

PRICING REQUEST
THE TEXAS MILITARY DEPARTMENT
This Solicitation cannot exceed \$25,000.00
Exclusions: TXMAS, TIBH, TCI, TX SMARTBUY

<p>This Pricing Request must be completed, signed and submitted by e-mail to:</p> <p>You may email your quote to: devin.b.brock.nfg@mail.mil and rene.cantu6.mil@mail.mil</p> <p>on or before the following pricing request deadline:</p> <p>August 29, 2018 by Close of Business (COB)</p>	<p>Vendor Information:</p> <p>ID Number.: _____</p> <p>Name: _____</p> <p>Address: _____</p> <p>City, State, Zip: _____</p> <p>Point of Contact: _____</p> <p>Phone: _____</p> <p>Email: _____</p>
<p>Delivery Information Upon award and issuance of a purchase order, items must be delivered to the following address:</p> <p>Texas Military Department National Guard Armory 1552 CR 406 El Campo, Texas 77437</p>	<p><i>VENDOR MUST SIGN BELOW</i></p> <p>An authorized signatory must sign below. Failure to sign will disqualify this pricing request.</p> <p>Signature: _____</p> <p>Title: _____</p> <p>Date: _____</p>
<p>Reference Number: 18-CFMOMaint-El Campo-RC</p>	

The Texas Military Department is requesting pricing on the items listed below. Enter the **Unit Price, Extension** and the **Grand Total** of the items(s) described and return the completed pricing request form to our office by the date and time shown above. **Late responses will not be considered.** Vendor must specify if bidding all or none.

Once the pricing request has been issued, all communication regarding this bid must be in writing. The agency in its sole discretion may respond to inquiries. All bids are good for 45 days after the pricing request deadline.

Item No.	Class & Item: JOB ORDER	Qty	Unit	Unit Price	Extension
	<p><u>FOUNDATION AND HVAC REPAIRS</u></p> <p>All bids will be “Not to Exceed” and “Turn Key”.</p> <p style="text-align: center; color: blue;">BID MUST BE SIGNED OR WILL BE CONSIDERED NON-RESPONSIVE</p> <p>JOB DESCRIPTION/SCOPE OF WORK:</p>				

Item No.	Class & Item: JOB ORDER	Qty	Unit	Unit Price	Extension
	<p>Contractor shall provide all labor and materials to repair/replace the building components as provided in this pricing request.</p> <p><u>General Work Conditions and Requirements:</u></p> <p>SCOPE OF WORK:</p> <p>1. General Conditions:</p> <p>a. Construction shall be limited to the perimeter set forth in this proposal letter and information supplied by Texas Military Department.</p> <p>b. Daily and final clean-up.</p> <p>c. Start time and construction activities to be coordinated with on-site staff.</p> <p>d. Contractor to provide portable toilet, dumpster, and temporary fencing, as needed.</p> <p>2. Base Bid</p> <p>a. existing cracked 4" cmu partition wall to be removed and replaced with 4" metal stud and gypsum board partition wall. Replace door frames, but re-use doors. Paint louvers in door plantation brown.</p> <p>b. Replace drop ceiling in room 102-113 and 123-126 and office 132</p> <p>b. Float tape and paint using doric white</p> <p>c. Clean caulked areas around the front windows and reseal using self leveling grey caulk.</p> <p>d. Pressure wash entire building minimum 2000 PSI</p> <p>3. Bid Option 1</p> <p>Replace all HVAC systems</p> <p>a. Demo existing HVAC split systems. Replace with high efficiency, scroll compressor, 410A</p> <p>b. Gas furnaces must be high efficiency direct drive blower.</p> <p>c. Re-use supply trunk. All supply duct will need to be cleaned and re-wrapped with R-8. Include manual dampers of the trunk line and replace drops with R-8. Supply diffusers in offices 123-126 and 132 must be replaced. Office areas 102-113 diffusers can be re-used.</p> <p>d. Replace decking, clean return space and replace grilles.</p> <p>e. All duct connections must be sealed with duct butter and aluminum tape.</p> <p>f. Existing copper will need to be thoroughly flushed.</p> <p>g. Replace all tubing insulation and thermostat wire</p> <p>h. Replace existing filter base with 2" filter base.</p> <p>i. Supply one case of air filters.</p> <p>j. Supply new seven-day programmable thermostats with. Low voltage to thermostat must have a common wire hooked up.</p> <p>k. Vendors proposed solution regarding equipment and method of repair, submit to owners via approved submittal.</p> <p>l. Complete when there is 100% verification that all systems are operational.</p> <p>m. Contractor must do block load on conditioned spaces and show cfm data for each room to be sized according to room size and load requirements</p>				
Reference Number 18-CFMOMaint-El Campo RC		Return By August 29, 2018 by COB		Page 2 of 8	

Item No.	Class & Item: JOB ORDER	Qty	Unit	Unit Price	Extension
	<p>4. Bid Option 2 a. Dig trench 4' wide out to culvert next to side walk. b. Beginning depth for 4" 4 hole perforated corrugated pipe will be 6". Back fill with 1 ½ chip drain rock up to slab. 1-2 inches of slab must be visible. Chip rock will stop at the edge of the building. c. Pipe will need to be connected to the down spouts. Pipe will start a 4" and increase to 6" after 2nd downspout.</p> <p>Please see attachment for details</p> <p>4. CLARIFICATIONS: a. Contractor shall have full access to area to complete the project. b. Proposal includes regular business hours for working (no overtime included). c. Owner to furnish area for fenced staging area, material storage, and dumpster location. d. Anticipated duration of 5-6 weeks from time of site mobilization. ** Material Specs and Drawings attached to same E-mail request including this SOW **</p> <p><u>LOCATIONS OF SERVICE:</u> National Guard Armory 1552 CR 406 El Campo, Texas 77437</p> <p>IF REQUIRED, A COURTESY MEETING/SITE VISIT WILL BE HELD WITH VENDOR(S) AND FACILITIES POC PRIOR TO AWARD FOR ORIENTATION AT NO COST TO THE AGENCY. MEETING/SITE VISIT MAY LAST UP TO TWO (2) HOURS. THIS ALSO INCLUDES TRIP CHARGES AND/OR SERVICE CHARGES. SITE VISIT WILL BE AT 2:00PM AUGUST 15, 2018 NATIONAL GUARD ARMORY 1552 CR 406 EL CAMPO, TX 77437</p> <p>PROJECT SITE VISIT IS MANDATORY</p> <p>Please contact Devin Brock @ 512-789-4104, Cell #512-497-0660, email devin.b.brock.nfg@mail.mil for any site visit or job specific questions.</p> <p>All questions regarding the SOW must be submitted in writing to the POC. The POC can be contacted by telephone for site visit information only. No authority is intended or</p>				

Item No.	Class & Item: JOB ORDER	Qty	Unit	Unit Price	Extension
	<p>implied that scope of work may be amended or alternates accepted prior to bid opening without written approval from the Texas Military Department.</p> <p>All Items/equipment for completion are to be supplied by contractor to complete job.</p> <p>Awarded contractor shall furnish all labor, tools, equipment, and transportation, as necessary to complete work. Awarded contractor shall be responsible for supervision, clean up and disposal and must have all applicable licenses, insurance and permits.</p> <p>All bids will be “Not to Exceed” and “Turn Key”.</p> <p>Contractor shall remove and dispose of all defective materials in performance of the service in strict compliance with all applicable rules, regulations, codes, laws, ordinances, statutes, etc. All items that require removal from the site shall be disposed of in accordance with Federal, State, and local laws, rules, and regulations.</p> <p>The POC listed here may be telephoned or visited for clarification of the scope of work only. No authority is intended or implied that scope of work may be amended or alternates accepted prior to bid opening without written approval from the Texas Military Department.</p>				

TEXAS MILITARY DEPARTMENT
STANDARD TERMS AND CONDITIONS:
ITEMS BELOW APPLY TO AND BECOME PART OF BID.
ANY EXCEPTIONS THERETO MUST BE IN WRITING.

1. BIDDING REQUIREMENTS:

- 1.01. Bidders must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
- 1.02. Bids should be submitted on this form. Bidders must price per unit shown. Unit prices shall govern in the event of extension errors. If a price quotation is submitted as part of the bid, the quotation must be referenced on the bid document and signed by the bidder to establish formal linkage to the bid.
- 1.03. Bids must be time stamped at TEXAS MILITARY DEPARTMENT (TMD) on or before the hour and date specified for the bid opening.
- 1.04. Late and/or unsigned bids will not be considered under any circumstances. Person signing bid must have the authority to bind the firm in a contract.
- 1.05. Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 1.06. Bid prices are requested to be firm for TMD acceptance for 30 days from bid opening date. "Discount from list" bids are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts offered will be taken if earned.
- 1.07. Bidder should enter Texas Identification Number System (TINS) number, full firm name and address of bidder on the face of this form. Enter in the space provided, if not shown.
- 1.08. Bid cannot be altered or amended after opening time. Alterations made before opening time should be initialed by bidder or his authorized agent. No bid can be withdrawn after opening time without approval by the TMD based on an acceptable written reason.
- 1.09. 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. **AWARD NOTICE:** The State 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 at the sole discretion of the State. The State also reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the State. Any contract may also be extended up to three months at the sole discretion of the State.
- 1.11. Consistent and continued tie bidding could cause rejection of bids by the TMD and/or investigation for antitrust violations.
- 1.12. Inquiries pertaining to this IFB must include the requisition number, class/item codes, and opening date.

2. SPECIFICATION:

- 2.01. Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality will be considered unless advertised under §2155.067, Texas Government Code (Gov't Code). If bidding on other than references, bid should show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require bidder to furnish specified brand names, numbers, etc.
- 2.02. Unless otherwise specified, items shall be new and unused and of current production.
- 2.03. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 2.04. Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the bidder, on request, at bidder's expense. Each sample should be marked with bidder's name and address, and requisition number. Do not enclose in or attach bid to sample.
- 2.05. The State will not be bound by any oral statement or representation contrary to the written specifications of this Invitation for Bids (IFB).
- 2.06. Manufacturer's standard warranty shall apply unless otherwise stated in the IFB.

3. TIE BIDS:

Awards will be made in accordance with 34 TAC Rules 20.36(b)(3) and 20.38 (Preferences).

4. DELIVERY:

- 4.01. Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days mean calendar days, unless otherwise specified. Failure to state delivery time obligates bidder to deliver in 14 calendar days. Unrealistic delivery promises may cause bid to be disregarded.
- 4.02. If delay is foreseen, bidder shall give written notice to the TMD and the ordering agency. Bidder must keep the TMD and ordering agency advised at all times of status of order.
- 4.03. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TMD to purchase the goods or services of this IFB elsewhere and charge any increased costs for the goods or services, including the cost of rebidding, to the bidder.
- 4.04. No substitutions permitted without written approval of TMD.
- 4.05. Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency.

5. INSPECTION AND TESTS:

All goods will be subject to inspection and test by the State. Authorized TMD personnel shall have access to supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the bid or on samples taken from regular shipment. All costs shall be borne by the bidder in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the State's option, be returned to the bidder or held for disposition at bidder's expense. Latent defects may result in revocation of acceptance.

Reference Number 18-CFMOMaint-EL Campo-RC	Return By August 29, 2018 by COB	Page 5 of 8
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6. AWARD OF CONTRACT:

A response to this IFB is an offer to contract based upon the terms, conditions, and specifications contained herein. Bids do not become contracts until they are accepted through an open market purchase order. The contract shall be governed, construed, and interpreted under the laws of the State of Texas. The factors listed in §§2155.074, 2155.144, 2156.007, and 2157.003, Gov't Code, shall also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.

7. PAYMENT:

Bidder shall submit 2 copies of an itemized invoice showing State order number and agency requisition number on all copies. The State will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. Payment shall be made in accordance with Chapter 2251, Gov't Code.

8. PATENTS, TRADEMARKS, OR COPYRIGHTS:

Bidder agrees to defend and indemnify the TMD and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the TMD's or the State's use of any good or service provided by the bidder as a result of this IFB.

9. BIDDER ASSIGNMENTS:

Bidder hereby assigns to the TMD any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. §1, *et seq.*, and the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code §15.01, *et seq.*

10. BIDDER AFFIRMATIONS:

Signing this bid with a false statement is a material breach of contract and shall void the submitted bid and any resulting contracts, and the bidder shall be removed from all bid lists. By signature hereon affixed, the bidder hereby certifies that:

10.01.The bidder 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 bid.

10.02.Pursuant to 15 U.S.C. §1, *et seq.* and Tex. Bus. & Comm. Code §15.01, *et seq.* neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

10.03.Pursuant to §2155.004, Gov't Code, neither the bidder nor any person or entity which will participate financially in any contract resulting from this IFB has received compensation for participation in the preparation of the specifications for this IFB.

10.04.Pursuant to §231.006(d), Texas Family Code, regarding child support, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to §231.006, Gov't Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

10.05.Under §2155.004, Gov't Code, the bidder certifies that the individual or business entity named in this bid or any contract resulting from this IFB is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.

10.06.As required by §2252.903, Gov't Code, bidder agrees that any payments due under a contract resulting from this IFB shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. Bidder shall comply with rules adopted by TMD under §§403.055, 403.0551, 2252.903, Gov't Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

10.07.Pursuant to §669.003, Gov't Code, TMD may not enter into a contract with a person who employs a current or former executive head of the TMD or any other state agency until four years has passed since that person was the executive head of the TMD or any other state agency. By submitting a bid, the bidder certifies that it does not employ any person who was the executive head of the TMD or any other state agency in the past four years. If bidder does employ a person who was the executive head of the TMD or any other state agency, provide the following information:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Bidder: _____

Date of Employment with Bidder: _____

10.08. In accordance with §2155.4441, Gov't Code, bidder agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

10.09. Bidder certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that bidder is in compliance with the State of Texas statutes and rules relating to procurement and that bidder is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov/portal/SAM/>

10.10. Sections 2155.006 and 2261.053, Gov't Code, prohibit state agencies from awarding contracts to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or

any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005. Under §2155.006, Gov't Code, bidder certifies that the individual or business entity named in its bid is not ineligible to receive a contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.

10.11. Bidder represents and warrants that payment to the bidder and the bidder's receipt of appropriated or other funds under any contract resulting from this IFB are not prohibited by §556.005 or §556.008, Gov't Code, relating to the prohibition of using state funds for lobbying activities.

10.12. Bidder represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to TMD under the IFB and any resulting contract, if any, and that bidder's provision of the requested items under the IFB and any resulting contract, if any, would not reasonably create an appearance of impropriety.

11. NOTE TO BIDDER:

If bidder takes any exceptions to any provisions of the IFB, these exceptions must be specifically and clearly identified by section in bidder's bid in response to the IFB and bidder's proposed alternative must also be provided in the bid. Bidders cannot take a 'blanket exception' to the entire IFB. If any bidder takes a 'blanket exception' to the entire IFB or does not provide proposed alternative language, the bidder's bid may be disqualified from further consideration.

12. PROTEST PROCEDURES:

Any actual or prospective bidder who is aggrieved in connection with this IFB, evaluation, or award of any contract resulting from this IFB may formally protest as provided in Comptroller of Public Accounts rules at 34 TAC Rule 20.384.

13. DISPUTE RESOLUTION:

The dispute resolution process provided for in Chapter 2260, Gov't Code must be used by the TMD and the bidder to attempt to resolve any dispute arising under any contract resulting from this IFB.

14. NON-APPROPRIATION OF FUNDS:

Any contract resulting from this IFB is subject to termination or cancellation, without penalty to TMD, either in whole or in part, subject to the availability of state funds. TMD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TMD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render TMD's or bidder's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, TMD will not be liable to bidder for any damages, which are caused or associated with such termination, or cancellation and TMD will not be required to give prior notice.

15. TEXAS PUBLIC INFORMATION ACT:

Notwithstanding any provisions of this IFB to the contrary, bidder understands that TMD will comply with the Texas Public Information Act (Chapter 552, Gov't Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. Within three (3) days of receipt, bidder will refer to TMD any third party requests, received directly by bidder, for information to which bidder has access as a result of or in the course of performance under any contract resulting from this IFB. Any part of the solicitation response that is of a confidential or proprietary nature must be clearly and prominently marked as such by the bidder.

16. CONFLICT OF INTEREST:

Under §2155.003, Gov't Code, a TMD employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and bidders who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of TMD or purchasers of other state agencies.

17. FORCE MAJEURE:

Neither bidder nor TMD shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this IFB caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

18. INDEPENDENT CONTRACTOR:

Bidder is and shall remain an independent contractor in relationship to the TMDs. The TMD shall not be responsible for withholding taxes from payments made under any contract resulting from this IFB. Bidder shall have no claim against the TMD for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

19. INDEMNIFICATION AND LIABILITY:

19.01. Acts or Omissions:

Vendor shall indemnify and hold harmless the State of Texas and Customers, 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 THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

19.02 Infringements

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, 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 THE CUSTOMER 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 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.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or

(ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

19.03 Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

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. THE CUSTOMER AND/OR THE STATE 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) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS 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 FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

20. RIGHT TO AUDIT:

In addition to and without limitation on the other audit provisions of this IFB, pursuant to §2262.003, Texas Government Code, the state auditor may conduct an audit or investigation of the bidder or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the bidder or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the bidder or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This IFB or any contract resulting from this IFB may be amended unilaterally by TMD to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.003, Texas Government Code. Bidder will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the bidder and the requirement to cooperate is included in any subcontract it awards.

21. U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM:

By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- 1. All persons employed to perform duties within Texas, during the term of the Contract; and
- 2. All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of Texas Military Department, 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 most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.
If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the state, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the state must undertake to replace the terminated Contract.

Reference Number 18-CFMOMaint-El Campo RC	Return By August 29, 2018 by COB	Page 8 of 8
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