



## PURCHASE ORDER

**PO Number:303-6-0699**

Requisition Number:303-6-01280

**Order Date: 5/2/2016**

**Ordered**

MAIL INVOICE TO AGENCY BELOW

TEXAS FACILITIES COMMISSION  
 FISCAL MANAGEMENT / ACCOUNTS PAYABLE  
 P.O. BOX 13047 Austin, Texas 78711-3047  
 OR  
 email to: [accountspayable@tfc.state.tx.us](mailto:accountspayable@tfc.state.tx.us)

**Delivery Location**

Central Services Bldg  
 1711 San Jacinto Blvd.  
 Austin, TX 78701

**Show numbers on all papers and packages**

**Referenced Source or Vendor**

33043043042008  
 TPASS - Comptroller of Public Accounts  
 Attn: Budget and Internal Accounting  
 PO Box 13186  
 Austin, TX 78711-3186  
 Phone:(512) 463-5355, Fax:  
[ctp@cpa.texas.gov](mailto:ctp@cpa.texas.gov)

**Description** CPA Texas Contract Management Certification Training for Tommy Oates, Keith Hall, Mark Diaz, Dorothy Spearman, Terri Rodgers, Dan Simms, Daniel Vickers, Robert Goodwin, Shawn Finley, Matt Groce, Jim Overton, Laura Hall, Rodney Trammell, and Jeff Hoffman.

Dates: March 29-April 1, 2016

Location: UT Commons Learning Center (J.J. Pickle Research Campus) in Austin, TX.

Sec. 771.003. AUTHORITY TO CONTRACT; EXCEPTIONS. (a) A state agency may agree or contract with another state agency for the provision of necessary and authorized services and resources.  
 Exempt Purchase TGC 771 Interagency Agreement.

TFC Contact: Sarah Evans, (512) 305-9269

**Line Items**

Description	Qty	Unit	Unit Price	Start Date	End Date	Total
CTCM TRAINING, MARCH 29-APRIL 1, 2016	8	Class	\$400.00	3/29/2016	4/1/2016	\$3,200.00
Attendees: Laura Hall, Terri Rodgers, Dan Simms, Robert						

The invoice should include, but is not limited to including:

- (1) the vendor's mailing and e-mail (if applicable) address;
- (2) the vendor's telephone number;
- (3) the name and telephone number of a person designated by the vendor to answer questions regarding the invoice;
- (4) the state agency requisition number;
- (5) the state agency's name, agency number, and delivery address;
- (6) the commission's purchase order number, if applicable;
- (7) the contract number or other reference number if applicable;
- (8) a valid Texas Identification Number (TIN) issued by the Comptroller of Public Accounts;
- (9) a description of the goods or services, in sufficient detail to identify the order which relates to the invoice;
- (10) unit numbers corresponding to the original order; and
- (11) other relevant information supporting and explaining the payment requested or identifying a successor organization to an original vendor, if necessary.

**FOB DESTINATION CASH DISCOUNT: 0% 0 DAYS.**

**TEXAS FACILITIES COMMISSION INTERNAL PURCHASING**

PURCHASER: 

Evans, Sarah, 5123059268

**(IN ACCORDANCE WITH YOUR BID, SUPPLIES MUST BE PLACED IN THE AGENCY RECEIVING ROOM IN DAYS FROM RECEIPT OF ORDER.)**

STATE AND CITY SALES TAX EXEMPTION CERTIFICATE: The undersigned claims an exemption from taxes under Chapter 20, Title 122A, Revised Civil Statutes of Texas, for purchase of tangible personal property described in this number order, purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas

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**TERMS AND CONDITIONS: ITEMS BELOW APPLY TO AND BECOME A PART OF BID. ANY EXCEPTIONS THERETO MUST BE IN WRITING**

#### **I. INTRODUCTION.**

**1.1. GENERAL.** These Terms and Conditions shall apply for goods and services including without limitation any Invitation for Bid, Request for Offer, Request for Qualifications, and Request for Proposal (hereinafter referred to collectively as "solicitations") offered by the Texas Facilities Commission (hereinafter referred to as "TFC") and any purchase order issued by TFC (hereinafter referred to as "Purchase Order"). The term "Respondent" shall mean any party who responds to a solicitation for goods and services offered by TFC. The term "Vendor" shall mean the party listed as vendor on the purchase order.

**1.2. STATUTORY AUTHORITY.** This procurement falls under the statutory authority of the Texas Government Code Chapter 2151, commonly known as the "Purchasing Act," Chapter 2155, General Rules and Procedures, Chapter 2157, Purchasing Methods, and Chapter 2161, Historically Underutilized Businesses. The purchasing procedures include statutory requirements and those requirements established by rule of the Texas Comptroller of Public Accounts (hereinafter referred to as "CPA"), Texas Procurement and Support Services Division (hereinafter referred to as "TPASS") as contained in Title 34 Texas Administrative Code, Part 1, Chapter 20, Subchapter C, Section 20.31 and other applicable federal and state statutes and rules cited herein.

**1.3 COST OF SUBMITTING RESPONSE.** TFC will not reimburse Respondent for any cost related to its response. Respondent is responsible for any expense related to the preparation and submission of its response.

#### **II. GENERAL INSTRUCTIONS.**

**2.1 SOLICITATION REQUIREMENTS.** Respondent shall comply with the following requirements when responding to a solicitation for goods and/or services offered by TFC.

- (a) Respondent must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
- (b) Respondent shall submit the number of copies required in the manner stated in the specification or in the solicitation.
- (c) Response shall be submitted on the indicated form or in the indicated format. Response must be time stamped in TFC's Mail Room or hand delivered to the address on the solicitation before the hour and date specified for the solicitation opening unless specified otherwise. Late responses will not be considered under any circumstances once the opening has begun.
- (d) Failure to sign the solicitation will disqualify the bid. The person signing the response must have the authorization to contractually bind Respondent.

**2.5 DELIVERY.** No substitutions or cancellations will be permitted without written approval from TFC.

(a) If delay is foreseen, Vendor shall give written notice to TFC. Vendor must keep TFC advised at all times of the status of an order. Default in promised delivery, without accepted reasons, or failure to meet specifications authorizes TFC to purchase supplies elsewhere and charge the full increase, if any, in cost and handling to Vendor.

(b) Delivery shall be made between 8:00 am and 4:00 pm Monday through Friday except on regularly observed State or federal holidays, unless prior approval has been obtained from TFC.

(c) Receipt of goods or services does not constitute acceptance.

(d) Goods and materials shall be properly packaged. Damaged goods and materials will not be accepted. If the damage is not readily apparent at the time of delivery, the goods shall be returned to the vendor at no cost to TFC. TFC reserves the right to inspect goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery.

**2.6 INSPECTIONS AND TESTS.** All goods will be subject to inspection and test by TFC. Authorized TFC 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 Vendor 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 TFC's option, be returned to Vendor or held for disposition at vendor's expense. Latent defects may result in revocation of acceptance.

**2.7 VENDOR PERFORMANCE.** (a) TFC is required to report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the agency or any other purchase made through TFC's delegated authority or a purchase made pursuant to the authority in Texas Government Code, Title 10, Subtitle D or a purchase exempt from CPA/TPASS procurement rules and procedures.

(b) Respondent's past performance will be measured based upon a classification given by the CPA rating a vendor on an A through F scale, with A being the highest grade. TFC is required to review the rating in the CPA's performance tracking system to determine whether to award a contract to a Respondent.

(c) Vendor performance information is located on the CPA website at: <A href="http://www.window.state.tx.us/procurement/prog/vendor\_performance/">http://www.window.state.tx.us/procurement/prog/vendor\_performance/</A>.

(d) TFC may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System, as authorized by Title 34, Part 1, Chapter 20, Subchapter C, Section 20.108 of the Texas Administrative Code, TFC may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports and non-renewal of contracts. Any such investigations shall be at the sole discretion of TFC, and any negative findings, as determined by TFC, may result in non-award to the Respondent.

**2.8 AWARD OF PURCHASE ORDER.** A response to this solicitation is an offer to contract based upon the terms, conditions, and specifications contained herein. Responses do not become a purchase order until they are accepted by the TFC Procurement Division through issuance of a purchase order number. The Purchase Order shall be governed, construed, and interpreted under the laws of the State of Texas. The factors listed in Texas Government Code, Title 10, Subtitle D, Section 2156.007 shall also be considered in making an award.

**2.9 IRREVOCABILITY OF A RESPONSE.** The response is irrevocable for thirty (30) days from opening if the response is an invitation for bid and ninety (90) days for all other solicitations. This period may be extended at TFC's request with the Respondent's written agreement.

**2.10 ORDER OF PRECEDENCE.** In the event of any conflict or contradiction between or among solicitation documents, the Notice of Award, as modified by any amendments, shall control over the solicitation and the response. The solicitation, as modified by any addenda, shall control over the response.

**2.11 PURCHASE ORDER DOCUMENTATION.** The Purchase Order will consist of the Notice of Award, the solicitation package, all attachments and the mandatory Price Sheet, together with any modifications made through addenda thereto, and the successful response, together with any clarifications thereto that are submitted at the request of TFC. No terms or conditions that are included in any response or submitted by Respondent that differ from or are contrary to the terms and conditions of TFC's solicitation documents constitute part of the Purchase Order unless specifically incorporated by TFC in writing signed by TFC.

### III. RESPONDENT AFFIRMATIONS.

**3.1 FALSE STATEMENTS.** Respondent represents and warrants that all statements and information prepared and submitted in response to the solicitation are current, complete, true, and accurate. Signing the solicitation with a false statement is a material breach of this Purchase Order and shall void the submitted response or any resulting Purchase Orders, and may result in removal of the Respondent from the Centralized Master Bidders List.

**3.2 CONFORMANCE.** Respondent represents and warrants that all goods and services furnished shall conform in all respects to the terms of this Purchase Order, including any drawings, specifications or standards incorporated herein, and any defect in materials, workmanship and free from such defects in

will perform no work in connection with this Purchase Order during the twelve (12) month period immediately following the employee's last date of employment at TFC.

#### **IV. PAYMENT.**

**4.1 PAYMENT.** Payment for goods and services purchased with state-appropriated funds is made by warrants or by direct deposit from the State Treasury. No penalty for late payment will be incurred by TFC if payment is made in thirty (30) days or less from receipt of goods, services or a correct invoice, whichever is later. Payment under this Purchase Order are subject to the availability of appropriated funds. Payment will be made in accordance with Chapter 2251 of the Texas Government Code.

(b) If, at any time during the term of this Purchase Order, Vendor reduces the comparable price of any article or service covered by the Purchase Order to customers other than TFC, the prices charged to TFC for such articles or services shall also be reduced proportionately. Such reduction shall be effective at the same time and in the same manner as the reduction in price to customers other than TFC. In addition to invoicing at the reduced prices, Vendor shall furnish promptly to TFC complete information regarding the reduction.

**4.2 PAYMENTS TO VENDOR FOR GOODS.** To facilitate payments for goods provided by Vendor to TFC, Vendor's invoice shall include, but not be limited to, the following:

- (i) the Vendor's mailing and e-mail address, if applicable;
- (ii) the Vendor's telephone number;
- (iii) the name and telephone number of a person designated by the vendor to answer questions regarding the invoice;
- (iv) the TFC Purchase Order;
- (v) TFC's name, and delivery address;
- (vi) the TFC requisition number, if applicable;
- (vii) the TFC contract number or other reference number, if applicable;
- (viii) a valid Texas Identification Number (TIN) issued by the CPA;
- (ix) a description of the goods or services, in sufficient detail to identify the order which relates to the invoice;
- (x) unit numbers corresponding to the original order; and
- (xi) other relevant information supporting and explaining the payment requested or identifying a successor organization to an original vendor, if necessary.

**4.3 PAYMENTS TO VENDOR FOR SERVICES.** (a) Payments for services provided by Vendor will be made on a monthly basis and within thirty (30) days from receipt of a correct invoice or billing statement in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by TFC. Vendor will be paid for completion of work accepted and approved by TFC. For large projects, partial payment may be allowed once per month on completed work with acceptance and approval of TFC.

(b) Vendor shall invoice TFC for services performed by vendor identification number, building, if applicable, and purchase order number. Invoices must include the purchase order number, the number of employees that worked on the job and the number of hours. Additionally, invoices for any materials purchased for each project must be provided. Address for submission is: Texas Facilities Commission, Accounts Payable, P.O. Box 13047, Austin, Texas 78711-3047 or by e-mail to <A href="mailto:accountspayable@tfc.state.tx.us">accountspayable@tfc.state.tx.us</A>.

**4.4 STATE FUNDING.** (a) This Purchase Order shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of Tex. Const. art. III, § 49. In compliance with Tex. Const. art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Purchase Order may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

(b) Furthermore, any damages due under this Purchase Order should not exceed the amount of funds appropriated for payment under this Purchase Order, but not yet paid to Vendor, for the fiscal year budget in existence at the time of the breach; provided, however, the foregoing shall not be construed as a waiver of sovereign immunity.

**4.5 TRAVEL.** Any travel or per diem required by Vendor to perform its obligations under the Purchase Order will be at Vendor's expense. All travel and per diem that TFC requests in addition to what the Purchase Order requires Vendor to provide at the Vendor's expense will be paid at rates not to exceed State of Texas travel laws, rules and regulations. Vendor must obtain prior written approval by TFC prior to incurring travel expenses.

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 TFC, and at no fault to TFC, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Contract.

(c) For persons not eligible for E-Verify screening, Contractor (including sub-contractors) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

## **VII. RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE.**

### **7.1 SUPPORTING DOCUMENTS, RETENTION; RIGHT TO AUDIT; INDEPENDENT AUDITS.**

(a) Vendor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Purchase Order 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 Purchase Order and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Vendor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Purchase Order. Vendor and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Vendor must retain all work and other supporting documents pertaining to this Purchase Order, for purposes of inspecting, monitoring, auditing, or evaluating by TFC and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

(b) Vendor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. The acceptance of funds by Vendor or any other entity or person directly under this Purchase Order, or indirectly through a subcontractor under this Purchase Order, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Vendor acknowledges and understands that the acceptance of funds under this Purchase Order shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Vendor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractor through Vendor and the requirement to cooperate is included in any subcontractor it awards. Furthermore, 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.

**7.2 CONFIDENTIALITY.** Vendor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Vendor to the extent that such information is:

- (a) confidential by law;
- (b) marked or designated "confidential" (or words to that effect) by TFC; or
- (c) information that Vendor is otherwise required to keep confidential by this Purchase Order.

**7.3 PUBLIC RECORDS.** Notwithstanding any provisions of this Purchase Order to the contrary, Vendor understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, Vendor will cooperate with TFC in the production of documents responsive to the request. Vendor agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. Vendor may request that TFC seek an opinion from the Office of the Texas Attorney General. However, the final decision whether to seek a ruling from the Office of the Texas Attorney General will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, Vendor will notify TFC's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Purchase Order and/or any amendment to this Purchase Order. This Purchase Order and/or any amendment to this Purchase Order and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. Vendor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Purchase Order, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, Vendor is required to make any information created or exchanged with the State pursuant to this Purchase Order, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

**7.4 PUBLIC DISCLOSURE.** No public disclosures or news releases pertaining to this Purchase Order shall be made without prior written approval of TFC.

## **VIII. BONDS AND INSURANCE.**

**8.1 BONDS.** (a) Prior to commencement of construction work, if applicable under the solicitation, Vendor is required to tender payment and performance bonds to TFC, as required by Texas Government Code, Chapter 2253, when the following circumstances apply:

- (i) A performance bond is required if the Purchase Order amount is in excess of \$100,000.00. The performance bond is solely for the protection of TFC. The performance bond is to be for the sum of the Delivery Release to guarantee the faithful performance of the work in accordance with the Purchase Order. The performance bond shall be effective through Contractor's warranty period.

- (d) For renovation projects or projects that involve portions of work contained within an existing structure, the policy must also include Existing Property coverage in an amount equivalent to the Total Purchase Order Sum. For purposes herein, "Existing Property" means existing buildings or structures as well as, all personal property contained therein. "Existing Property" does not include personal property owned or operated by Vendor or any subcontractors.
- (e) For TFC furnished equipment or materials that will be in care, custody or control of Vendor, Vendor shall be responsible for any and all damages and losses thereto.
- (f) The policy must be written jointly in the names of TFC and Vendor. Subcontractors must be named as additional insureds. The policy shall have endorsements as follows:
  - (i) this insurance shall be specific as to coverage and not contributing insurance with any insurance or self-insurance carried by TFC, if any;
  - (ii) this insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion; and
  - (iii) loss, if any, shall be adjusted with and made payable to TFC as trustee for the insureds as their interests may appear. TFC shall be named as loss payee.
- (g) Valuation of any loss for the renovation and any existing property (exclusive of building and existing structures) shall be at replacement cost.
- (h) Policy shall remain in effect until Substantial Completion is achieved as to all phases of the Project.

**8.3 GENERAL REQUIREMENTS FOR INSURANCE.** (a) Vendor shall be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention shall be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with the date of this Purchase Order and the certificate of insurance shall state that the coverage is claims made and the retroactive date.

- (b) Vendor shall maintain coverage for the duration of this Purchase Order. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Purchase Order. Vendor shall, on at least an annual basis, provide TFC with an insurance certificate as evidence of such insurance. The premium for this extended reporting period shall be paid by Vendor.
- (c) Vendor shall not commence work under this Purchase Order until they have obtained the required insurance and until such insurance has been reviewed by TFC. Vendor shall not allow any subcontractors to commence work until the required insurance has been obtained and approved. Approval of insurance by TFC shall not relieve or decrease the liability of Vendor hereunder.
- (d) Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A.M. Best rating of A- or better.
- (e) TFC shall be an additional insured as its interests may apply on the Commercial General Liability and Business Automobile Liability Policies.
- (f) Vendor shall produce endorsements upon TFC's request to each affected policy:
  - (i) Naming TFC, P.O. Box 13047, Austin, Texas 78711 as additional insured (except Workers' Compensation and employers' Liability);
  - (ii) That obligates the insurance company to notify the TFC Purchase Order Administrator, TFC, P.O. Box 13047, Austin, Texas 78711, of any non-renewal, cancellations or material changes at least thirty (30) days prior to change or cancellation; and,
  - (iii) That the "other" insurance clause shall not apply to the State where TFC is an additional insured shown on the policy. It is intended that policies required in this Purchase Order, covering both TFC and Vendor, shall be considered primary coverage as applicable.
- (g) TFC shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.
- (h) Vendor shall not cause any insurance required under this Purchase Order to cancel nor permit any insurance to lapse during the term of this Purchase Order.
- (i) TFC reserves the right to review the insurance requirements of this section during the effective period of the Purchase Order and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions or the claims history of the industry as well as Vendor (such adjustments shall be commercially available to Vendor).
- (j) Vendor shall provide TFC thirty (30) days written notice of erosion of the aggregate limit.
- (k) Actual losses not covered by insurance as required by this Purchase Order shall be paid by Vendor.

**X. ASSIGNMENT AND SUBCONTRACTING.**

**10.1 ASSIGNMENT.** Vendor shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Purchase Order without the prior written consent of TFC.

**10.2 SUBCONTRACTING.** It is mutually understood and agreed that Vendor may subcontract with others for some or all of the services to be performed. Subcontractors providing service under this Purchase Order shall meet the same requirements and level of experience as required of the Vendor. No subcontract under the Purchase Order shall relieve Vendor of responsibility for the service. If Vendor uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances.

(i) Vendors planning to subcontract Order all or a portion of the work to be performed under this Purchase Order shall identify the proposed subcontractor on the HUB Subcontracting Plan, as further described in Section 10.3 below.

(ii) Subcontracting shall be at the Vendor's expense.

(iii) TFC retains the right to check any subcontractor's background and make the determination to approve or reject the use of subcontractor.

(iv) Vendor shall be the only contact for TFC and subcontractor. Vendor shall list a designated point of contact for all TFC and subcontractor inquiries.

**10.3 HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS).** In accordance with State law, it is TFC's policy to assist HUBs, whether minority or women owned, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it does business for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling Vendor's obligations with TFC. If Vendor subcontracts with others for some or all of the services to be performed under this Purchase Order, Vendor shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 as described in the HUB Subcontracting Plan. In addition to information required by Section 10.2 above, Vendor shall provide TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on a HSP Progress Assessment Report (hereinafter referred to as "PAR"), attached hereto and incorporated herein for all purposes. PARs shall be submitted monthly with each invoice and are a condition of payment.

**10.4 PAYMENT OF SUBCONTRACTORS.** As provided by Section 2251.022 of the Texas Government Code, Vendor shall pay a subcontractor its appropriate share of a payment received by TFC not later than the tenth (10th) day after the date Vendor received payment.

**XI. WARRANTIES.**

**11.1 PERFORMANCE WARRANTY.** All work performed under this Purchase Order shall be in accordance with applicable terms and conditions of this Purchase Order and of local codes and ordinances and any other authority having lawful jurisdiction. Vendor shall guarantee all work included in the Purchase Order against any defects in workmanship and shall satisfactorily correct, at no cost to TFC, any such defect that may become apparent within a period of one (1) year after completion of work. The warranty period shall commence upon the date of acceptance by TFC.

**11.2. MATERIAL WARRANTY.** All material furnished under this Purchase Order is guaranteed by Vendor to be in compliance with this Purchase Order, fit and sufficient for the purpose intended, new and free from defects. Materials furnished under this Purchase Order shall be the latest improved product in current production, as offered to commercial trade, and shall be of quality material. Used, shopworn, demonstrator, prototype, reconditioned, or discontinued products or material are not acceptable. The warranty period for Vendor-provided materials shall be for a period of one (1) year after completion of the installation or within the manufacturer's warranty, whichever is longer. The warranty period shall commence upon date of acceptance by TFC.

**11.3 NO LITIGATION WARRANTY.** Vendor represents and warrants that it is not a party to or otherwise substantively involved in any matter involving litigation, or any administrative or regulatory proceeding, which, if decided adversely to Vendor's interests, could be reasonably expected to adversely affect Vendor's ability to fully and timely perform all of its obligations under this Purchase Order. Vendor agrees that in the event any action, event or circumstance occurs, that could be reasonably expected to adversely affect Vendor's ability to fully and timely perform all of its obligations under this Purchase Order, Vendor shall provide written notice to TFC of such action, event or circumstance, and shall continue to update TFC in writing every thirty (30) days thereafter of the status of the action, event or circumstance, until otherwise directed by TFC.

**11.4 WARRANTY ON SAFETY AND HEALTH REQUIREMENTS.** Vendor shall procure, at Vendor's expense, all necessary and required licenses and permits necessary for the performance of this Purchase Order. Vendor represents and warrants that the services provided under this Purchase Order comply with all applicable federal health and safety standards, including but not limited to, OSHA, and all Texas health and safety standards.

**XII. MISCELLANEOUS PROVISIONS.**

**12.1 NOTICES.** Any notice required or permitted to be delivered under this Purchase Order shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to Vendor at the address provided on the response and to TFC at the address set forth below:

- (iii) participation in any group insurance plans available to employees of the State of Texas;
- (iv) participation or contributions by the State of Texas to the State Employees Retirement System;
- (v) accumulation of vacation leave or sick leave; or
- (vi) unemployment compensation coverage provided by the State.

**12.11 NAME AND ORGANIZATIONAL CHANGES.** (a) Vendor must provide TFC with written notification of all name changes and organizational changes relating to Vendor including, but not limited to, merger, acquisition or sale no later than ten (10) business days of such change. Vendor, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Purchase Order. If the change entails personnel changes for personnel performing the responsibilities of the Purchase Order for Vendor, Vendor shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Purchase Order and Vendor shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Vendor or successor entity, as applicable, to maintain its status as a party to this Purchase Order.

(b) TFC may terminate the Purchase Order due to any change to Vendor that materially alters Vendor's ability to perform under the Purchase Order.

**12.12 FORCE MAJEURE.** Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Purchase Order, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure", including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents, breakdowns, or floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, TFC may terminate this Purchase Order immediately upon written notification to Vendor.

**12.13 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS.** (a) Effective September 1, 2006, all state agencies and institutions of higher education shall procure products which comply with the State of Texas accessibility requirements for electronic and information resources specified in Title 1 of the Texas Administrative Code, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(b) If applicable, Vendor shall provide the Texas Department of Information Resources ("DIR") with the universal resource locator ("URL") to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<A href="http://www.buyaccessible.gov">http://www.buyaccessible.gov</A>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <A href="http://www.section508.gov">http://www.section508.gov</A>.

**12.14 BUY TEXAS.** If Vendor is authorized to make purchases under this Purchase Order, Vendor certifies that Vendor will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code Ch. 2155.

**12.15 PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS.** 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 or 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 Purchase Order, 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 TFC of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Vendor without TFC's 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 limited to, attorneys' fees and court costs, arising from any such claim. Vendor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsels, if required to avoid conflicts of interest. Vendor represents that it has determined what licenses, patents and permits are required under this Purchase Order and has acquired all such licenses, patents and permits.

**12.16 EQUAL OPPORTUNITY.** Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Vendor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this non-discrimination article. Vendor shall include the above provisions in all subcontractors pertaining to the work.