

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



Type of Solicitation:
INVITATION FOR BID

Name of Solicitation:
Site Preparation – Nederland, Texas

Solicitation Number:
582-21-24336

Class 914, Item 84

Deadline for Submission of Questions: June 20, 2021, 2:00 pm (CST)

Responses Due: June 27, 2021, 2:00 pm (CST)

Description:

TCEQ is soliciting for site pad and electrical installation in Nederland, Texas. The installation will be completed two weeks from written approval-to-commence by the TCEQ Project Manager.

PURCHASING AUTHORITY:

- Competitive Sealed Proposals (RFP) Gov't Code 2156, Subchapter C
- Scientific & Technical Environmental Services (RFP) Section 5.2291 (b) Texas Water Code, Chapter 2254 Gov. Code, Subchapter A
- Purchase of Automated Information Systems (RFO) Gov't Code 2157
- Professional and Consulting Services (RFQ) Gov't Code 2254
- Authority to Award Grants (RFGA) Texas Water Code, Chapter 5, Section 5.124
- Biddable Goods and Services (IFB) Gov't Code 2155

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TCEQ Procurements and Contracts Representative

Name: Cheril Mohler

Telephone: 512-239-0432

Email: Cheril.Mohler@tceq.texas.gov

Due to the current pandemic, ONLY electronic for faxed responses will be accepted.

Electronic Submission:

Responses may be submitted electronically to TCEQebid@tceq.texas.gov

To confirm receipt of all electronic submissions, contact Cheril Mohler at 512-239-0432.

FAX submission:

1-512-239-0823.

RESPONDER GENERAL INSTRUCTIONS

Questions Regarding the Solicitation

Deliver questions in writing by the due date on the Cover Page to the TCEQ Procurements and Contracts Representative by e-mail. It is preferred to receive questions by e-mail to document proof of delivery date and time. Please title mail containing questions with Solicitation Name, Solicitation Number and the Due Date for Responses. TCEQ has sole discretion as to whether to respond to questions.

Addenda

Any changes to the Solicitation, deadline dates, and all responses to questions will be posted as addenda on the ESBD. All addenda are part of the Solicitation. No other explanations, interpretations, or changes will be considered official or binding. It is Responder's responsibility to ensure review all of the addenda.

Changes to the Terms and Conditions

Exceptions that are not advantageous to TCEQ may result in the deduction of points in the evaluation or disqualification of the Response.

Cost of Preparing the Response

The Responder is responsible for all costs incurred in the preparation and submission of a Response.

Quantity and Nature of the Work

Responders are required to inform themselves of all conditions which may affect the performance or the prices. By submitting a Response, Responder expressly waives any claims that there was a misunderstanding concerning the quantities or the nature of the Work.

Submission of Responses

Responses become TCEQ records and cannot be returned. Responses should be in the format of one (1) electronic version with only one (1) PDF document; or (1) fax copy submission.

Prepare the Response per the selected submission format and as follows:

- Include all information listed on the Response Contents Page;
- Obtain any missing applicable forms from TCEQ with sufficient time to complete and submit them in the Response;
- Complete the applicable forms in this Solicitation;
- Create any other applicable documents;
- Insert all the applicable documents behind the specified tabbed sections; and
- Sign the Response on the Responder's Signature and Information page. Unsigned Responses will not be considered.

Delivery to TCEQ

Submit the Response by the due date on the Cover Page as follows. Do not submit Responses by any other method.

Submission in Electronic Format:

- **Electronic Mail (e-mail)**

The e-mail subject line must contain the solicitation number, company name, and the due date and time. The respondent is solely responsible for ensuring the complete electronic submission is sent to, and actually received by, TCEQ before the due date and time stated on the solicitation document.

- **Fax**

The telephone number for FAX submission of solicitations is 1-512-239-0823. This is the only number that will be used for the receipt of responses. The State shall not be responsible for failure of electronic equipment or operator error. Late, illegible, incomplete, or otherwise non-responsive responses will not be considered.

ANY DOCUMENTS WITH SIGNATURES SHALL BE SUBMITTED AS AN ADOBE PORTABLE DOCUMENT FORMAT (PDF) FILE. TCEQ IS NOT RESPONSIBLE FOR DOCUMENTS THAT CANNOT BE READ. UNREADABLE PROPOSALS MAY BE, AT TCEQ'S DISCRETION, REJECTED AS NON-RESPONSIVE.

Due Date/Late Responses

It is Responder's responsibility to ensure timely delivery of the Response to TCEQ by the date and time on the Cover Page. Late responses will not be considered under any circumstances. TCEQ will not be responsible for failure of service on the part of the U.S. Postal Service, courier companies, or any other form of delivery service chosen by the Responder. Responses cannot be altered, amended or withdrawn after the Due Date and Time.

TCEQ's Acceptance of Responses

TCEQ may reject Responses that do not comply with requirements in the Solicitation and state and federal laws. TCEQ may accept or reject all or any part of any response, waive procedures for submitting Responses, waive formalities and/or minor technicalities, and award by item or groups of items, whichever best serves the interests of TCEQ. TCEQ may

also cancel this procurement and withdraw this Solicitation at any time before a contract is signed by TCEQ. TCEQ shall be the sole judge of the best interests of TCEQ. TCEQ may award one or more contracts for all or part of the Work.

Certification of Interested Parties

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295) to the state agency at the time the business entity submits the signed contract to the state agency.

The Texas Ethics Commission has provided a list of Frequently Asked Questions and the certification form on their web site at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm for your review.

If you are a selected vendor for a contract that meets the requirements for Certification of Interested Parties, you will be given instructions on how to obtain this certification form at the time of award.

Evaluation

The pricing and all terms and conditions of Responses are fixed for 120 days from receipt by TCEQ. Best and Final Offers (BAFOs), if requested by TCEQ, are fixed for 60 days.

Protest Procedures

An actual or prospective Responder or Contractor who is aggrieved in connection with the Solicitation, evaluation, or award of a contract by TCEQ may formally protest to the TCEQ Manager of Procurements and Contracts. TCEQ Protest Procedures can be found at [30 Texas Administrative Code Part 1, Chapter 11, Subchapter B, § 11.2](#).

Public Information

The Response is a public record. By signing and submitting a response, Responder hereby acknowledges:

- That the Response and subsequent documents submitted to TCEQ are subject to the Texas Public Information Act (PIA);
- That it is Responder's obligation to specifically identify information it contends to be confidential or proprietary and accepts that TCEQ may in its sole discretions deem a Response as non-compliant; and
- That Responder grants a royalty-free, non-revocable, world-wide, perpetual license to reproduce, any copyrighted portions of the Response and subsequent documents to comply with LBB reporting requirements, PIA disclosures, or any other reporting requirements mandated by law or statute.

Conflict of Interest

Disclose apparent, potential or actual conflicts of interest known with the Response in **Tab 5**. Responder has a continuing obligation to disclose conflicts of interest during this Solicitation, and if awarded, during the Contract Period. TCEQ may refuse to contract with Responder or terminate any Contract due to an apparent, potential, or actual conflict of interest.

Scope of Work

SCOPE OF WORK

I. INTRODUCTION

The TCEQ installing an air monitoring station in the Nederland, Texas area. Monitoring at this site is part of a state initiative to assess area ambient air quality.

II. DESCRIPTION OF WORK

TCEQ is soliciting for site pad and electrical installation at 1516 17th Street, Nederland, Texas 77627. The installation must be completed within two weeks of written approval-to-commence by the TCEQ Project Manager.

III. SPECIFICATIONS AND STANDARDS FOR PERFORMANCE TRACKING

Upon the award of this solicitation, the Contractor and TCEQ Project Manager will meet for a preconstruction meeting to review specifications and expectations. Attachment D, Site Specifications Inspection & Construction Checklist will be discussed and completed for mutual understanding before work can commence. After the completion of the preconstruction meeting, mutual agreement of specifications, and completions of Attachment D, Site Specifications Inspection & Construction Checklist, the TCEQ Project Manager will provide written approval-to-commence giving notice that the Contractor may proceed with the work.

IV. DELIVERABLES

The project consists of the following components:

- A. The Site Pad shall be installed in accordance with the specifications in Attachments A and B.
- B. The Electrical shall be installed in accordance with the specifications in Attachments A and C.

V. TIME LINE

Below is a table outlining the time line for the above deliverables.

DELIVERABLE	EXPECTED DURATION OF WORK
SITE PAD INSTALLATION	ONE WEEK
ELECTRICAL INSTALLATION	ONE WEEK
TOTAL PROJECT:	TWO WEEKS

The timeline stated above is enforced unless there are time delays due to inclement weather. If there is a time delay, the Contractor must contact the TCEQ Project Manager in writing with projected continuation or completion dates.

After project completion, the TCEQ Project Manager or a designee will conduct a site inspection. If there are deviations from the prescribed specification, the Contractor will have one additional week to correct the deviations.

VI. QUALITY ASSURANCE AND ACCEPTANCE PROCEDURES

Before the Contractor can invoice TCEQ for the project, the Contractor must obtain written acceptance and approval from the TCEQ Project Manager.

To obtain TCEQ Project Manager approval, the Contractor must notify the TCEQ Project Manager of the completion of the project in writing. The TCEQ Project Manager will perform a site inspection. The TCEQ Project Manager will verify that the project is completed per specifications. If any deviations from the prescribed specifications are identified, the Contractor must correct the deficiency within one week of the site inspection. Any items not meeting the specifications will not be accepted or approved for payment.

SPECIAL TERMS AND CONDITIONS

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If the Contract exceeds \$25,000, the Contractor will execute a payment bond to the TCEQ before beginning the work.

1. The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material.
2. The payment bond must be in the amount of the contract.
3. The payment bond must be executed by a corporate surety in accordance with Texas law.
4. The payment bond must be payable to the state, and its form must be approved by the attorney general.
5. The payment bond must clearly and prominently display on the bond or on an attachment to the bond:
 - a. the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or
 - b. the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

The following terms shall have the meanings ascribed below when used in this document:

- 1.1 “Conforming” and “Conformity” and similar words refer to the condition or status of a good, service, property or the Work as meeting and being compliant with the requirements of the Contract.
- 1.2 “Fiscal Year” means the period of time that begins on September 1 and ends on August 31. The fiscal year is designated by the calendar year in which it ends; for example, Fiscal Year (FY) 2016 begins on September 1, 2015 and ends on August 31, 2016.
- 1.3 Whenever used in this contract, “include,” and similar words are intended to mean include but not limited to; they are not intended to be exhaustive.
- 1.4 “Nonconforming” or “Nonconformity” means a failure of a good, service, property or the Work to conform to this Contract, and includes a defect in a good, service, property or the Work.
- 1.5 “Work” means the services, goods and property the Contractor is required to provide in this Contract. The term includes the entire completed undertaking and the various separately identifiable parts. The term also includes all duties of the Contractor.

2. ORDER OF PRECEDENCE

The entire Contract between TCEQ and Contractor consists of the documents identified in the Contract Documents List. The Contract Documents are intended to be interpreted in harmony with each other. Any inconsistency in the solicitation or the Contract shall be resolved by giving precedence in the following order:

- a. Contract Signature Page
- b. Federal Conditions and Forms
- c. Special Terms and Conditions
- d. Procedures for Work Orders
- e. Scope of Work
- f. Price Form (completed)
- g. Insurance Section
- h. General Terms and Conditions
- i. HUB Subcontracting Plan and HUB Progress Assessment Forms
- j. Work Orders and Notices to Proceed (incorporated by reference)
- k. Work Plans and other Work Order-related documents created during the Contract (incorporated by reference)
- l. TCEQ Solicitation (incorporated by reference)
- m. Other documents, exhibits, and attachments listed in the Contract Documents List.

3. CONTRACT AMENDMENTS

This Contract may only be modified by a written amendment. Amendments take effect when signed by the Contractor and TCEQ, except for unilateral amendments specifically allowed by this Contract.

4. TERM AND AMOUNT OF CONTRACT

- 4.1 *Contract Period.* The Contract Period begins on the later of: 1) the Effective Date on the Contract signature page, or 2) the latest date of the parties' signatures shown on the Contract signature page. The Contract Period ends on the Expiration Date on the signature page.
- 4.2 *Renewals and Extensions.* This Contract may be renewed up to three one-year periods by amendment. TCEQ, by unilateral amendment, may extend the Contract for 180 days beyond any expiration of the Contract Period. In a renewal or extension, TCEQ may increase the Maximum TCEQ Obligation by an amount up to the original Maximum TCEQ Obligation.
- 4.3 *Maximum TCEQ Obligation.* The Maximum TCEQ Obligation is the greatest amount TCEQ may pay for the Work. There is no guaranteed minimum expenditure by TCEQ.
- 4.4 *Service Adjustment/Contingency Requirement (SACR).* TCEQ may in its sole discretion make allowances for unforeseen circumstances or contingency requirements. TCEQ may increase the current Maximum TCEQ Obligation by an amount not to exceed 200% of the original Maximum TCEQ Obligation at the time the Contract was signed.

5. PRICES AND REIMBURSEMENT

- 5.1 *Prices.* Prices are firm, fixed, and fully-loaded.
- 5.2 *Cost Reimbursement.* Reimbursement is limited to direct costs for items specifically identified on the Price Form or in the Scope of Work and approved by the TCEQ Project Manager before the cost is incurred. Reimbursement requests must be itemized and documented in a format acceptable to TCEQ.
- 5.3 *Records.* Contractor must maintain records supporting its costs in accordance with generally accepted accounting principles.
- 5.4 *Reimbursement for Travel.* Travel reimbursement is limited to actual costs, and shall not exceed the maximum allowed for State employees by the Texas Comptroller of Public Accounts.

6. QUALITY AND ACCEPTANCE

- 6.1 *Quality Standard.* All Work must be complete and satisfactory to the TCEQ. All materials and equipment shall be handled in accordance with instructions of the supplier, except as otherwise provided in the Contract.
- 6.2 *Acceptance.* TCEQ relies on Contractor to inspect and test the Work to ensure that it conforms to the Contract requirements. TCEQ relies on the Contractor's greater expertise in the field of the Work. Any act by TCEQ indicating acceptance, whether express or implied, shall not be deemed to mean that TCEQ has tested or inspected the Work, but rather that TCEQ has accepted the Work in reliance on Contractor's greater expertise and Contractor's representation that the Work conforms to all Contract requirements. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of nonconforming Work or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
- payment;
 - use of the Work or any part of the Work by TCEQ;
 - review or approval of a submittal;
 - inspection or testing by TCEQ; or

- correction of defective Work by TCEQ.

- 6.3 *Quality Assurance.* All Work that involves the acquisition of environmental data shall be performed in accordance with a TCEQ-approved Quality Assurance Project Plan (QAPP) meeting all applicable TCEQ and EPA requirements. Environmental data includes any measurements or information that describe (1) environmental processes, location, or conditions; or (2) ecological or health effects and consequences. Environmental data includes information collected directly from measurements, produced from models, and compiled from other sources such as databases or the literature. No data collection or other Work covered by this requirement shall be implemented until Contractor receives the QAPP approved by TCEQ and, if necessary, the EPA. TCEQ may refuse payment or reimbursement for any environmental data acquisition performed without an approved QAPP.
- 6.4 *Laboratory Accreditation.* Any laboratory data or analyses provided under this Contract must be prepared by a laboratory that is accredited in accordance with 30 Texas Administrative Code (TAC) Chapter 25, Subchapters A and B, for the matrices, methods, and parameters of analysis used, unless one of the regulatory exceptions specified in 30 TAC § 25.6 applies.

7. PAYMENTS AND INVOICES

- 7.1 *Excess Obligations Prohibited.* TCEQ's obligations under this Contract are contingent upon the continued availability of funding. If funds become unavailable due to lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, TCEQ may terminate this contract.
- 7.2 *Invoice.* Contractor will submit invoices no later than the 15th day of every month after the services are completed. If the Contract has an approved Historically Underutilized Business (HUB) Subcontract Plan (HSP), a HUB Progress Assessment Report (PAR Form) describing subcontracting activity must also be submitted with the invoice. The invoice may be rejected for failure to comply with all invoice requirements.
- 7.3 *Invoice Contents.* The Contractor must include the following information on the face of all invoices: invoice number, invoice date, TCEQ Contract number, Work Order number if any, Vendor Identification Number, period covered by the invoice, item and unit description, quantity, unit price, extended price, and total amount for which Contractor is requesting payment. Contractor shall submit its invoice to the TCEQ Contract Manager.
- 7.4 *State Agencies/Institutions of Higher Education.* If the Contractor is a State agency or institution of higher education payments must be made via interagency transaction voucher (ITV), please provide a Recurring Transaction Index (RTI) number on the face of the invoice OR if payments are to be deposited into a local bank account, the following statement must be placed on the face of the invoice: "Funds to be deposited into local bank account." For additional information, please refer to the Texas Comptroller's Accounting Policy Statement (APS) 014.
- 7.5 *Progress Payment.* A progress payment is a payment made on a portion of the Work that is part of a line item designated on the Price Form. The Contractor's written request must include a description of the relevant portion of the Work. Contractor may request, and TCEQ at its sole discretion may issue or refuse, a progress payment.

- 7.6 *Final Payment.* Contractor must submit its invoice for final payment within 30 days of completion of the Work.
- 7.7 *Retainage.* TCEQ may withhold 5% or less of each payment as retainage. Release of retainage may be requested in the final invoice.
- 7.8 *Release of Claims by Contractor.* The final invoice shall be accompanied by a complete and legally effective release of TCEQ from all known and unknown claims relating to the Contract on a form provided by TCEQ. Contractor's acceptance of final payment constitutes a waiver of all claims against TCEQ related to the Contract, known or unknown.
- 7.9 *Assignment of Claims.* Contractor may assign its right to be paid under this Contract. Any assignment shall cover all unpaid amounts payable under this Contract. An assignment does not relieve Contractor of any obligation under this Contract. All assignments must be approved by both assignor and assignee in writing and submitted to the TCEQ Contract Manager. Notwithstanding any contrary provision in applicable law, TCEQ shall have no liability to Contractor or to any assignee on any claim arising from TCEQ's directing payment to Contractor instead of an assignee, or to an assignee instead of Contractor.
- 7.10 *Prompt Payment Act.* In accordance with the Texas Prompt Payment Act, TCEQ will pay an acceptable invoice within 30 days of receipt.
- 7.11 *Disputed Invoices.* TCEQ may dispute an invoice by sending a notice in writing to the Contractor within 21 days of receipt. TCEQ may make a partial payment and dispute the difference on the invoice.
- 7.12 *Liability for Taxes.* Contractor will pay all taxes resulting from this Contract including, any federal, state, or local income, sales or excise taxes of Contractor or its employees.
- 7.13 *Lobbying.* In accordance with Texas Government Code Chapter 556, funds received under this Contract may not be used toward lobbying expenses of an individual or entity.
- 7.14 *Debts and Delinquencies Affirmation.* Contractor agrees that any payments due under the Contract shall be applied towards any debt or delinquency that it owes to the State of Texas.

8. COMMUNICATIONS AND NOTICES

- 8.1 *Notices.* All notices shall be made in writing and be delivered to a party's designated Contract Manager and Project Manager. Notices are effective upon receipt. If the Contractor has no Contract Manager, TCEQ may send notices to any address previously provided by the Contractor.
- 8.2 *Claim.* Contractor shall give notice to TCEQ of any claim, demand, suit, or other action (a "Claim") asserted against Contractor which either arises in relation to the Contract, or which could have an adverse material effect on Contractor's ability to perform the Work. Contractor shall give notice directly to the TCEQ Manager of Procurements and Contracts within three days of Contractor's receipt of notice of the Claim. The notice shall state the date of the Claim, the names and addresses of the claimants, the basis of the Claim, the name of each person or entity against whom the Claim is asserted, and the amount of the Claim.

- 8.3 *Notice of Conflict of Interest.* Contractor shall give notice to TCEQ of any actual, apparent, or potential conflict of interest regarding Contractor or any entity or individual performing any portion of the Work. As determined by TCEQ, any entity with an organizational conflict of interest and any individual with a personal conflict of interest must not take part in any way in the performance of any portion of the Work that creates the conflict of interest. TCEQ has sole discretion to decide whether an actual, apparent, or potential conflict exists. Any such conflict is cause for termination.
- 8.4 *Bankruptcy.* If Contractor becomes the subject of a voluntary or involuntary bankruptcy proceeding, Contractor shall immediately give notice to TCEQ and send a copy of this notice to TCEQ Bankruptcy Program MC-132, P. O. Box 13087, Austin, TX 78711-3087. The notice must include the Contract number.

9. SHIPMENT AND DELIVERY OF GOODS AND MATERIAL SAFETY DATA SHEETS

- 9.1 *Shipping Terms.* All shipments shall be made Free on Board (FOB) destination, full freight allowed and not invoiced. Delivery shall be made between the hours of 8 a.m. and 5 p.m. Central Time, Monday through Friday, excluding State holidays, unless prior approval for another delivery time has been granted by TCEQ. Each shipment must be accompanied by a packing slip. Packing slips should reflect the TCEQ contract number, item description, lot number and quantity, if applicable.
- 9.2 *Material Safety Data Sheet.* Contractor must provide to TCEQ, at no cost, at least one copy of any applicable manufacturer's Material Safety Data Sheet (MSDS) with all materials provided. Contractor must make available, at no cost, the relevant manufacturer's MSDS to any person that may be affected by the Work.

10. SUPERINTENDENCE BY THE CONTRACTOR

- 10.1 *Contractor's Responsibility for Subcontractors.* All acts and omissions of subcontractors, suppliers and others performing or furnishing any of the Work under a direct or indirect contract with Contractor ("Subcontractors") are imputed to Contractor. Nothing in this Contract creates a contractual relationship between TCEQ and any Subcontractor except for product warranties for goods supplied by a third-party manufacturer and delivered to TCEQ. Nothing in this Contract creates any obligation for TCEQ to pay any Subcontractor. Contractor is solely responsible for scheduling and coordinating the work of Subcontractors, and for all communications to Subcontractors.
- 10.2 *Superintendence of the Work.* Contractor shall supervise all Work. Contractor is solely responsible for the means, methods, design, processes, procedures and conduct of the Work. This responsibility includes control of associated hazards to assure the safety of the performance of the Work, and for the protection of all persons, property, premises and facilities which may be affected by the Work. No action by TCEQ will transfer this responsibility to TCEQ. Contractor shall maintain a superintendent capable of overseeing performance of the Work at any location where Work is performed.

11. SUBCONTRACTORS AND EMPLOYEES

- 11.1 *Personnel.* Contractor shall provide competent, suitably qualified personnel to perform the Work. Contractor shall at all times maintain good discipline and order at the site of the Work. Contractor shall require its personnel to execute any confidentiality agreements, and any other required assignments, licenses or other instruments, and to provide information related to Intellectual Property, as may be necessary to effectuate the provisions of the Contract. Contractor will, upon request of TCEQ, obtain and provide background checks on personnel performing Work at a TCEQ campus.
- 11.2 *TCEQ Objection.* Contractor shall not use any subcontractor, employee, supplier, or other person or organization to whom TCEQ reasonably objects.
- 11.3 *Key Personnel and Subcontractors.* Contractor's Project Manager and any individuals specified for the key personnel positions listed in the Contract are material to the performance of the Work. Contractor shall provide notice to TCEQ within five (5) business days of making substitutions to key personnel. Substitutes shall be at least as qualified as the personnel or subcontractors being replaced.
- 11.4 *Flowdown of Contract Provisions.* Contractor shall include in its subcontracts, supplier contracts, employment contracts, and employment policies any provision included in this Contract, or shall include a similar provision, whenever and to the extent necessary in order for Contractor to fulfill its obligations under this Contract, regardless of whether or not the provision expressly requires that it be included in such contracts or policies.
- 11.5 *E-Verify.* Contractor will use the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of (1) all persons employed during the Contract term to perform duties within Texas; and (2) all persons (including subcontractors) within the United States of America assigned by the contractor to perform Work pursuant to the Contract.
- 11.6 *Equal Opportunity.* Contractor shall not discriminate against any person on the basis of race, color, national origin, religion, sex, age, and disability in the performance of this Contract.

12. BOOKS AND RECORDS

- 12.1 *Contractor's Books and Records.* During the Contract and for four years thereafter, Contractor shall maintain books, records, documents, and other evidence reasonably pertinent to Contractor's performance of the Work. Contractor shall maintain all financial records in accordance with generally accepted accounting principles. Contractor shall permit representatives and agents of TCEQ, or authorized state and federal agencies, to have unrestricted access to all records, data and facilities as necessary to review, inspect, and audit all financial activities and services associated with TCEQ funds. Contractor shall provide appropriate facilities for such access and inspection.
- 12.2 *Right to Audit.* Pursuant to Section 2262.154 of the Texas Government Code, the State auditor may conduct an audit or investigation of the Contractor 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 Contractor 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 Contractor 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. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

- 12.3 *Time Sheets.* Contractor shall maintain and, upon request by TCEQ, submit weekly time sheets for each person providing services on behalf of Contractor or a subcontractor. The time sheets must state the position held by each person and the number of hours worked. Upon request, the timesheets must be submitted to the TCEQ Contract Manager weekly by noon Central Time on Monday of the following week.

13. WARRANTIES AND CERTIFICATIONS

- 13.1 In addition to all warranties established or implied by law, Contractor warrants that:
- 13.1.1 All goods, services and property provided conform to this Contract and to all representations made or provided by the Contractor for the purpose of inducing the TCEQ to enter this Contract, and are merchantable, fit for the purpose intended, of best quality and workmanship, and free from all deficiencies in media, material, workmanship, and quality;
 - 13.1.2 All goods, services and property provided conform to standards established for such goods in accordance with any applicable laws and regulations, including the Occupational Safety and Health Act (29 U.S.C. §§ 651-678);
 - 13.1.3 All services are performed in a professional and workmanlike manner, consistent with relevant accepted standards and practices.
- 13.2 The warranties set forth above are effective upon TCEQ's issuance of final payment under the Contract or Work Order, and for 24 months thereafter. Nonconformities are not deemed waived by TCEQ's failure to notify Contractor upon receipt of goods, property or completion of services or by payment of invoice. Contractor shall, at its expense, repair or replace any goods and property and re-perform any services that are found to be or that become nonconforming or defective. If, after notice of a claim under these warranties, Contractor fails to promptly repair, replace, or re-perform as required, TCEQ may undertake its own remedial action and Contractor shall reimburse the TCEQ for all costs of such action. If TCEQ does not choose to repair, replace, or re-perform in place of the Contractor, Contractor shall promptly refund to TCEQ the full purchase price paid for the entire Work.
- 13.3 *Ability to Perform.* Contractor has the corporate authority, capability, experience and means to enter into this Contract and to perform the Work.

14. INTELLECTUAL PROPERTY

- 14.1 *Work for Hire.* All Work created under this Contract is a work for hire. TCEQ is the owner of the Work, including user documentation, and all intellectual property in the Work. Contractor will enter into written agreements with its employees and subcontractors that confirm TCEQ's ownership interest.
- 14.2 *License.* If any intellectual property that is incorporated into the Work or intellectual property created under this Contract is not work for hire, Contractor grants to TCEQ a royalty-free, nonexclusive, perpetual, irrevocable, fully paid-up, enterprise-wide and

worldwide license to use, reproduce, publish, modify, create derivative works, distribute, publicly perform and display the intellectual property and associated user documentation, and to authorize others to do the same.

- 14.3 *Third Party Intellectual Property.* Contractor shall secure the necessary intellectual property rights from third parties to comply with this article. Contractor's prices include all user documentation, and applicable license and/or royalty fees necessary for TCEQ to use the Work. Commercially available software that is necessary to use the Work may be exempted from this requirement with prior approval from TCEQ. Contractor shall take all necessary steps to pass-through to TCEQ all warranties, representations and other service commitments applicable to third party intellectual property incorporated into the Work.
- 14.4 *Electronic Deliverables.* Electronic deliverables must be delivered in a format approved by TCEQ.

15. INDEMNIFICATION

- 15.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE STATE OF TEXAS, INCLUDING TCEQ AND ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, FROM AND AGAINST ALL LOSSES, LIABILITIES, ACTIONS, DAMAGES, DEMANDS, SUITS, AND OTHER CLAIMS OF ANY TYPE ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ITS EMPLOYEES, SUBCONTRACTORS, SUPPLIERS, OR AGENTS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND TCEQ AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

16. HISTORICALLY UNDERUTILIZED BUSINESSES

- 16.1 If applicable, Contractor will comply with the Historically Underutilized Business (HUB) requirements of Texas Government Code, Chapter 2161. If this Contract includes an approved HUB Subcontracting Plan (HSP), Contractor shall implement the HSP in good faith. Any substitutions of personnel or subcontractors that require a revision of the Contractor's approved HSP must receive prior review and approval from TCEQ and comply with the good faith effort requirements of 34 TAC § 20.285.
- 16.2 The HSP must contain the subcontractors' Texas Comptroller-issued Texas Identification Number System (TINS) identifier. If the subcontractor does not have a TINS identifier, the Contractor will obtain a completed Application for Texas Identification Number from its subcontractor and immediately submit it to TCEQ, or in the case where a subcontractor is being proposed for addition to the HSP, submit it with the Contractor's HSP Amendment Request.

17. PUBLIC INFORMATION, CONFIDENTIALITY, AND PUBLICITY

- 17.1 Public Information and Release of Information.
- 17.1.1 All information provided by TCEQ and the Work is the property of TCEQ. The Texas Public Information Act (PIA), Texas Government Code Chapter 552, applies to all information provided by TCEQ and the Work. At no

additional charge to the TCEQ, Contractor shall surrender or return information regarding this Contract, including information provided by TCEQ or the Work, to TCEQ not later than the 10th day after the date TCEQ requests the information.

17.1.2 *Requests for Public Information.* TCEQ has sole responsibility to respond to any requests for information regarding this Contract, including information provided by TCEQ or the Work. If Contractor receives a request for information from any third party, Contractor shall immediately forward the request to TCEQ. Except as provided below, the Contractor will not release any information without the express written authorization of the TCEQ Contract Manager or relevant TCEQ Project Manager. The Contractor may release the amount of the Contract and any information required to comply with laws or rules. Contractor will make Work available in a format that is accessible by the public at no additional charge as requested by TCEQ.

17.1.3 *Use of Information.* Contractor is permitted to use, copy, and disclose information to Contractor's employees and subcontractors only as necessary to fulfill Contractor's obligations.

17.1.4 *Contracting Information Responsibilities.* In addition to the other records retention requirements in this Contract, for contracts with a Maximum TCEQ Obligation of at least \$1 million, in accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the TCEQ for the duration of the Contract, (2) promptly provide to the TCEQ any contracting information related to the Contract that is in the custody or possession of the Contractor on request of the TCEQ, and (3) on termination or expiration of this Contract, either provide at no cost to the TCEQ all contracting information related to the Contract that is in the custody or possession of the Contractor or preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the TCEQ. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

17.2 Confidential Information.

17.2.1 *TCEQ's Confidential Information.* If TCEQ provides Contractor information identified as confidential or proprietary, Contractor has a duty to maintain its confidentiality and prevent unauthorized release. Contractor is permitted to use, copy, and disclose confidential information to Contractor's employees and subcontractors only as necessary to fulfill Contractor's obligations.

17.2.2 *Contractor's Confidential Information.* If TCEQ receives a request for information that Contractor submitted to TCEQ in response to a request for a bid, proposal, qualification or other solicitation or provided during or after the term of the Contract and Contractor has identified the information as business confidential or proprietary, TCEQ will timely notify Contractor of the request. Contractor may submit arguments to the Texas

Office of the Attorney General if it believes the information should not be released. TCEQ will not submit arguments on behalf of Contractor and will not release the information unless ordered to do so by the Attorney General. Information contained in this Contract and vouchers, communications, and other information sent between TCEQ and Contractor related to the performance of this Contract or work performed on behalf of TCEQ is considered public information under § 552.1101(b) of the Texas Government Code regardless of whether Contractor identifies it as being confidential.

- 17.3 *Publicity.* Contractor may not participate in any media event or issue any media release, publication, editorial, or article that pertains to the Work without prior written approval of TCEQ.
- 17.4 *Endorsement of Contractor.* Contractor shall not state or imply that TCEQ endorses or recommends its services, goods, or property. Contractor may not use any TCEQ logo or trademark or the likenesses of TCEQ employees in sales brochures, press releases, or other promotions, unless prior approval is obtained from the TCEQ External Relations Division.

18. OTHER LIABILITIES

- 18.1 No employee, officer, director or agent of TCEQ assumes personal liability by signing this Contract or by reason of default in the performance of any of the Contract.

19. TIME DELAYS, SUSPENSION

- 19.1 *Time is of the Essence.* Contractor's timely performance is essential to this Contract.
- 19.2 *Suspension.* TCEQ may suspend all or part of the Work at any time, for any reason. Contractor shall resume performance within ten days of receipt from TCEQ of a notice to resume. If Contractor's performance is delayed by TCEQ, Contractor's sole remedy is an extension of the schedule for the delivery of the Work. TCEQ may extend the Contract Period to accommodate an extension of the schedule for the delivery of the Work.
- 19.3 *Force Majeure.* If either party's performance is delayed by acts of God, labor stoppages, or similar irresistible forces, the affected party shall give ongoing notice of the delay supported by sufficient evidence to the other party as soon as practicable after the delay is apparent. Upon timely notice, the time for performance shall be extended for a reasonable period of time. Force majeure does not include ordinary delays that are common to the industry or location.
- 19.4 *Disaster Recovery.* Contractor shall maintain a business continuity plan designed to enable Contractor to recover normal business operations and data within seventy-two hours of any declared disaster or force majeure event.

20. TERMINATION

- 20.1 *Termination for Cause.* If Contractor fails to perform a material obligation, stops Work, or becomes insolvent, TCEQ may give notice of breach of contract. Within ten days of the notice, Contractor must attempt to cure the breach or demonstrate that a breach has not occurred. If Contractor does not cure the breach or demonstrate that a breach has not occurred, TCEQ may terminate the Contract for cause by notice. A material obligation includes delivery of Conforming Work on schedule for the agreed

prices, maintaining and providing evidence of required insurance coverage, compliance with HUB requirements, and integrity in dealing with TCEQ.

- 20.2 *Termination for Convenience.* TCEQ may terminate this Contract without cause by giving ten days' prior notice of termination for convenience. Upon receipt of the notice, Contractor shall promptly stop all Work except as specified in the notice of termination. Contractor's exclusive remedy is payment for goods, services and property ordered, delivered and not rejected by TCEQ. TCEQ shall not be liable for anticipated profits, unabsorbed overhead, interest on borrowing, or other damages not specifically stated in this Contract.
- 20.3 *Debarment.* If Contractor is debarred by the State of Texas or it or any of its officers, directors, owners, partners, or primary managers or supervisors is subject to suspension, debarment, exclusion, disqualification, or similar ineligibility determined by any federal, state or local government entity, the Contractor must immediately notify TCEQ and TCEQ may terminate this contract for cause.
- 20.4 *Hazardous Waste Violations.* If Contractor is adjudicated of having committed substantive, non-clerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial danger to the public health and safety or the environment, Contractor will immediately notify TCEQ and TCEQ may terminate this Contract for cause.
- 20.5 *Termination for Noncompliance.* If Contractor knowingly or intentionally fails to comply with a requirement under Subchapter J, Chapter 552, Texas Government Code, and, after notice and opportunity to cure, TCEQ determines that Contractor has not taken adequate steps to ensure future compliance, TCEQ may terminate this Contract without further obligation to Contractor.

21. REMEDIES

- 21.1 *Right of Set-off.* In addition to other remedies available under the Contract or in law or equity, TCEQ or the Comptroller may set-off the State's good faith claims, whether or not adjudicated, against a Contractor's claim for payment.
- 21.2 *Schedule of Remedies Available to TCEQ.* In accordance with Texas Government Code Chapter 2261, the following Schedule of Remedies applies to this Contract. In the event of Contractor's nonconforming performance, TCEQ may:
- 21.2.1. Issue notice of nonconforming performance;
 - 21.2.2. Reject nonconforming performance and request corrections without charge to TCEQ;
 - 21.2.3. Accept (subject to limitations on TCEQ acceptance) late performance, nonconforming performance, or correction of nonconforming performance and make payment therefore, with or without a set-off to cover damages, even if such performance is tendered after the end date of the Contract;
 - 21.2.4. Reject a payment request and/or suspend further payments pending acceptable revision of the nonconformity;
 - 21.2.5. Suspend all or part of the Work and/or payments pending accepted revision of the nonconformity;
 - 21.2.6. Demand restitution and recover payments where performance is subsequently found nonconforming;

- 21.2.7. Recover all actual damages incurred by TCEQ, including costs of delay, costs of securing a replacement contractor, reasonable attorney’s fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate;
- 21.2.8. Terminate the Contract without further obligation for payment;
- 21.2.9. File a cause of action for specific performance, rescission, damages and other relief as appropriate; and/or
- 21.2.10. Award the Contract to another entity.

21.3 Cumulative Remedies. The rights and remedies provided to TCEQ in this Contract are in addition to, and do not limit, any rights and remedies available under state or federal law.

22. DISPUTES; CLAIMS

- 22.1 *Continuing the Work.* Except as expressly permitted by law, Contractor must not delay or stop Work because of a dispute or disagreement with TCEQ.
- 22.2 *Dispute Resolution Process.* TCEQ and Contractor shall use the dispute resolution process provided for in Texas Government Code Chapter 2260 to attempt to resolve all disputes arising under the Contract. The rules of TCEQ found in 30 TAC Chapter 11, Subchapter D, describe the requirements for filing a notice of claim, conducting negotiations, and requesting a hearing.

23. MISCELLANEOUS PROVISIONS

- 23.1 *Severability of Provisions.* If any provision of this Contract is held by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the remainder of the Contract shall remain in force and shall be construed to conform as closely as possible to the originally-expressed intent of the parties.
- 23.2 *Sovereign Immunity.* This Contract does not waive TCEQ’s sovereign immunity or any official immunity to which TCEQ’s officers, employees, or agents are entitled under law.
- 23.3 *Relationship of the Parties.* This Contract does not create an employer/employee relationship, agency relationship, partnership, or joint venture. Contractor is an independent contractor in performing the Work. Contractor shall be responsible for all compensation, coverages, claims and taxes of its employees and subcontractors.
- 23.4 *Venue.* Contractor agrees that the Contract is being performed in Travis County, Texas, because this Contract has been solicited, executed, and will be administered in Travis County, Texas. The Contractor agrees that any permissible cause of action involving this contract arises solely in Travis County.
- 23.5 *Third-Party Beneficiaries.* There are no third-party beneficiaries to this Contract.
- 23.6 *Accessibility.* All electronic deliverables must meet State of Texas accessibility requirements in 1 TAC Chapters 206 and 213 effective April 18, 2020.
- 23.7 *Computation of Time.* A period of days is computed as follows: (1) exclude the day of the event that triggers the period; (2) count every day, including Saturdays, Sundays, and legal holidays; (3) include the last day of the period; (4) if the last day is a Saturday, Sunday or legal holiday, the period continues to run until the next business day.

- 23.8 *Governing Law.* This Contract and any disputes arising out of or related to it will be governed by the laws of the State of Texas, without regard to its choice of law rules and without regard to conflicts of laws principles.
- 23.9 *Waiver.* With the exception of an express, written waiver in the form of a unilateral amendment signed by TCEQ, no act or omission will constitute a waiver or release of Contractor's obligation to perform Conforming Work. No waiver on one occasion, whether expressed or implied, shall be effective as a waiver for any other occasion.
- 23.10 *Assignment of Contract Obligations.* No assignment of the obligations, rights or interests in the Contract by Contractor will be binding on TCEQ without its written consent. No assignment will relieve Contractor from its obligations under this Contract.
- 23.11 *Survival of Obligations.* Except where a different period is specified in this Contract or applicable law, all representations, indemnifications, and warranties made in, required by or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, survive for four years beyond the termination or completion of the Contract, or until four years after the end of a related proceeding. A related proceeding includes any litigation, legal proceeding, permit application, or State Office of Administrative Hearings proceeding, which is brought in relation to the Contract or which in TCEQ's opinion is related to the subject matter of the Contract. Either party shall notify the other of any related proceeding if notice of the proceeding has not been provided directly to that other party.
- 23.12 *Visits to Work Site.* TCEQ may make a scheduled or unscheduled visit to any location where the Work is being performed.
- 23.13 *Contractor Performance Evaluations.* TCEQ may prepare written evaluations of Contractor's performance and use its evaluations in the selection criteria for future contracts. Contractor acknowledges that these evaluations are made on a subject in which TCEQ and its officers and employees have an interest or duty, and are made for the purpose of communicating with other persons having a corresponding interest or duty. TCEQ may provide this information to state agencies and others. Contractor consents to disclosure of TCEQ's evaluations to Texas state agencies and others, including submitting CPA's Texas Procurement and Support Services Division vendor performance forms to appropriate state databases.
- 23.14 *Compliance with Law.* Contractor must comply with all applicable federal, state, and local statutes, regulations, and other laws. Contractor has sole responsibility for obtaining all licenses and permits necessary for the Work, and for giving all notices required by law.
- 23.15 *Certifications.* Contractor will maintain the status of all certifications made in the solicitation response, including but not limited to, not boycotting Israel during the term of this Contract. Contractor will notify TCEQ of any change to its certifications.
- 23.16 *Texas Made Products.* In accordance with Texas Government Code, § 2155.4441, in performing this Contract, Contractor must purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside of Texas.
- 23.17 *Anti-Trust.* Neither the Contractor, nor any firm, corporation, partnership, or institution, represented by the Contractor, or anyone acting for such a firm, corporation or institution has violated or will violate the antitrust laws of this state (Chapter 15 of the Texas Business & Commerce Code) or federal antitrust law.

Contractor assigns to TCEQ any and all claims for overcharges associated with this Contract arising under the antitrust laws of the United States and the State of Texas.

- 23.18 *Cybersecurity Training.* Contractor shall ensure that any Contractor representative (employee, officer, or subcontractor personnel) who has access to a TCEQ computer system or database completes a cybersecurity training program certified by the Texas Department of Information Resources (DIR) under § 2054.519 of the Texas Government Code.
- 23.18.1 “Access to TCEQ Computer System or Database” means having a TCEQ network user account or the authorization to maintain, modify, or allow access control to any TCEQ web page, TCEQ computer system or TCEQ database.
- 23.18.2 Within 7 days after the execution of the Contract, Contractor shall provide a list of persons requiring training to the TCEQ Contract Manager, and thereafter provide an updated list by the first workday of any additional person who becomes subject to the training requirements.
- 23.18.3 If a Contractor representative has completed a DIR-certified, cybersecurity training and that certificate of training has not expired, Contractor shall include the Contractor representative on the list of persons requiring training, indicate that they have completed the training, and attach evidence of completion of the certified training.
- 23.18.4 For Contractor representatives who do not have a current training certificate, the training must be completed within 7 calendar days after TCEQ provides access to the training. Contractor shall provide the TCEQ Contract Manager evidence that the training was successfully completed.
- 23.18.5 For each State of Texas fiscal year within the term of the Contract or any Contract renewal, all Contractor representatives subject to the training requirement must complete DIR-certified training within 7 calendar days after TCEQ provides access to the training. Contractor shall provide the TCEQ Contract Manager evidence that the training was successfully completed.

INSURANCE SECTION

INSURANCE SECTION

1. **COVERAGES REQUIRED.** Contractor shall obtain and maintain throughout the Contract term the insurance coverages listed below:
 - 1.1 *Worker's Compensation Insurance:* Coverage to secure the payment of compensation to injured employees as defined in the Texas Worker's Compensation Act.
 - 1.2 *Employer's Liability Insurance:* Coverage in the following minimum amounts:
 - Bodily Injury, \$500,000 per accident;
 - Disease, \$500,000 per employee;
 - Aggregate policy limit of \$1,000,000.
 - 1.3 *Commercial Automobile Liability Insurance:* Coverage in the following minimum amounts for owned, hired, and non-owned vehicles for claims of automobile bodily injury and property damage which may arise in the performance of the Contract:
 - \$500,000 per person;
 - \$500,000 per occurrence for bodily injury; and
 - \$1,000,000 per occurrence for property damage; or
 - \$1,000,000 per occurrence if the policy is issued for bodily injury and property damage combined.
 - 1.4 *Commercial General Liability Insurance:* Coverage for claims of personal injury and bodily injury, including accidental death, and property damage which may arise from the performance of the contract. The types of coverage required are: Blanket, Broad Form Property Damage, Premises and Operations Hazards, Products and Completed Operations Hazards, Independent Contractor's, and Contractual Liability in the minimum amounts of:
 - \$1,000,000 per occurrence for bodily injury; and
 - \$1,000,000 per occurrence for property damage; or
 - \$2,000,000 per occurrence if the policy is issued for bodily injury and property damage combined.
 - 1.5 *Commercial General Liability Additional Coverage for Explosion, Collapse and Underground Hazards:* In the same amounts as the Commercial General Liability Insurance listed above.
 - 1.6 *Excess Liability Insurance (Umbrella):* Additional coverage for all liability policies required for this Contract (excluding Worker's Compensation and

Employer's Liability Insurance, which are not liability insurance) in an amount not less than \$1,000,000 in the aggregate.

- 1.7 *Requirements for Subcontractors:* All requirements listed in items 1.1-1.6 will also apply to subcontractors.

2. **MINIMUM INSURER RATING.** The Contractor will obtain all required policies from insurers licensed, eligible or registered under Texas law with a rating of A- or better in a financial size category of IV or higher according to A.M. Best Company.

3. **NOTICES OF CHANGE.** The Contractor's insurance policies must require the insurer or the insurer's authorized agent to notify TCEQ of any cancellation, or material change, other than for non-payment, at least 30 days in advance. The Contractor's insurance policy must require the insurer or the insurer's authorized agent to notify TCEQ of any cancellation or material change due to non-payment at least 10 days in advance. These notices of changes must reference the TCEQ contract number and be made in writing by certified mail to the TCEQ Contract Manager at the address shown in the Contract.

4. **INSURANCE CERTIFICATE.** Contractor shall provide TCEQ with evidence of the insurance coverage required under this Contract. The evidence of the coverage shall be a certificate of insurance on a form approved by the Texas Department of Insurance. Contractor will submit the certificate to the TCEQ Contract Manager no later than ten days after award of the Contract, or as directed by the Special Terms and Conditions. Prior to the expiration of any insurance coverages during the term of the Contract, Contractor will submit a certificate evidencing renewed or new insurance policies. Certificates must bear the contract number of this Contract. If Contractor changes insurers, Contractor shall give TCEQ a new certificate of insurance within ten days. The certificate of insurance shall set out any deductible or self-insured retention amounts for each coverage required.

5. **REQUIRED ADDITIONAL PROVISIONS.** All policies of insurance shall include the following provisions:
 - 5.1 TCEQ and its officers and employees are named additional insureds to the *Commercial General Liability Insurance, Excess Liability Insurance (Umbrella),* and Excess Liability Insurance (Other than Umbrella);

 - 5.2 Waiver of subrogation in favor of TCEQ, its officers and employees for bodily injury (including death), property damage or any other loss arising from this Contract, except for the Professional Liability Insurance; and

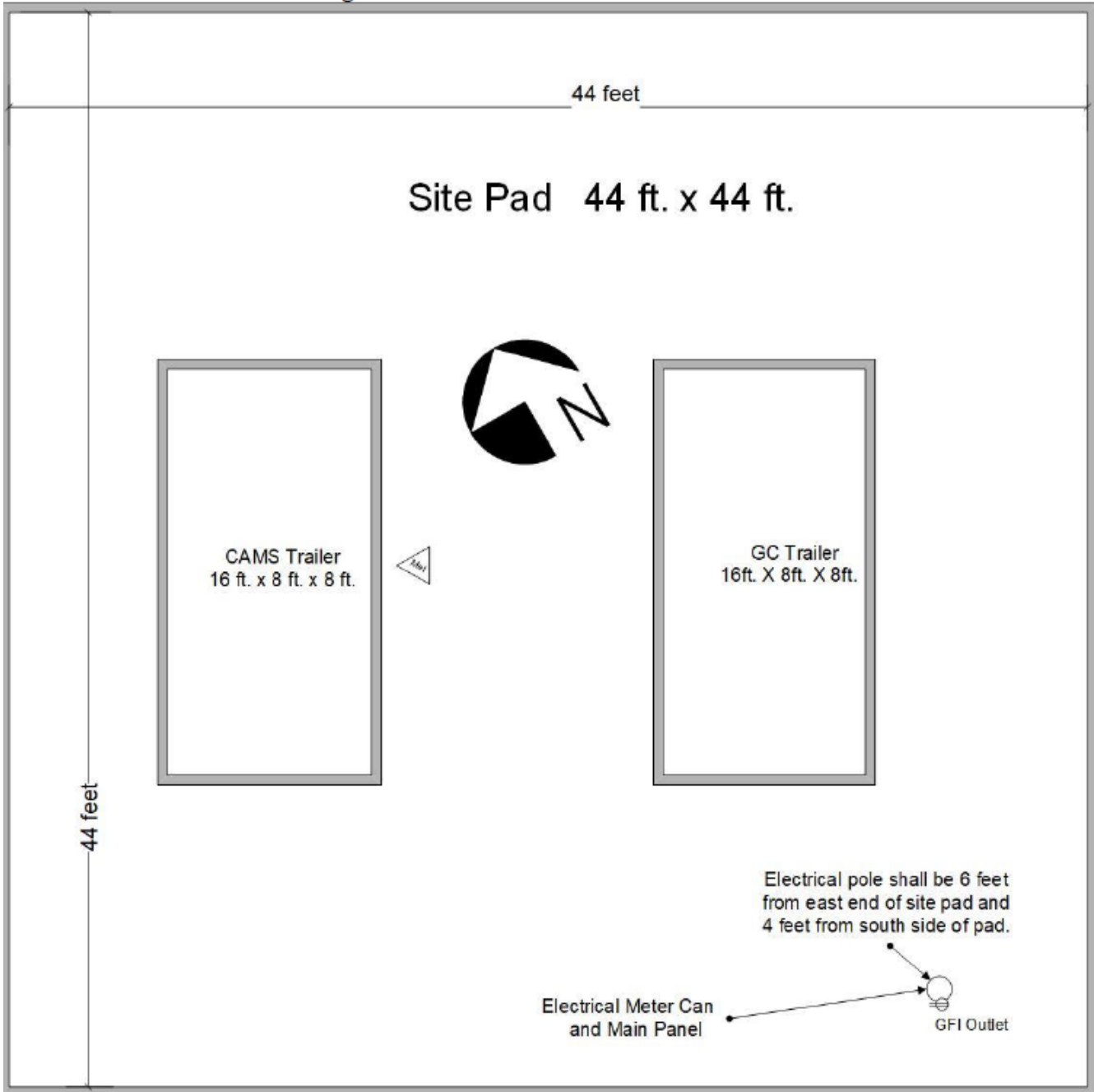
 - 5.3 The Contractor's insurance is primary insurance with respect to the TCEQ and its officers and employees.

6. **SELF-INSURANCE.** Contractor must disclose on its insurance certificate if any of the coverage required under the contract is being satisfied with a Self-Insured Retention (SIR) and list the amount of the SIR.

Attachments

Attachment A:

Site Layout Diagram and Location Image



Location Photo

Specific site location within the marked area will be determined by the TCEQ representative during the pre-construction meeting.

Nederland 17th Street Site Overview, 1516 17th Street, Nederland Texas



Attachment B
Continuous Air Monitoring Site Construction Specifications:
Site Pad 44 x 44 feet

These specifications are for Nederland 17th Street per the attached layout and diagram.

Before Construction

- The Contractor(s) shall obtain all necessary local permits, environmental study (prior to beginning construction), and request final inspection (s), if required by the local authority. The Contractor(s) shall make any corrections to the installations that the local inspectors may require.
- The contractor shall be responsible for locating (schedule dig test by calling 811 or online at call811.com) all underground utilities in the area of project construction and shall be responsible for avoiding and not disrupting nor damaging any underground utilities during project construction and installation.

Note: If utilities are discovered in the project area after the dig test has been performed, the contractor shall stop construction and notify the TCEQ Construction Coordinator.

Additional Notes: See attached Layout and Diagram

Materials and Construction

1. The contractor shall provide the equipment, materials, and labor to construct the site pad.
 - a. The 44' (ft) x 44' (ft) (1936 square feet) site shall be covered with a 6" (inch) pad of compacted crushed limestone or Texas Department of Transportation(TXDOT) approved road base material, homogeneously mixed with 5 percent (%) cement mix and rolled in place.
 - b. Road base shall have a maximum aggregate size of 1 ¾". If specified base material is unavailable in the construction area, the contractor must provide detailed specifications for the proposed substituted material and receive written approval from the TCEQ construction coordinator before the proposed material is used.
 - c. The site pad shall be prepared by scraping and leveling the area before the road base material is applied. The pad surface shall be 6" (inch) "above grade".
 - d. The pad shall be compacted, rolled and leveled using an adequate size steel vibratory or pneumatic roller.
2. Exterior of the site pad must be returned to its original state once the site pad construction is complete.
3. Soil material removed in preparation can be used to repair any damage done to the exterior site area during excavation. The remainder of removed material shall be transported from the premises and will not be spread or piled outside site pad area.
4. Exterior of the site pad will be clean of excess material and trash before construction will be approved by the TCEQ construction coordinator. Any grass or soil outside the site perimeter damaged by the contractor shall be corrected by the contractor at no additional cost to the end user.

Timeline

All aspects of site construction (pad and electrical) are to be completed within two weeks of the TCEQ giving the construction approval to commence work on that specific site, weather permitting. The contractor shall provide pictures and construction progress to the TCEQ Construction Coordinator daily once construction commences.

Attachment C

Continuous Air Monitoring Site Construction Specifications: 200 AMP Electrical and Overhead Power Connection

These specifications are for the Nederland 17th Street site, located on City of Nederland water treatment property at 1516 17th Street, Nederland, Texas 77627, per the attached diagram and layout. This site will require above ground power.

Before construction

- The Contractor(s) shall obtain all necessary local permits, environmental study (prior to beginning construction), and request final inspection(s), if required by the local authority. The Contractor(s) shall make any corrections to the installations that the local inspectors may require.
- The contractor shall be responsible for locating (schedule dig test by calling 811 or online at call811.com) all underground utilities in the area of project construction and shall be responsible for avoiding and not disrupting nor damaging any underground utilities during project construction and installation.
- The Contractor will be responsible for notifying electrical service provider of the final electrical service pole inspection(s) and send a confirmation (by e-mail) to the TCEQ construction coordinator as soon as the electrical provider has excepted inspection(s).

Note: If utilities are discovered in the project area after the dig test has been performed, the contractor shall stop construction and notify the TCEQ Construction Coordinator.

Materials and Construction

1. The contractor shall provide the equipment, materials, and labor to establish an electrical connection from the local power company.
2. Contractor will be responsible for all engineered wiring diagrams and load charts as required by the utility provider.
3. This shall be an insulated copper, 3 wire, single phase (two balanced legs for 120-volt 200-amps per leg) connection for 240 volts, 200 amps, and 60 Hz.
4. This shall be wired with entrance cable of adequate size, as specified by Local and National Electrical Code, to carry the 200-ampere load.
5. The contractor shall furnish and install a service pole for above ground power (see attached layout), as directed by TCEQ Construction Coordinator.
 - a. The pole shall be sound material treated with creosote.
 - b. The pole shall be rigidly mounted vertically in the ground to a depth that will support the pole and weight of the wires from the power company pole.
 - c. The dimensions of several key characteristics, such as pole height, depth, and length, shall be determined upon site selection under consultation with the relevant electric provider and the selected vendor to meet code.
6. All electrical equipment used by the contractor must be manufacturer listed by Underwriters Laboratories, Incorporated and shall carry the Underwriter's label. Materials shall be new equipment and all fittings shall be well galvanized or otherwise made corrosion resistant.

7. All work must be installed in accordance with the National Electrical Code and any local or state laws in existence at the time of installation. If there is a conflict with the National code, the local code shall prevail.
8. The contractor shall furnish, install, and wire the following electrical equipment associated with the panel:
 - a. A rain tight service head
 - b. A meter loop base
 - c. A Square D, QO Load Center (Manufacturer # QO1816M200FTRB) Type exterior weatherproof electrical box with a Single Phase 240V/200-ampere main disconnect switch, with a minimum of 8 breaker space(s)
 - d. A Surge Protective Device (SPD) DITEK model DTK-120/240HD2 or equal will be added to the 200-amp main panel circuit. SPD must be UL/US Listed
 - e. A Square D load center shall have one 100-ampere 2-pole breaker, two 20-ampere GFCI breakers, and one 20-ampere non GFCI breaker installed with panel
 - f. An all-weather, 110-volt receptacle connected to a 20-ampere “GFCI breaker” shall be installed on the service pole
9. All wiring is to be run in specified conduit with weather tight connectors as required, including the weather tight service head at point of power cut-in.
10. The meter loop shall be completed with ground connection and an 8-foot ground rod.
11. A grounding conductor shall be connected from the overhead feeder down to the ground, connected to the ground rod with a copper clamp, and must be copper and of adequate size as specified by Local and National Electrical Code.

Timeline

Installation of the power pole support shall be completed within one week of completion of the site pad, weather permitting. Construction area shall be clean of all trash and leftover materials before construction will be approved by the TCEQ Construction Coordinator.

Note: Please contact the TCEQ Construction Coordinator before commencing work.

Attachment D

Site Specifications Construction and Inspection Checklist

Site Name: Nederland Site

Site Address: 1516 17th Street, Nederland, Texas 77627

Inspector(s): _____

Date: _____ **Time:** _____

A contractor representative must meet the TCEQ representative at the job site for a preconstruction meeting during which the TCEQ representative will review the specifications and ensure the contractor understands them. Each specification category must be initialed by the contractor representative to document understanding of the project expectations. When construction is complete, the TCEQ representative will conduct a final site inspection and provide any identified deviations to the contractor in writing. The contractor will have one week to upgrade the deviations to meet the specifications. **Any items not meeting the specifications will not be accepted or paid for.**

Site Pad

Initial

Contractor questions about the site pad specifications:

_____ I understand the driveway specifications as written in *Continuous Air Monitoring Station Construction Specifications: Site Pad.*

Fence – N/A

Contractor questions about the fence specifications:

_____ I understand the driveway specifications as written in *Continuous Air Monitoring Station Construction Specifications: Fence*

Electrical

Contractor questions about the electrical specifications:

_____ I understand the driveway specifications as written in *Continuous Air Monitoring Station Construction Specifications: Electrical*

Note: The TCEQ Project Manager must provide a written notice to commence before any construction can begin.

Signature of Contractor Representative: _____ Date: _____

Printed Name of Contractor Representative: _____

Signature of TCEQ Representative: _____ Date: _____

Printed Name of TCEQ Representative: _____

Attachment E

Release of Claims

(Must be returned with last invoice per General Term and Condition Section 6.6)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Release of Claims

Click here to enter text. (“Contractor”) releases the Texas Commission on Environmental Quality (TCEQ), its officers, agents, and employees from all claims arising out of or relating to TCEQ Contract Number Click here to enter text. (the “Contract”), except for Contractor’s final invoice in the amount of \$Click here to enter text. and retainage withheld by TCEQ in the amount of \$ Click here to enter text. . Contractor releases any and all liens related to the Contract, and relinquishes any right it may have to place liens related to the Contract. Contractor warrants that it has completed all work described in the Contract.

Executed on this Click here to enter text. day of Click here to enter text., 20Click here to enter text..

By: _____
(signature)

Click here to enter text.
(name)

Click here to enter text.
(title)

RESPONSE DOCUMENTS

FILL OUT AND SUBMIT WITH RESPONSE

RESPONDER’S SIGNATURE AND INFORMATION

(Failure to sign below will disqualify your Response.)

Registered Name of Responder: _____

D/B/A _____

Company Address:

Vendor ID Number: _____

The ID number is the payee identification number assigned and used by the Comptroller of Public Accounts of Texas to process payment for goods/services.

Provide one of the following:

- Federal Employers Identification Number (EIN):
- Social Security number behind Tab 4.

Every vendor MUST provide an EIN or Social Security number prior to receiving payment under an awarded contract. If you provide a Social Security number, include it behind Tab 4. For information on obtaining your EIN, you may call the IRS at 800-829-4933 or visit [Electronic Filing PIN Request](http://www.irs.gov/Individual/Electronic-Filing-PIN-Request) (www.irs.gov/Individual/Electronic-Filing-PIN-Request)

Printed Name and Title of individual authorized to bind Responder to this Response:

Authorized Signature: _____

Your signature binds you to everything in the Solicitation and your Response, including the Certifications and your completed HUB Subcontracting Plan. By signing, you also affirm that everything in your Response is complete, true and accurate.

Date of Signature: _____

Name of Responder Representative to contact regarding this response:

Title of Representative: _____

Telephone Number: _____

Email Address: _____

Pursuant to Texas Family Code § 231.006(c), regarding child support, Responses must include names and Social Security Numbers of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the Response. See Responder’s Certifications for additional information. Check one of the following:

- This provision applies, and the required information is submitted behind Tab 4 in the Response.
- This provision does not apply to the Responder.

RESPONSE CONTENTS

Response must be organized with the designated index tabs and in the designated order. If the item for a tab is not applicable to the Response, insert a page marked “Not Applicable” behind the tab. Tabs may be identified with a cover sheet placed in front of that section.

- TAB 1** Authorized Signature and Information
 - Responder’s Signature and Information
 - Signed Cover Page of Addenda

- TAB 2** Price Form

- TAB 3** Additional Response Forms
 - Preferences

- TAB 4** **Social Security Numbers** (if applicable)

- TAB 5** **Other** (May be used to include additional information that does not fall under another designated Tab, to explain a Certification you cannot make, or disclose a conflict of interest.)

RESPONDER'S CERTIFICATIONS

By signing and submitting its Response, Responder certifies each of the numbered statements below, unless the Response prominently and explicitly states that Responder cannot certify a particular statement and describes the facts and circumstances which prevent it from making the certification. If you cannot make any of the certifications, provide this information in **Tab 5**. Unless disclaimed, these certifications are part of the Response and any resulting Contract. False certifications may lead to disqualification of the response or to contract remedies such as termination/cancellation for cause, administrative actions such as removal from the Centralized Master Bidders List, and criminal penalties. References to “vendor” in these affirmations are required by statute, and in this context indicate the Responder. References to “Government Code” and “Family Code” are to Texas statutes.

1. Responder has not given or offered, and does not intend to give or offer, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, service or other thing of value to a public servant in connection with its Response.
2. The Response does not include financial participation by any individual or entity that was compensated for preparation of the specifications or request for proposal. Under Section 2155.004, 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.
3. Neither the Responder nor the firm, corporation, partnership, or institution, represented by the Responder, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state (Texas Business & Commerce Code Chapter 15) or federal antitrust law. Responder has not communicated its Response, directly or indirectly, to any competitor or any other person engaged in the same line of business. Responder has not received information about any other response to this Solicitation.
4. No individual who is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent of Responder is a child support obligor who is more than 30 days delinquent in paying child support. Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract [if any] may be terminated and payment may be withheld if this certification is inaccurate.

5. During the four years ending on the date of the Response, Responder has not been the executive head of TCEQ. Responder does not employ a current executive head of TCEQ or any other state agency or a former executive head of TCEQ or any other state agency that was the executive head during the four years ending on the date of the Response.

6. Neither Responder nor any of its officers, directors, owners, partners, or primary managers or supervisors is subject to suspension, debarment, or similar ineligibility determined by any federal, state or local government entity.

7. The Response does not include proposed financial participation by any person who, during the five-year period preceding the date of the Response submittal (and/or Contract award – explain under Tab 5), has been convicted of violating a federal law or assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of any disaster occurring on or after September 24, 2005, including Hurricane Rita and Hurricane Katrina. Under Section 2155.006, Government Code, the Responder 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 [if any] may be terminated and payment withheld if this certification is inaccurate.

8. The Responder has not been an employee of TCEQ within the preceding 12 months. Also, if the Responder employs a person that worked for TCEQ within the preceding 12 months, the person will not perform services on projects for the Responder that the employee worked on while employed by TCEQ.

9. The Responder has not been adjudicated during the preceding three-year period to have committed substantive, non-clerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial danger to the public health and safety or the environment.

10. Responder, nor any of its officers, has been adjudicated by a court of law to have violated the Texas Deceptive Trade Practices Act.

11. If Responder gives a Texas address for itself, that address is Responder's legal business address, and Responder is either incorporated in Texas, has its principal place of business in Texas, or has an established physical presence in Texas.

12. If any of these certifications change between submittal of the Response and award of a contract or cancellation of the Solicitation, Responder will promptly notify TCEQ.

PRICE FORM

Proposer must enter a price for each item listed.

Unless otherwise described the price is for one unit of each item, for example, one hour or one widget.

Where the unit is identified as “lump sum,” the price must be given for one complete item (for example, if the item is a contract task, deliverable, or milestone, the price must be given for completion of that task, deliverable, or milestone). If the item is completion of all work, the price must be given for completion of all work.

No additional amount will be paid for any costs or charges incurred by the Contractor, which is not listed on the price form.

The quantities shown below are either estimated quantities or they are multipliers (weighting factors) used solely for evaluation of pricing.

Description	Quantity	Unit	Price	Extended Price (Item Price x Quantity)
Site PAD	1	EA		
Electrical	1	EA		
Total for Site				

PREFERENCES

Identify the preferences for which Responder qualifies.

Not all preferences apply to all procurements. Preferences may not apply to procurements of scientific and technical services. Texas Water Code § 5.2291. Texas bidder preferences may not apply to contracts with financial support from federal agencies. *See* 40 C.F.R. 31.36(c)(2) (EPA codification of federal grant requirements). For more information about preferences, see the State of Texas Procurement Manual.

Tie bid preferences (Tex. Gov. Code 2155.444):

- Goods or services produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Texas vegetation native to the region, for landscaping
- Agricultural products grown in Texas
- Agricultural products offered by a Texas bidder
- Non-agricultural goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- USA-produced supplies, materials or equipment

Specification preferences:

- Products made of recycled, remanufactured, or environmentally sensitive materials (Tex. Gov. Code 2155.445)
- Energy-efficient products (Tex. Gov. Code 2155.442)
- Rubberized asphalt paving material (Tex. Gov. Code 2155.443)
- Recycled motor oil and lubricants (Tex. Gov. Code 2155.447)
- Recycled paper products (Tex. Gov. Code 2155.448(a))
- Foods of higher nutritional value, for public cafeterias (Tex. Gov. Code 2155.452)
- Manufacturers that recycle or reuse computer equipment made by other manufacturers (Tex. Health and Safety Code 361.965(d))

Source preferences:

- Products produced at facilities located on formerly contaminated property (Tex. Gov. Code 2155.450)
- Products and services from economically depressed or blighted areas (Tex. Gov. Code 2155.449, 2306.004)
- Vendors that meet or exceed air quality standards (Tex. Gov. Code 2155.451)
- Products made by persons with disabilities (Tex. Gov. Code 2155.441)
- Products made by Texas Correctional Industries (Tex. Gov. Code Ch. 497)