

**Texas State Library and Archives Commission  
Request for Offer 306-13-8003**

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**Section I  
Service Requirements**

**1.1 Scope**

The Texas State Library and Archives Commission (TSLAC) intends to purchase accounting and financial services for the preparation and submittal of the agency's Annual Financial Report (AFR) in accordance with State regulations and requirements. These services are being purchased through this Request for Offer (RFO) under the Professional Services Act, Texas Government Code 2254.001 - 2254.006. This purchase will be awarded to the Respondent who demonstrates the competence and qualifications to perform these services at a fair and reasonable price.

**1.2 Project Timeline for Awarded Respondent**

This project includes the following deliverables. These deliverables may be expanded and/or negotiated as needed upon agreement by TSLAC and the awarded respondent.

<b>Deliverable</b>	<b>Due Date</b>
Federal Schedule entry and initial Certification	September 18
State Grant Pass-through initial Certification	September 18
Federal Grant Pass-through Certification	September 26
State Grant Pass-through final Certification	September 26
General Revenue Certification	November 1
Federal Schedule final Certification	November 1
SEFA/ARRA Reconciliation	November 10
Completed Annual Financial Report and Certifications	November 12

**1.3 TSLAC Responsibilities once Contract Begins**

- Provide financial data and staff assistance, as appropriate, to facilitate this project and ensure project deadlines are met.
- Provide Selected Respondent security access to TSLAC's records in USAS. Access provided will be sufficient to allow reviewing, requesting and processing accounting entries required to complete the project.

**1.4 Awarded Respondent Responsibilities**

Selected Respondent will perform the following accounting and financial services under this specification. Selected Respondent will perform financial and accounting services required to prepare and submit the Annual Financial Report for the TSLAC, including reconciling the AFR to the Uniform Statewide Accounting System (USAS) and preparing the Certifications specified below. Selected Respondent may perform other financial work relating to this project, as requested by the TSLAC. Selected Respondent must agree to follow the Comptroller of Public Accounts' reporting

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requirements relating to this project. TSLAC will provide to Selected Respondent online access to the *Comptroller's Reporting Requirements for Annual Financial Reports of State Agencies and Universities*. The Selected Respondent will reconcile the AFR to USAS, and document all entries needed to bring USAS into agreement with the final AFR. Selected Respondent must perform all of the following services under this RFO.

- Prepare a set of work papers to support the information presented in the final AFR as submitted to the Comptroller of Public Accounts. Where feasible, electronic copies of work papers must be provided, in addition to paper copies.
- Assist TSLAC in ensuring that the adjustments entered in USAS are correctly processed, and perform follow-up by reviewing selected USAS reports to ensure that the adjustments are posted properly.
- Prepare all certification and transmittal forms required by the State Comptroller relating to the AFR.
- Serve as a resource in coordinating with the State Comptroller's Office in the event of questions relating to the TSLAC AFR reconciliation and certification process.
- Retain a file copy of all financial records, supporting documentation, statistical records and any other records pertinent to this project for a period of two (2) years. Such records shall be made accessible to the State Comptroller, State Auditor, or any of their duly authorized representatives, for the purpose of audits or examinations.
- Provide TSLAC with documentation to certify that Respondent has filed all required reports and other required documents relating to this project with appropriate agencies, on or before mandated deadlines, and in compliance with all State requirements. Respondent must notify TSLAC Executive Director and Accounting Manager immediately regarding any difficulties in meeting deadlines.

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**Section II  
Proposal Information**

**2.1 RFO Schedule of Events\***

<b>Event</b>	<b>Due Date</b>
RFO Released	April 10, 2012
RFO Opened (last day to submit proposals)	April 27, 2012, 11:00am CST
Contract awarded approximately	May 10, 2012
Services to begin September 1, 2012	

\*The TSLAC reserves the right to change the dates in the schedule of events above upon written notification to prospective Respondents through a posting on TSLAC's website.

RFO Opening: The public opening of the RFO will take place at the following location on the date and time listed in 2.1.

Texas State Library and Archives Commission  
1201 Brazos Street, 3<sup>rd</sup> Floor Conference Room  
Austin, Texas 78701

Note: This meeting will be open to the public, however only the names of the respondents will be read out loud during this meeting.

**2.2 References**

Respondent must provide a resume and two references, preferably from other State government agencies. References must include contact name, entity name, phone number and email address.

**2.3 Budget**

Prospective Respondents must submit a turnkey cost proposal in response to this RFO. Proposals must designate a cost breakdown for each of the following project components, and a total turnkey price. Proposals must also include pricing OR increase cap for the next four years.

- Preparing and/or entering journal vouchers required to reconcile USAS to AFR.
- Preparing and submitting the General Revenue Reconciliation and Certification.
- Preparing and submitting the State and Federal Grants Pass-through Certifications.
- Preparing and submitting the Federal Schedule Certification.
- Preparing and submitting the SEFA/ARRA Reconciliation, when required.
- Preparing the completed Annual Financial Report and Certifications.

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**2.4 Respondent Qualifications**

Qualified Prospective Respondents must meet all of the following criteria.

- Demonstrated prior experience in preparing an annual financial report for a state agency in accordance with Texas Comptroller of Public Accounts (CPA) requirements.
- Demonstrated experience using the Uniform Statewide Accounting System to record required adjusting entries.
- Ability to comply with all reporting requirements established by the CPA.
- Demonstrated ability to complete projects within established deadlines.

**2.5 Subcontractors**

Subcontracts providing services under the Contract shall meet the same requirements and level of experience as required of Respondent. No subcontract under the Contract shall relieve the Respondent of responsibility for ensuring the requested services are provided. Respondents planning to subcontract all or a portion of the work to be performed must identify the proposed subcontractors.

**2.6 Texas Public Information Act**

The TSLAC will not consider any Proposal that bears a copyright. Proposals will be subject to the Texas Public Information Act, Texas Government Code, Chapter 552, and may be disclosed to the public upon request after award. Subject to the Act, Respondents may protect trade and confidential information from public release.

The determination of whether information is confidential and not subject to disclosure under the Public Information Act is the duty of the Office of the Attorney General (OAG). The TSLAC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the Respondent are not acceptable. The TSLAC shall comply with all opinions of the OAG.

The TSLAC assumes no responsibility for asserting legal arguments on behalf of anyone. Respondents are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

- a. Trade secrets or other confidential information, submitted as part of this Proposal, shall be clearly marked on each page it appears. Such marking shall be in boldface type in at least **14-point font** at the top and center of the page.
- b. Confidential information must also be listed on the Confidential Information form, which may be found in **Appendix A**. This form must be placed in Tab 1.
- c. More information can be found on the Texas Attorney General's website.  
<http://www.oag.state.tx.us/open/index.html>

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**2.7 Proposal Evaluation**

Proposals will be considered based on the ability of each Respondent to carry out all of the requirements contained in this Request for Proposal. The TSLAC will base its selection on, among other things, demonstrated competence and qualifications of the Respondent, the appropriateness of the bid, and on the reasonableness of the bid fee.

A contract may not be awarded to the Respondent with the lowest bid. The TSLAC will award the contract to the bid that represents the best value for the agency and the State. If all bids exceed the amount budgeted for this project, the agency may re-bid or cancel the project unless additional funds become available. Bids will be evaluated on how well they meet the following criteria:

- A. Respondent knowledge and experience (60%)
- B. References (20%)
- C. Demonstration of best value (20%)

**2.8 Payment**

The TSLAC requires that the Respondent itemize the cost for the proposed services.

Payments to the awarded Respondent will be tied to the successful completion of specified project services in approved award. Once the work is reviewed and services are rendered complete by the TSLAC, approval for payment will be processed upon receipt of an accepted invoice. Respondent may invoice TSLAC monthly for actual time spent on each component of awarded project.

It is the responsibility of the awarded Respondent to submit invoices. Invoicing instructions will accompany a completed contract.

Payment will be made according to the State of Texas prompt payment laws.

**2.9 TSLAC Terms and Conditions**

Terms and Conditions are those listed within **Appendix B**. These will become part of any contract awarded. The TSLAC reserves the right to add, delete, and amend terms and conditions. The awarded Respondent will be notified of changes to the terms and conditions.

Please list terms and conditions that you take issue with in **Appendix C**.

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**Section III  
Proposal Submission**

**3.1 Proposal Requirements**

- a. **Proposals must include the following:**
  1. **Proposals must be signed to be considered**
  2. **Include contact name, business name, address, phone number, email and tax ID number**
  3. **Verification of ability to perform tasks listed in Section 1.4**
  4. **Resume and two (2) references (Section 2.2)**
  5. **Detailed budget (Section 2.3)**
  6. **Verification of qualifications listed in Section 2.4**
  7. **If applicable, list Subcontractors (Section 2.5)**
  8. **If applicable, Confidential Information form (Appendix A)**
  9. **If applicable, Terms & Conditions issues form (Appendix C)**
  10. **If applicable, your terms and conditions**
- b. Documentation provided with the Proposal should be complete and comprehensive. The TSLAC will not be responsible for locating or securing information not included in the Proposal. Failure to furnish required documentation with the Proposal may result in the Proposal being deemed incomplete and non-responsive, resulting in rejection
- c. The TSLAC will not be responsible for any expenses relating to proposal offers or proposal development of documentation that may result from this procurement action.
- d. All proposals must be received and time stamped at the TSLAC Purchasing Department by the date and time listed in 2.1. The TSLAC reserves the right to reject late submittals.
- e. **Email and mailed proposals will be accepted. Telephone and facsimile bids will not be accepted.**
- f. Respondents are responsible for all costs associated with preparing a response to this Proposal. The TSLAC will bear no responsibility for costs associated with preparing or providing this information.
- g. Respondents must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements within this proposal.
- h. Proposal cannot be altered or amended after opening time. Alterations made before opening time should be initialed by Respondent or his authorized agent. No Proposal can be withdrawn after opening time without approval by the TSLAC based on acceptable written reason.
- i. The TSLAC, as an agency of the State of Texas, qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. Do not include tax in Proposal. Tax Exemption Certificates are available upon request.
- j. Tie Bid awards will be made in accordance with TAC Rule 13.6(b) (3) and 2.38 (Preferences). Consistent and continued tie bidding could cause

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rejection of bids by the TSLAC and/or investigation for antitrust violations  
1.12.

- k. Late, illegible, incomplete, or otherwise non-responsive Proposals will not be considered.
- l. Any terms and conditions attached to a Proposal will not be considered unless specifically referred to within the Proposal and may result in disqualification of the Proposal.

### **3.2 Inquiries**

- a. All inquiries shall be submitted in writing to Jill Sutherland at facsimile 512-475-3393 or by email to [jsutherland@tsl.state.tx.us](mailto:jsutherland@tsl.state.tx.us). **All inquires must have Requisition number 306-13-8003 listed in the subject line.**
- b. Except as otherwise provided in this Section, upon award of this Proposal, other employees and representatives of the TSLAC will not answer questions or otherwise discuss contents of this Proposal with any potential Respondent or its representatives. Failure to observe this restriction may result in disqualification of any subsequent response.
- c. If Respondent takes any exceptions to any provisions listed in this Proposal, these exceptions must be specifically and clearly identified by Section in Respondent's response to this Proposal and the Respondent must propose an alternative with their Proposal Response.

### **3.3 Submission**

- All Proposals will become the property of the TSLAC upon submission.
- The TSLAC reserves the right to reject any and/or all Proposals received, and to cancel this RFO in part or in its entirety. This solicitation of Proposals in no way obligates the TSLAC to award a contract.

### **3.4 Delivery of Proposals**

Proposals submitted by mail to the TSLAC Purchasing department by U.S. Postal Service, Overnight/Express Mail, or Hand Delivered to 1201 Brazos Street, Room 309, Austin, Texas 78701 by the bid opening time and date. Purchasing hours are from 8:00am to 4:15 pm CST.

### **3.5 Proposal Opening**

Proposals will be opened at the TSLAC at the time and date listed in Section 2.1.

- a. Proposals submitted shall constitute an offer for a period of ninety (90) days or until an award is made by the TSLAC, whichever occurs earlier.
- b. A response to this Proposal is an offer to contract based upon the terms, conditions, and specifications contained herein. Proposals do not become contracts until awarded.
- c. The factors listed in TAC, Title 10, Subtitle D, Section 2155.074, 2155.144, 2156.007, and 2157.003 shall also be considered in making an

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award when specified. Any legal actions must be filed in Travis County, Texas.

**3.6 Award**

Following the final decision of the TSLAC, TSLAC will proceed with contract negotiations and finalize a contract. If a contract cannot be successfully negotiated with a reasonable period of time, contract negotiations will be terminated and negotiations with the next-highest ranking Respondent may begin.

**3.7 Best Value Statement**

The TSLAC reserves the right to award this RFO to the Respondent whose proposals is the best value to the agency and the State of Texas. Best value does not always mean lowest cost.

**3.8 Contract Term**

The term of service will begin September 1, 2012 and will conclude August 31, 2013 unless otherwise terminated earlier by either party. The contract may be extended for additional one-year terms at the sole discretion of the TSLAC, with the agreement of Respondent.





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All of the following terms and conditions are hereby made part of this contract with the Texas State Library and Archives Commission (TSLAC) by reference. Submitting a bid or signing a Purchase Order with a false statement is a material breach of contract and shall void the submitted bid or Purchase Order or any resulting contracts, and the Vendor shall be removed from all bid lists.

Contracts awarded by TSLAC shall be governed by and construed in accordance with the laws of the State of Texas. The federal or state courts of the United State located in Texas shall have jurisdiction to hear any dispute under potential contracts and serviced may be made upon TSLAC by first class mail to its address as set forth herein.

1. **Sales and Use Tax.** The TSLAC, as an agency of the State of Texas, qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Vendor may be able to claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. Excise Tax Exemption Certificates are available upon request.
2. **Observance of TSLAC Rules and Regulations.** Vendor agrees that at all times its employees will observe and comply with all regulations when accessing the TSLAC facilities, including, but not limited to, parking and security regulations.
3. **Non-Appropriation of Funds.** The State funds are contingent on the availability of lawful appropriates by the Texas Legislature. If the Texas Legislature fails to continue funding for the payments due under an order referencing this contract; the order will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments.
4. **Public Information Act.** Information, documentation, and other material in connection with this bid or contract may be subject to public disclosure pursuant to Chapter 552.021 of the Texas Government Code (the "Public Information Act"). Any part of a submitted bid that is of a confidential or proprietary nature must be clearly and prominently marked on each page as such by the Vendor.
5. **Antitrust.** Vendor represents that neither the Vendor nor the company, corporation, partnership, or institution represented by the Vendor, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State or the Federal Antitrust Laws, nor communicated directly or indirectly the proposal to any other person engaged in such line of business.
6. **Contract Fulfillment.** If federal or state laws or regulations or other federal or state requirements are amended and judicially interpreted so that either party cannot reasonably fulfill this contract, and if the parties cannot agree to an amendment that would enable substantial continuation of the contract, the parties shall be discharged from any further obligations under this contract.
7. **Payment.** 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. Any payments later than 30 days from uncontested invoice will start to accrue interest.
8. **Dispute Resolution.** Unless an applicable state statute or applicable federal law establishes another procedure for the resolution of disputes, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, as further described herein, by TSLAC and the Vendor to attempt to resolve all disputes arising under this contract. Vendor claims for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Texas Government Code. To initiate the process, Vendor shall submit written notice, as required by subchapter B, to the Chief Financial Officer or the designate. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Vendor and the TSLAC otherwise entitled to notice under the parties' contract. Compliance by Vendor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Texas Government Code. The contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code is Vendor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by TSLAC if the parties are unable to resolve their disputes under this Section. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by TSLAC nor any other conduct of any representative of TSLAC relating to this contract shall be considered a waiver of sovereign immunity to suit. The submission, processing and resolution of Vendor's claim is governed by the published rules adopted by the Office of the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found in the Texas Administrative Code. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Vendor, in whole or in part.
9. **Gifts.** The Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future

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employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid or contract.

10. **Compensation.** Pursuant to Chapter 2155.004 of the Texas Government Code, the Vendor has not received compensation for participation in the preparation of the specifications for this bid or contract.
11. **Certification Regarding Non-Payment of Child Support.** Pursuant to Section 231.006 (d), Family Code, re: child support, the Vendor certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
12. **Ineligibility.** Under Chapter 2155.004 of the Texas Government Code, the 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.
13. **Indemnification.** The Vendor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of contractor or any agent, employee, subcontractor, or supplier of contractor in the execution or performance of this contract.
14. **Debt.** 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.
15. **Executive Head of a State Agency.** Vendor certifies that they are in compliance with Chapter 669.003 of the Texas Government Code, relating to contracting with executive head of a State agency. If Chapter 669.003 applies, Vendor will complete the following information:

Name of former executive:

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Name of State agency:

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Date of separation from State agency:

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Position with bidder:

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Date of employment with bidder:

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16. **State Auditor's Clause.** Vendor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditors Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditors Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards.
17. **Excluded Parties List System.** The TSLAC is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administrations Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contents of EO 13224 may be viewed by accessing the following website: <http://www.whitehouse.gov/news/orders/>.
18. **Patents and Copyrights.** The Vendor agrees to protect the State of Texas from claims involving infringement of patents or copyrights.
19. **Vendor Assignments.** Vendor hereby assigns an ordering agency any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A Section 1, et seq (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq (1967).

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- 20. Default.** In the event that the Vendor fails to carry out or comply with any of the terms and conditions of the agreement with TSLAC, TSLAC may notify the Vendor of such failure or default in writing and demand that the failure or default be remedied within ten (10) days. In the event that the Vendor fails to remedy such failure or default within the ten (10) day period, TSLAC shall have the right to cancel the agreement upon thirty (30) days written notice or immediately.
- 21. Cancellation.** The cancellation of the agreement, under any circumstances whatsoever, shall not effect or relieve Vendor from any obligation or liability that may have been incurred or will be incurred pursuant to this agreement, and such cancellation by TSLAC shall not limit any other right or remedy available to the TSLAC at law or in equity.
- 22. Agreement Amendments.** No modification or amendment to the agreement shall become valid unless in writing and signed by both parties. All correspondence regarding modifications or amendments to the agreement must be forwarded to the TSLAC Purchasing Department for prior review and approval. Only the contract administrator within the Purchasing Department or his/her designee will be authorized to sign changes or amendments.
- 23. Independent Vendor Status.** Vendor agrees that Vendor and Vendor's employees and agents have no employer-employee relationship with TSLAC. TSLAC shall not be responsible for the Federal Insurance Contribution Act (FICA) payments, federal or state unemployment taxes, income tax withholding, Workers Compensation insurance payments, or any other insurance payments, nor will TSLAC furnish any medical or retirement benefits, any paid vacation or sick leave.
- 24. Publicity.** Vendor agrees that it shall not publicize this agreement or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of TSLAC's name in connection with any sales promotion or publicity event without the prior express written approval of TSLAC.
- 25. Severability.** If one or more provisions of this agreement, or the application of any provision to any party or circumstance is held invalid, unenforceable, or illegal in any respect, the remainder of the agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.
- 26. No Waiver.** Nothing in this agreement shall be construed as a waiver of the state's sovereign immunity. This agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this agreement 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. TSLAC does not waive any privileges, rights defenses, or immunities available to TSLAC by entering into this agreement or by its conduct prior to or subsequent to entering into this agreement.
- 27. Property Rights.** For purposes of this contract, the term "work" is defined as all reports, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the contract. The TSLAC and Vendor intend this contract to be a contract for services, and each considers the work and any and all documentation or other products and results of the services to be rendered by Vendor to be a work made for hire. By execution of a contract for these services, Vendor acknowledges and agrees that the work (and all rights therein) belongs to and shall be the sole and exclusive property of the TSLAC. If, for any reason, the work would not be considered a work-for-hire under applicable law, Vendor does hereby sell, assign, and transfer to the TSLAC, its successors and assigns, the entire right, title and interest in and to the copyright of the work and any registrations and copyright applications relating thereto, and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and all to rights corresponding to the foregoing. Vendor agrees to execute all papers and to perform such other property rights as the TSLAC may deem necessary to secure for TSLAC or its designee the rights herein assigned. Copyrightable material made by the Vendor for TSLAC shall be considered work-made-for-hire for TSLAC within the meaning of the copyright laws. Vendor shall assign all rights, title and interest in such copyrightable materials to TSLAC. Should this work product prove to be patentable, Vendor will assign all patent rights to TSLAC upon request. TSLAC shall have the right, at its discretion, to keep such work product as a trade secret.
- 28. Acceptance of Products and Services.** All products furnished and all services performed under this agreement shall be to the satisfaction of TSLAC and in accordance with the specifications, terms, and conditions of this contract. TSLAC reserves the right to inspect the products furnished or the services performed, and to determine the quality, acceptability, and fitness of such products or services.
- 29. Deceptive Trade Practices Act (DTPA).** Vendor represents and warrants that it has not been the subject of a Deceptive Trade Practices Act or any unfair business practice administrative hearing or court suit, and that Vendor has not been found to be guilty of such practices in such proceedings. Vendor certifies that it has no officers who have served as officers of

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other entities who have been the subject of a Deceptive Trade Practices Act or any unfair business administrative hearing or court suit, and that such officers have not been found to be guilty of such practices in such proceedings.

- 30. Immigration.** Vendor represents and warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this Contract.
- 31. Criminal Conviction Certification.** The Vendor certifies that neither Vendor or any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representatives of such subcontractors, to be assigned to the project hereunder, has been convicted of a felony criminal offense, or that if such a conviction has occurred or occurs during the term of this contract, the Vendor will immediately fully advise TSLAC as to the facts and circumstances.
- 32. Subcontracting.** It is contemplated by the parties hereto that the Vendor shall conduct the performances provided by this contract substantially with its own resources and through the services of its own staff. In the event the Vendor should determine that it is necessary or expedient to subcontract for any of the performances specified herein, the Vendor shall subcontract for such performances only after the Vendor has transmitted to TSLAC a true copy of the subcontract the Vendor proposes to execute with a subcontractor and has obtained TSLAC's written approval for subcontracting the subject performance in advance of executing a subcontract. The Vendor, in subcontracting for any products or performances specified herein, expressly understands and acknowledges that in entering into such subcontracting(s), TSLAC is in no manner liable to any subcontractor(s) of the Vendor. In no event shall this provision relieve the Vendor of the responsibility for ensuring that the finished products and/or services rendered under all subcontracts are rendered so as to comply with all terms of this contract.
- 33. Assignment.** The Vendor will not assign its rights under this contract or delegate the performance of its duties under this contract without prior written approval from TSLAC.
- 34. Accessibility.** TSLAC is required to follow Texas Administrative Code, Title 1, Part 10, Chapter 206, Accessibility and Usability of State Web Sites, Texas Administrative Code, Title 1, Part 10, Chapter 213, and the Federal Section 508, Accessibility Standards.
- 35. Ethics.** Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Chapter 2155.003 of the Texas Government Code. The Rule outlines the ethical standards required of public purchaser, employees, and vendors who interact with public purchasers in the conduct of state business. Specifically, a TSLAC employee may not have an interest in, or in any matter 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. Entities who are interested in seeking business opportunities with the state must be mindful of these restrictions when interacting with public purchasers of TSLAC or purchasers of other state agencies.
- 36. Convictions in connection with Hurricane Katrina, Hurricane Rita, and subsequent disasters.** Per Senate Bill 608, 80th Legislative Session, TSLAC will not accept bids, nor award contracts to persons convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Katrina, Hurricane Rita, and subsequent disasters.
- 37. Equal Opportunity.** Vendor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age and disability in the performance of bid awards.
- 38. Force Majeure.** Neither Vendor nor TSLAC shall be liable to the other for any delay in, or failure of performance, of any requirement included in any award resulting from a bid 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.
- 39. Termination.** Vendor shall have the right to terminate contracts awarded from this bid upon a material breach of its terms by TSLAC, which are not cured within thirty (30) days of written notice. If Vendor (a) terminates or suspends its business (b) becomes subject to any bankruptcy or insolvency proceeding under any Federal or State statute or (c) becomes or subject

**Appendix B**  
**Texas State Library and Archives Commission**  
**Terms and Conditions**

to direct control by a trustee, receiver, or similar authority, TSLAC may, in addition to its other legal rights and remedies, terminate this agreement on seven (7) days notice to Vendor. Upon such termination, Vendor will offer TSLAC a prorated refund or subscription fee.

- 40. Limitation on Authority; No Other Obligations.** Vendor shall have no authority to act for or on behalf of TSLAC or the State of Texas except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TSLAC.
- 41. Vendor Performance.** The TSLAC may monitor the performance of the Contract issued under this Bid. All services and goods under the Contract shall be performed at an acceptable quality level and in a manner consistent with acceptable industry standards, custom, and practice. The Vendor will receive a paper copy of this report, as well as an e-mailed copy. The TSLAC will provide a sample of the Vendor Performance Report upon request.
- 42. Change Management.** Vendor shall assign only qualified personnel to this Contract. Vendor, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required. Vendor shall provide to TSLAC prior written notice of any proposed change in key personnel involved in providing services under this Contract. Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of the Vendor. No subcontract under the Contract shall relieve the Vendor of responsibility for ensuring the requested services are provided. If Vendor uses a subcontractor for any or all of the work required, the following conditions shall apply: a) Vendors planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors. b) Subcontracting shall be solely at Vendor's expense. c) TSLAC retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors. d) Vendor shall be the sole contact for TSLAC. Vendor shall list a designated point of contact for all TSLAC inquiries.
- 43. Federal, State, and Local Requirements.** Vendor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Vendor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Vendor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Vendor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Vendor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Vendor's omission or breach of this Section.
- 44. Applicable Law & Conforming Amendments.** Vendor must comply with all laws, regulations, requirements and guidelines applicable to a Vendor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TSLAC reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TSLAC or Vendor's compliance with all applicable State and federal laws, and regulations.
- 45. No Liability Upon Termination.** If this Contract is terminated for any reason, TSLAC and the State of Texas shall not be liable to Vendor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Vendor may be entitled to the remedies provided in Government Code, Chapter 2260. Vendor or Vendor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing services under any PO resulting from this Bid. Vendor or Vendor's employees, representatives, agents and any subcontractors shall not be employees of TSLAC. Should Vendor subcontract any of the services required in this Bid, Vendor expressly understands and acknowledges that in entering into such subcontract(s), TSLAC is in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Bid.
- 46. Independent Vendor.** Vendor or Vendor's employees, representatives, agents, and any subcontractors shall serve as an independent contracting in providing services under any PO. Vendor or Vendor's employees, representatives, agents and any subcontractors shall not be employees of the TSLAC. Should Vendor subcontract any of the services required, Vendor expressly understands and acknowledges that in entering into such subcontract(s), the TSLAC is in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve the Vendor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with the specifications.
- 47. Buy Texas.** Vendor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.