saving device required by this section.
 - 4.3.6.5 The State may impose an administrative fine on an entity that operates a vending machine subject to this section in an amount not to exceed \$250 per year for each machine found to be in violation of this section or rules adopted by the State under this section.
 - 4.3.6.6 The State may adopt and enforce additional rules relating to the specifications for and regulation of energy-saving devices required by this section.
- 4.3.7 Vending machines must not allow force vend (e.g., if an item is sold out, the customer must be able to get his or her money back by depressing the coin return instead of having to select another product).
- 4.3.8 Vending machines must not display advertising.
- 4.3.9 Vending machines must be equipped with a conspicuous professional-looking sign or decal (handwritten signs or decals are NOT acceptable) prominently placed on the front of the machine, displaying the Contractor name, telephone number, and customer refund procedural information for lost money or receipt of inferior product from the vending machine. Approved identification signs are not considered advertising.
- 4.3.10 Vending machines must be equipped with professional-looking labels or tags for each product selection and vend price (handwritten labels or tags are NOT acceptable).
- 4.3.11 Vending machines must be repaired or serviced as needed and when requested by the TWC-BET or service site. Some service sites may require service five (5) to seven (7) days per week. All repair, service, or customer complaint responses must be made within 24 hours of notice to the Contractor. If for any reason the repair or service cannot be made within 24 hours, the Contractor must contact the TWC-BET Vending Specialist immediately. The Contractor must notify the TWC-BET Vending Specialist if consistent complaint issues are experienced.
- 4.3.12 Combination machines may be utilized. Contractor must notify the TWC-BET in writing as to the type of machine combination prior to installation. Meter readings must still be submitted.

- 4.3.13 Vending machines must be provided and serviced at all locations on the Service Site Locations.
- 4.3.14 Vending machines may not be removed without prior authorization from the TWC-BET Director or TWC-BET Vending Specialist in accordance with Section 4.6. If a machine is removed without prior authorization from the TWC-BET, Contractor must reinstall the machine. TWC-BET may assess a penalty equal to the estimated monthly gross sales average listed on Proposal, Tab A, Part 5, Service Site Locations and with each subsequent contract renewal date for each month the equipment is not at the service site.
- 4.3.15 Vending machines must be equipped with non-resettable counters (meters) that monitor the number of vends and/or dollar sales. The readings from these counters must be sufficient for a TWC-BET audit of the dollar amount of sales. These amounts will be verified by TWC-BET.
- 4.3.15.1 Must be equipped with non-resettable vend meters for single-price machines, wherein Ending Meter Reading less Beginning Meter Reading less Test Vends yields Units Sold; Gross Sales divided by Sales Tax Rate yields Net Sales; and Gross Sales less Net Sales equals Sales Tax Dollars (e.g., Gross Sales \$300.00. Sales Tax Rate 8.25%. Convert 8.25% to decimal [0.0825] and add 1 [1.0825]. Divide Gross Sales [\$300.00] by Sales Tax Rate factor [1.0825], resulting in Net Sales [\$277.14]). To calculate Sales Tax, subtract Net Sales [\$277.14] from Gross Sales [\$300.00], resulting in \$22.86 Sales Tax collected). Net Sales is the figure on which commissions must be paid; and
- 4.3.15.2 Must be equipped with non-resettable dollars sold meters for multiple-price machines, wherein Ending Dollars Sold less Beginning Dollars Sold less Test Vends equals Gross Sales; Gross Sales divided by Sales Tax Rate yields Net Sales; and Gross Sales less Net Sales equals Sales Tax Dollars (e.g., Gross Sales \$300.00 Sales Tax Rate 8.25%. Convert 8.25% to decimal [0.0825] and add 1 [1.0825]. Divide Gross Sales [\$300.00] by Sales Tax Rate factor [1.0825], resulting in Net Sales [\$277.14]. To calculate Sales Tax, subtract Net Sales [\$277.14] from Gross Sales [\$300.00], resulting in \$22.86 Sales Tax collected). Net Sales is the figure on which commissions must be paid.

4.4. Special Locations (as applicable)

- 4.4.1 TDCJ PRISONS: All prisons must be serviced twice per week and may require servicing on weekends. The visitation areas must be serviced on either Thursdays or Fridays, and the employee areas must be serviced on either Mondays or Tuesdays.
- A. Delivery/service technicians must wait for an escort for 15 minutes only; after 15 minutes, the Contractor must notify the TWC-BET Vending Specialist.
- B. The TWC-BET Vending Specialist will contact the prison administration office to inquire as to the delay and determine if an escort may be secured or if the delivery/service technician(s) must depart.
- C. The Contractor must notify the prison warden's office prior to moving any vending equipment within a prison or removing any vending equipment from a prison.

4.5. TWC-BET Responsibilities

- 4.5.1 TWC-BET shall have no responsibility for protection of machines against damage or the unauthorized removal of machines or any parts or contents thereof.
- 4.5.2 Unless otherwise stipulated in this RFP, TWC-BET may, without cost to the Contractor, provide the Contractor with the necessary space for the operation of the services required in this RFP and will furnish, without cost to the Contractor, all service sites and utilities as are reasonable and necessary for the efficient performance of the contract.
- 4.5.3 TWC-BET will grant to the Contractor the exclusive right to operate Vending Machine Services listed on or added to Are Site Locations List, pursuant to this RFP.
- 4.5.4 TWC-BET will grant to the Contractor the exclusive right to sell food products, nonalcoholic beverages, and other such products as approved by TWC-BET at the service sites.
- 4.5.5 TWC-BET shall inform Contractor of vend rate adjustments, changes to the products to be sold, commission rates, and service site additions or deletions in writing.
- 4.5.6 TWC-BET shall respond to Contractor's written request for vend rate adjustments, changes to the products to be sold, commission rates, and service site additions or deletions in writing.

4.6. Adding or Deleting Services Sites

- 4.6.1 The TWC-BET may amend the Contract by adding or deleting service sites listed in the Service Site Location If service site(s) are deleted, the Contractor must continue to service all other service sites. All additions or deletions will be made in writing by the TWC through an amendment to the contract with a revised Service Site Location list. In the event a Service Site Location(s) must be removed to comply with legal requirements, TWC-BET will execute a unilateral amendment and provide a copy to Contractor. The Contractor must provide to the TWC-BET Vending Specialist the installation or removal dates of all machines which must be within 30 days.
- 4.6.2 TWC-BET may add service sites within 30 miles of any service site listed in the Service Site Location listing. In the event site(s) are added, TWC will notify the Contractor and provide an updated Service Site Location listing. The Contractor must provide the additional services within thirty (30) days of notice under the same terms and conditions as specified in this RFP or the Contract in effect, whichever is most recent.
- 4.6.3 Service sites may request additional services. After completion of a feasibility study by TWC-BET and discussion, Contractor must provide the additional vending equipment within thirty (30) days of notice, at the same prices and percentages in the current contract, under the same terms and conditions as specified in this RFP.

4.7. Changeover Period.

- 4.7.1 All machines must be delivered and installed no later than thirty (30) days after the beginning date of the Contract.
- 4.7.2 The Contractor must coordinate the exact delivery schedule with the outgoing vendor, service site, and BET Vending Specialist; the Contractor must provide the TWC-BET Vending Specialist with the proposed plan to execute coordination, including service site survey.
- 4.7.3 The Contractor must provide the TWC-BET Vending Specialist with the final changeover schedule for all machines not less than (thirty) 30 days prior to the beginning date of the Contract. The TWC-BET Vending Specialist will assist the Contractor in resolving any disputes.

- 4.7.4 The outgoing vendor must provide to the TWC-BET Vending Specialist the proposed changeover schedule no less than forty-five (45) days prior to the expiration date of the current contract term.

Sample Changeover Schedule

Outgoing vendor submits machine removal schedule no later than	April 15th
Incoming contractor submits machine installation schedule no later than	May 1st
Contract begins	June 1st
Incoming contractor must deliver & install all machines no later than 30 days after the beginning date of the contract	June 30th
Incoming contractor must submit a service schedule for each machine no later than	September 1st

(Dates above are for reference only)

5. Reports, Commissions, and Penalties

- 5.1** Sales and Commissions Report: The Sale and Commissions Report (Report) must document meter readings and other sales and commissions information for all machines by service site. The Contractor must submit this Report on a monthly basis to [Log in BET Sales and Commissions \(state.tx.us\)](http://Log in BET Sales and Commissions (state.tx.us)) no later than the first day of the second following month (i.e., if the reporting period ends on the last day of February, reports are due April 1) If the first day of the second following month falls on a weekend or a postal holiday, reports are due on the following TWC-BET workday. The Report must be submitted prior to submitting commission payments. Report information must reflect a calendar month, with meter readings submitted for the beginning and end of that calendar month. Only vending information reported in this manner will be accepted by TWC. Failure to provide the information in the requested manner may result in penalties being assessed.
- 5.2** All transactions are the sole responsibility of the Contractor. If the Contractor subcontracts any portion of the contract, the Contractor must submit the Report(s). TWC-BET WILL NOT ACCEPT THE REPORT(S) FROM ANY SUBCONTRACTOR(S). Failure to comply will result in penalties being assessed (reference Section 5.3).
- 5.3** During the contract term, if for any reason the Contractor does not report sales and commissions by the due dates, TWC-BET will compute an average sales figure based on reported sales for the past six (6) months, and the Contractor will be required to pay commissions based on that average. When the Contractor obtains the unreported sales and commissions, and if they are more or less than the computed six (6)-month average, the Contractor must adjust the next month's Report accordingly.

IF THE CONTRACTOR DOES NOT FOLLOW THESE REPORTING INSTRUCTIONS
TWC-BET RESERVES THE RIGHT TO ASSESS THE FOLLOWING PENALTIES:

- 5.3.1** Failure to accurately report any of the following information on the Report may result in assessment of a penalty equal to the estimated monthly gross sales average listed in Part 5 of Proposal Form Tab A, Service Site Locations on the due date for proposals and on each subsequent contract renewal date per service site per machine:
- a. Machine number
 - b. Machine type
 - c. Beginning meter reading
 - d. Ending meter reading

- e. Gross sales
 - f. Sales tax dollars
 - g. Commission percentage
 - h. Commission paid
- 5.3.2 If a meter malfunctions and meter readings are not reported using money collected, sales must still be reported. Failure to report sales may result in assessment of penalties equal to the estimated monthly gross sales average listed on the Service Site Listing on the due date for proposals and on each subsequent contract renewal date per service site per machine.
- 5.3.3 If sales and commissions are not being reported on a machine, the Contractor must provide justification in the Comments section of the report, or a penalty may be assessed equal to the estimated monthly gross sales average listed on the Service Site Listing on the due date for proposals and on each subsequent contract renewal date per machine.
- 5.4 All penalties are due ten (10) days after notice and are payable to the TWC-BET by separate check per penalty. If penalties are not received within ten (10) days, an additional \$20.00 penalty will be assessed.
- 5.5 Contractor shall submit commission payment check(s) to TWC Accounts Payable at the following address:

TEXAS WORKFORCE COMMISSION
Accounts Payable
PO Box 322
Austin TX 78767

- Contractor must attach documentation that includes the **Contractor name, sales and commission month and year for which payment is being submitted, the service area, contract number, and the amount of the check**. Separate commission payments must be sent for each contract area.
- 5.6 Commission payments must be received by TWC-BET no later than the fifth day of the second following month (i.e., if the reporting period ends on the last day of February, commission payments are due no later than April 5). If the fifth day of the second following month falls on a weekend or a postal holiday, payments are due on the following TWC-BET workday. The monthly Sales and Commissions report must be submitted prior to submitting the commission payments. If either Sales and Commissions Report or a commission payment is received after its due date, the Contractor is subject to a late penalty of 3% of that month's gross sales. If the payment received does not equal the amount on the Sales and Commissions Report, the Contractor is subject to a late penalty of 3% of that month's gross sales. This penalty must be paid by separate check within 10 days of notice by TWC-BET and must be accompanied by the delinquent commission payment and/or Sales and Commission Report, if not previously submitted. If commission payments and penalties are not received by the end of the calendar month in which the report was due, an additional penalty of 3% of that month's gross sales plus \$20.00 will be assessed to the Contractor. If these commission payments and penalties are not paid by the end of the month following the month in which the report was due, the TWC-BET may cancel the contract in its entirety and exercise the performance bond.
- 5.7 After the expiration date of its Contract, the Contractor must submit payment(s) per the procedures established above. TWC-BET may exercise the performance bond if payments are not submitted on time under the terms and conditions of the Contract.

- 5.8 TWC-BET will notify the Contractor of any payment returned by a financial institution. Payment must then be made by cashier's check or money order within ten (10) days from date of notification. All future payments must be in the form of a cashier's check or money order.

6. Performance Bond

- 6.1 The Contractor must procure and maintain a performance bond in the amount which is equal to one (1) month's average sales for the service sites at the time of proposal due date. The purpose of the performance bond is to ensure that all performance responsibilities, monetary or otherwise, of the Contractor and its agents that are expressed in the contract will be satisfactorily fulfilled. This includes the Contractor's defaulting on the contract. **The original bond must be delivered to the TWC-BET Vending Specialist prior to the installation of any machines or the commencement of any services.** Subcontractors are not responsible for providing bonds to TWC.
- 6.2 The following instruments may be submitted to TWC in lieu of a performance bond:
- a. Surety or blanket bond from a company chartered or authorized to do business in Texas;
 - b. Irrevocable letter of credit issued by a financial institution subject to the laws of Texas.
- 6.3 Performance bond submitted must be effective on the beginning date of the contract and must not expire until six (6) months after the expiration date of the contract (e.g., if the initial contract term is 6/1/2017-5/31/2019, the bond/surety term must be 6/1/2017-11/30/2019). This applies to any renewal periods exercised by TWC and ensures that all monthly sales, commissions, and commission reports have been submitted and paid in full.
- 6.4 Performance bonds completed (signed) by an out-of-Texas surety require a countersignature and a 7-digit license number by a Texas resident agent of a company chartered or authorized to do business in Texas or a copy of a reciprocal agreement between states.
- 6.5 A separate performance bond must be provided for each contract awarded and must reference the contract number for which the bond is provided.
- 6.6 All references to the performance bond by the Contractor must reference the effective dates of the contract and the RFP number or contract number in lieu of or in addition to the bonding company's number.
- 6.7 Performance bonds must be made payable to TWC. TWC may delay the installation of vending equipment if a bond or an approved alternative surety is not received.
- 6.8 Any default or breach of the contract may result in exercise of the performance bond by TWC.

7. Insurance Requirements

- 7.1 The Contractor must provide a certificate of insurance or binder to TWC **within fourteen (14) days after the date of notice of award. The RFP number or contract number must appear on the certificate.** All required insurance must remain in force throughout the term of the contract.
- 7.2 If the required insurance coverage policies expire during the term of the Contract and any subsequent contract extensions, Contractor must provide TWC's contract manager with a new

insurance certificate and renewal policies at least thirty (30) business days prior to the expiration of the existing insurance coverage. The certificate must show that the terms and financial amounts of the insurance coverage comply with the Contract requirements and will become effective as of the expiration date and time for the existing coverage.

7.3 The Contractor shall notify the TWC contract manager within five business days of any cancellation, non-renewal, or material change in insurance terms that affects required insurance coverage. In the event that the Contractor fails to keep in effect at all times the required insurance coverage, TWC may, in addition to any other remedies it may have, terminate the Contract, subject to the provisions of the Contract.

7.4 The Contractor is responsible for any deductible or self-insured retention requirements in the required insurance coverage.

7.5 Minimum Insurance Coverage: Contractor shall maintain insurance coverage in accordance with the statutory limits and the requirements provided in Section 3.19 of the TWC Standard Terms and Conditions

7.5.1 **Commercial Automobile Liability:** Contractor shall also maintain Commercial Automobile Liability coverage to include any automobile, including hired and non-owned automobile, liability of \$1,000,000 combined single limit for each accident

7.6 All policies must:

7.6.1 Be issued by companies authorized to do business in Texas with an A.M. Best Company rating of A VII or higher;

7.6.2 Be written on a primary and non-contributory basis with any other insurance coverage;

7.6.3 Include a Waiver of Subrogation Clause;

7.6.4 Including the following language: "It is a condition of this policy that the Contractor must furnish written notice to TWC-BET Vending Specialist, 101 E. 15th St., Austin TX 78778, thirty (30) calendar days in advance of the effective date of any reduction in or cancellation of this policy.";

7.6.5 Name TWC as an Additional Insured (except Worker's Compensation Insurance);

7.6.6 Name TWC as a Certificate Holder.

7.7 The Contractor must furnish TWC with Original Copies of all required certificates of Insurance prior to the installation of any machines or the commencement of any operations.

7.8 Failure to maintain the required insurance may result in cancellation of the contract.

7.9 SUBCONTRACTOR INSURANCE REQUIREMENTS: If the Contractor uses a subcontractor, the Contractor shall ensure that all subcontractors maintain the required insurance. The Contractor must possess certified copies of its subcontractors' policies and make them available for review by TWC-BET, upon request. **Do not send subcontractors' policies to TWC.**

8. Termination of Contract

8.1 The Termination provisions of the Standard Terms and Conditions, Section 10, apply to any Contract executed under this RFP.

8.2 Upon written notice of contract termination from TWC, the Contractor must:

- 8.2.1 Pay all money that may be due to TWC-BET in full within five (5) business days of termination of this Contract if the Contract is terminated for any reason prior to the expiration date listed in the Contract or any renewals and extensions;
 - 8.2.2 Remove all vending equipment within thirty (30) days after the date specified on the notification letter for all service sites in the contract area or service sites specified by TWC; and
 - 8.2.3 Provide written notice of removal dates for all equipment before any machine is removed. If a machine is removed prior to the written removal date, TWC may exercise the performance bond.
- 8.3 In the event equipment is not removed within thirty (30) days after the Contract is terminated or expired, TWC-BET may remove equipment to storage for a maximum of thirty (30) days. The Contractor will be notified of equipment's removal and storage. The Contractor is responsible for removal and storage costs of all equipment. At the end of the storage period, machines will be prepared for sale according to State procedures. Following vending equipment sale, TWC will issue a check to the Contractor in the amount of sale proceeds, less the removal, storage, and sale cost.
- 8.4 Contractor must vacate all parts of the service site(s) occupied by the Contractor, remove its vending machines and equipment, and return the premises to the TWC-BET, together with any equipment furnished by the TWC-BET pursuant to this contract, in the same condition as when originally made available to the Contractor, excepting reasonable wear and tear within thirty (30) days of the termination or expiration of any Contract resulting from this RFP. First priority for removal of equipment should be given to service sites with security concerns and service sites with numerous vending machines.
- 8.5 Contractor must supply the TWC-BET Vending Specialist the proposed removal schedule within seven (7) days of a termination notification and prior to the removal of equipment.
- 8.6 Contractor may terminate any Contract resulting from this RFP by providing one hundred twenty (120) days advance written notice to TWC.

ATTACHMENT 1 – Respondent Questions & Answers
Texas Workforce Commission - RFP NO. 3202300168

Respondents must submit their questions via email to the following address: **vendorproposals@twc.texas.gov** using this template, including the specific RFP Section and Page number related to each question. TWC will respond in the same format and will include an Amended RFP if needed. The answers refer to a specific location in the RFP whenever possible. If similar questions are asked, TWC may reference a response to another question. If TWC modifies the RFP in response to a Respondent’s question, then TWC notes “Yes” in the last column on the right, RFP Modified to Clarify?

No.	RFP Section	Page	Question	Answer	RFP Modified to Clarify?
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

ATTACHMENT 3 – Area Site Locations Listing

Service Site Number	Service Site Name & Address	Number of Machines	Type of Machine	Estimated Monthly Gross Sales Average 12/2021-11/2022
Area:	Rio Grande City			
Counties (Districts):	Starr (21)			
335 *	US Citizenship & Immigration Services (USCIS)	1	Bottle	\$93
	405 N. Estrella, Port of Entry	1	Snack	\$59
	Roma, TX 78584			
344 *	International Bridge/US Border Station	2	Can	\$28
	313 Pete Diaz Jr. Ave.	1	Snack	\$133
	Rio Grande City, TX 78582			
351	TX Health & Human Services Commission (HHSC)	1	Can	\$46
	2538 Central Palm Dr.	1	Snack	\$67
	Rio Grande City, TX 78582			
2082	TX Health & Human Services Commission (HHSC)	1	Bottle	\$53
	2542 Central Palm Dr., Ste 202	1	Snack	\$57
	Rio Grande City, TX 78582			
2206 *	US Border Patrol	1	Bottle	\$622
	730 Border Patrol Lane	1	Snack	\$111
	Rio Grande City, TX 78582			
	Total	11		\$1,269
	Bond Amount	\$1,269		

* These federal sites have been identified for possible removal at some point during the length of the contract term.

ATTACHMENT 4 – Vending Price List

Item	Ounces	New Max Price
Canned Drinks	12	\$1.25
Bottled Drinks	16.9	\$2.00
Bottled Drinks	20	\$2.75
Energy Drink	16	\$3.75
Sport Drinks	12	\$1.25
Sport Drinks	20	\$2.00
Water	16	\$1.50
Water	20	\$1.60
Water LTR	33.8	\$2.70
Specialty Water	20	\$2.75
Juices	12	\$1.75
Juices	15.2	\$3.00
ALL "Chips" Large Single Serving (LSS), Veggie Straws, Gardettos, Cheese Its, Popcorn, etc.	up to 2.5 ounces	\$1.50
"Chips" Regular Single Serving (RSS) [Lunch bag size]	1 oz or less	\$1.00
Chocolate	2 oz or less	\$2.25
Chocolate	more than 2 oz	\$4.50
Non Chocolate	4 oz or less	\$2.50
Non Chocolate	more than 4 oz	\$3.75
large grab bag candy (sour Patch, etc.)	Approx. 8 oz	\$3.50
Pastry	Less than 4 oz	\$1.75
Pastry	4 oz and above	\$2.25
Cookies (Grandma's, etc.)	Less than 3 oz	\$1.25
Cookies (Grandma's, etc.)	3 oz or more	\$1.75
Granola Bars	2 oz or less	\$1.00
Premium Nuts	1.5 to 2 oz	\$2.25
Peanuts/Seeds	less than 2 oz	\$1.25
Gum (5 ct), Mints, hard roll candy		\$1.25
Gum 15 ct	15 count	\$1.75
Cracker Sandwiches	1 to 2 oz	\$1.00
Jerky	about 1 oz	\$4.25
Trail Mix	less than 4 oz	\$1.50
Sandwich wedge (3 oz meat, .66 oz [120 ct] cheese)		\$5.25

ATTACHMENT 5 – Contractor’s Proposal Form

TAB A



PROPOSAL FORM

Solicitation # 3202300168

Service Area: Rio Grande City

Complete the following Execution of Offer and Proposal Information and place behind TAB A in your proposal.

Area Demographics:	
# of Sites	05
# of Machines	11



EXECUTION OF OFFER

By signing below Applicant agrees to provide the services described in this RFP, and to the TWC Standard Terms and Conditions and Applicant Certifications in sections 1.7 and 1.8 of this solicitation documents.

DARIN DUECKER

Printed Name

GENERAL MANAGER

Title

[Handwritten Signature]

Authorized Signature

4-13-23

Date Signed

Instructions	
1. Provide complete organizational information in the spaces provided below. 2. Enter either your organization's Texas Identification Number or Federal Tax I.D. Number. 3. Provide your business organization type, e.g. sole proprietorship, partnership, non-profit corporation, for profit corporation etc.	
Legal Entity Name	El Valle Canteen, LLC
Mailing Address	401B James Richard Closner Drive
City, State & Zip Code	La Feria, TX 78559
Phone No.	956-797-5710
E-Mail Address	Robert.ontiveros@onetacc.com and Darin.duecker@onetacc.com
Texas Identification Number (TIN)	32085833757
Federal I.D. Tax Number (14 digits)	88-3716727
Business Organization Type	LLC

PROPOSAL INFORMATION

PART 1 - GENERAL INFORMATION

Vendor Point-of-Contact (post award): Provide the name and contact information for the individual who will serve as the primary point of contact to TWC for performance-related issues, communications, service calls and quality assurance.

Contact name: Robert Ontiveros

Title: Branch Manager

Street Address: 401B James Richard Closner Dr.

City/State/Zip Code: La Feria, TX 78559

Telephone: 956-797-5710

E-Mail: robert.ontiveros@onetacc.com

Equipment:

- a) How many machines are currently in your inventory and will be available on to be placed in service? ,? 20
- b) How many additional machines will need to be procured? 0
- c) Would your company use cash on hand or finance the purchase of additional machines? n/a
- d) Does your company have an existing account with any of the national brands (i.e. Coca Cola, Pepsi, or Dr. Pepper)?
We do have existing accounts with all national drink and snack brands.

Include the following items behind **TAB B** in your proposal:

- List of machines, including serial and/or machine numbers.
- Brochure(s) identifying each vending machine type that will be supplied.

Subcontracting: If utilizing subcontractor(s) please complete the following information:

Texas Identification Number (TIN) or Federal Employer Identification number (EIN): _____

Subcontractor Name: N/A we will do all the work

Address: _____

Telephone number: _____

Contact Name: _____

Work to be performed by Subcontractor: _____

Use this same format to identify any additional subcontractors.

PART 2 – COMMISSION PERCENTAGE

Refer to Part 4 (Vending Price List) and Part 5 (Area Site Locations) of this Proposal Form for data and information regarding the service sites where vending services will be required.

Employee: Shalon Hornsby

Request: Administrative Contracts

Details: This is for a BET Revenue Generating RFP, Rio Grande City Contract area

TWC has established a baseline of \$1269.00 in gross monthly sales from all vending machines in the Rio Grande City contract area. The current contractor offers 10% for drinks, 10% for snacks and 10% for miscellaneous.

The current contractor charges \$0.90 for 12 oz. canned and \$1.70 for 20 oz. bottled drinks at state/federal locations.

BIDDER MUST FILL IN ALL PERCENTAGES FOR BID TO BE CONSIDERED.

Drinks (65%): 10 %

Snacks (30%): 10 %

Miscellaneous (5%): 10 %

Weighted average formula (weighted percent equals 100%):

A weighted average formula will be used to determine the contract award. The Bidder's bid percentage for each machine type will be multiplied by the percentage in the weighted average for formula for each machine type.

PART 3 - TECHNICAL APPROACH

Provide responses to the following questions/instructions. Note that the space following each of the question or instruction expands so that complete responses may be provided.

REFUND SYSTEM

Describe your company's and any proposed subcontractor's refund system.

We place a sticker on every machine with our phone number and a QR code sticker. Patrons can use the QR code to submit an online request for refunds, refills or machine problems. If they choose to call, we have a live person whom answers the phone to help

Describe your company's and any proposed subcontractor's policy and procedures regarding petty cash.

If a location requires petty cash, we will provide a dollar amount that is reasonable. We will require a signature upon receipt of the petty cash and will reconcile the set dollar amount on a regular basis to ensure the cash is correct.

Describe your company's and any proposed subcontractor's process of maintaining the required Refund Log (see Scope of work Section 4.1.7).

We would ask that each location have one designated location or person who handles the refunds for the entire location. Our employee will check in on every visit to restock the petty cash fund. We will require that refund slips be completed by person requesting a refund so that we know which machine had an issue and what caused the refund request. We use these slips to verify the employees cash shortage from the machines.

Describe how refunds will be handled, in person, by mail, or by some other method? If in person how will you contact the customer to ensure refund is made?

We will issue cash refunds to the designated location or person upon each visit. If a customer calls or submits an online inquiry, we will let them know accordingly how the process works. We will leave the refund with the designated person or location for pick up from the customer. For refunds on cashless purchases, we will need to get the card information from the customer and then issue a refund directly to the customer's card. They would need to contact us via the phone or the online submission portal so that we can verify the purchases and issue the refunds.

How often will your company process refunds?

For cash refunds, they will be processed on each visit. For cashless transactions, we can issue within 24 hours of the transaction.

SERVICE SCHEDULE

Describe your company's and any proposed subcontractor's service schedule for inspection and restocking of each service site listed in Part 5 of this Proposal Form.

Service schedules are based on machine usage. We will schedule the machine either a bi-weekly, weekly, or multiple times a week based on the usage. The day of the week will always be the same regardless of the frequency. All the machines have wireless telemetry in them. This lets us know exactly is sold from the machines in real time so that we know how much we need to refill on each visit.

Some locations require specific servicing schedules. How will your company and any proposed subcontractor comply with those schedules (e.g. prisons require to be serviced twice weekly per section 4.3.11 and 4.4.1)?

If a location requires a set schedule of service, we will comply with that schedule.

Provide a preliminary restocking and service schedule based on the service site listing referenced in Part 5, Service Site Location of this form.

Based on the sales provided in Part 5, we would service the accounts bi-weekly at a minimum. Using the telemetry system, we will be able to monitor the sales to know if our service schedule needs to be increased to weekly based on usage.

PHASE-IN STRATEGY

Describe your company's and any proposed subcontractor's anticipated phase-in strategy, including coordination with incumbent vendor, TWC-BET Specialist, and Site contact.

WE are the current vendor. There would be no need for a phase in schedule currently.

Describe your company's and any proposed subcontractor's plan for conducting site surveys and proposed timetable for implementation of set-up?

WE are the current supplier, thus no need for a site survey unless the locations want to relocate the equipment to a different spot.

Describe company's and any proposed subcontractor's process if a site requests that machines be removed due to service moving or no longer needing the machine (see RFP Section 4.1.15)

We would contact TWC first to inform them of the requests. Nothing will get done unless TWC approves of the request. Movement or removal of equipment will take five to seven business days after request.

TRACKING SALES

Describe your company's and any proposed subcontractor's method of tracking sales.

All sales are tracked through our Vending Management System. The system name is Cantaloupe and is a cloud based software system. All data is transmitted every four hours and our system is updated in those intervals. We use the Dex file from the machines to track sales data. The dex file is uploaded into the system and that is what is used to verify sales and cash collected from each machine.

Describe your company's and any proposed subcontractor's plan for handling meter readings on differing machine type (see RFP Section 4.3.16-4.3.18).

The Dex file records the meter readings from the machine. Our software system records the data that is found in the dex files and populates that into the software for storage and report running. The process is completely automated and removes the human error element of the process. For older machines that don't have the Dex data, our employee would be required to manually enter the meter reading into our software system. This is the process that has been used in the past and is still in place in all machines that don't have wireless telemetry capabilities.

Describe your company's and any proposed subcontractor's process for the collection and calculating of sales (see RFP Section 4.3.12)

All this data will be entered into our system via the Dex file or through manual entry in older machines. The dex file reports exactly how much cash should be collected and how much of each item that was sold. We now know exactly how much cash and coins each machine should have and that should be turned in to calculate commission payment. The process remains the same as it always has. On every visit to a machine, the employee will collect all the cash from the dollar bill validator and the coin box in the machine. This is the money that is used to verify the sales that are reported based on the dex file or the changes in inventory. Accountability of sales is now more accurate and accountable than every before due to the technology in the machines.

Describe your company's and any proposed subcontractor's sales review schedule. Indicate whether the review is performed daily, weekly, monthly, or quarterly?

The sales review is done on every visit. The Dex file informs us of exactly how much money should be collected as well as how much product was sold. We ensure that the cash that was collected matches the Dex files reporting of how much is supposed to be turned in. This is done the day following each refill.

CUSTOMER SERVICE (Complaints, Suggestions, and Requests)

Describe your company's process for handling customer complaints, suggestions, and requests.

We will have a sticker with our phone number and a QR code on it. Any customer can contact us via a phone call or by using the QR code to access an online portal for submission of any complaint or request. We would collect that data and

contact the customer through phone, text or email depending on customers desired correspondence. Arrangement will be made to address each customers requests as soon as possible.

Describe your company's and any proposed subcontractor's policy and approach regarding communicating with customers, service site representatives, and TWC-BET specialists.

We will follow each locations requests concerning the communication desires. Our software system allows us to place notes on each customers account that informs the employee of what they are to do on every visit. This is a permanent note and will be seen on every single visit to each location that has special requests.

COMPANY STABILITY

Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, provide an explanation of the impact to your company, both in organizational and directional terms. We are not currently for sale or intend to be for a very long time.

Provide details of all past or pending litigation or claims filed against your company that may affect your company's performance under a contract with the TWC-BET.

We have no current or any past litigation that would affect our performance of this agreement.

Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.

There is no current, past or future loans or financial agreement that will keep us from meeting the requirements of this contract.

Have you previously bid on any Invitation for Bids (IFB) or Request For Proposals (RFP) issued by the Texas Workforce Commission (TWC) a different business name than is being proposed? If yes, specify the former business name, business address, contract area, and month and year of bid.

This company was purchased in November of 2022 and was previously know as South Texas Canteen. The name was changed in November of 2022 to its current name of El Valle Canteen. We also are know in other counties as Sunrise Vending (Corpus Christi, Texas) and Canteen Victoria (Victoria, Texas).

VENDOR PERFORMANCE

How many years has your company been performing vending machine services using the same company name?

Sunrise Vending has been in business for over 25 years. Prior to its acquisition, El Valle Canteen was in business as South Texas Canteen for roughly 20+ years.

Provide examples of up to three (3) current or past contracts awarded to your firm for vending services. For each example provide the client name, client point-of-contact name and telephone number, period of performance, contract value, and scope of work performed including the number of sites and types and numbers of vending machines provided for each site. Companies or organizations referenced must still be in business or operating. Respondent may be asked for additional examples of past performance in the event the reference provided is unavailable.

Current or Past Contracts

Texas Workforce Commission

Nancy Greely

512-533-7132 office

Current Vendor for the Corpus Christi and surrounding areas for 10 plus years.

2022 sales = \$192,000 from 38 Snack and 47 Drink Vending Machines in 34 sites.

Texas A&M Kingsville University

Justin Woodall

Executive Director Supply Chain

955 University Blvd.
 Kingsville, Texas 78363
 361-593-4369 office

Current vendor for all the drink and snack vending. We have serviced the University for 20+ years.
 2022 sales= \$220,000 from 21 snack and 37 drink vending machines in 26 sites.

Del Mar College

David Davilla
 Director of Purchasing & Business Services
 101 Baldwin
 Corpus Christi, Texas 78404
 361-698-1560 office

Current vendor for all the drink and snack vending. We have serviced the College for 20+ years.
 2022 sales= \$270,000 from 30 snack and 44 drink vending machines in 32 sites.

PART 4 – Vending Price List

Item	Ounces	New Max Price
Canned Drinks	12	\$1.25
Bottled Drinks	16.9	\$2.00
Bottled Drinks	20	\$2.75
Energy Drink	16	\$3.75
Sport Drinks	12	\$1.25
Sport Drinks	20	\$2.00

Water	16	\$1.50
Water	20	\$1.60
Water LTR	33.8	\$2.70
Specialty Water	20	\$2.75
Juices	12	\$1.75
Juices	15.2	\$3.00
ALL "Chips" Large Single Serving (LSS), Veggie Straws, Gardettos, Cheese Its, Popcorn, etc.	up to 2.5 ounces	\$1.50
"Chips" Regular Single Serving (RSS) [Lunch bag size]	1 oz or less	\$1.00
Chocolate	2 oz or less	\$2.25
Chocolate	more than 2 oz	\$4.50
Non Chocolate	4 oz or less	\$2.50
Non Chocolate	more than 4 oz	\$3.75
large grab bag candy (sour Patch, etc.)	Approx. 8 oz	\$3.50
Pastry	Less than 4 oz	\$1.75
Pastry	4 oz and above	\$2.25
Cookies (Grandma's, etc.)	Less than 3 oz	\$1.25
Cookies (Grandma's, etc.)	3 oz or more	\$1.75
Granola Bars	2 oz or less	\$1.00
Premium Nuts	1.5 to 2 oz	\$2.25
Peanuts/Seeds	less than 2 oz	\$1.25
Gum (5 ct), Mints, hard roll candy		\$1.25
Gum 15 ct	15 count	\$1.75
Cracker Sandwiches	1 to 2 oz	\$1.00
Jerky	about 1 oz	\$4.25
Trail Mix	less than 4 oz	\$1.50
Sandwich wedge (3 oz meat, .66 oz cheese)	[120 ct]	\$5.25

PART 5 - Service Site Locations

Service Site Number	Service Site Name & Address	Number of Machines	Type of Machine	Estimated Monthly Gross Sales Average 12/2021-11/2022
Area:	Rio Grande City			
Counties (Districts):	Starr (21)			

335 *	US Citizenship & Immigration Services (USCIS)	1	Bottle	\$93
	405 N. Estrella, Port of Entry	1	Snack	\$59
	Roma, TX 78584			
344 *	International Bridge/US Border Station	2	Can	\$28
	313 Pete Diaz Jr. Ave.	1	Snack	\$133
	Rio Grande City, TX 78582			
351	TX Health & Human Services Commission (HHSC)	1	Can	\$46
	2538 Central Palm Dr.	1	Snack	\$67
	Rio Grande City, TX 78582			
2082	TX Health & Human Services Commission (HHSC)	1	Bottle	\$53
	2542 Central Palm Dr., Ste 202	1	Snack	\$57
	Rio Grande City, TX 78582			
2206 *	US Border Patrol	1	Bottle	\$622
	730 Border Patrol Lane	1	Snack	\$111
	Rio Grande City, TX 78582			
	Total	11		\$1,269
	Bond Amount	\$1,269		

* These federal sites have been identified for possible removal at some point during the length of the contract term.

Automated Products 112 4 wide snack machine

- Dimensions: Height 72", Width 33 1/2", Depth 35"
- has a capacity of 508 units
- Shipping weight 660lbs
- Automatic Products 112 Snack Machine comes with 4 pastry-chip trays, 2 candy trays, and 4 selections of gum and mints.
- Voltage 120volts, 3amps.



Crane 148 and 159 snack machines

- Dimensions: Height 72", Width 33 1/2", Depth 35"
- has a capacity of 508 units
- Shipping weight 660lbs
- Crane 148 and 159 Snack Machine comes with 4 pastry-chip trays, 2 candy trays, and 4 selections of gum and mints.
- Voltage 120volts, 3amps.



Drink Machine information

Model	Height	Width	Depth	Weight	Type
Royal GIII Plus RVCV 550-6 Narrow Cabinet	72"	31"	33.5"	536lbs	Stack
Royal GIII Plus RVCV 660-8 Standard Cabinet	72"	37"	33.5"	599lbs	Stack
Royal GIII Plus RVCV 804-8 Standard Cabinet	79.5"	37"	33.5"	653lbs	Stack

9 flavor selections Royal 550, 660 and 804 have same look but hold different amount of drinks

