



THE TEXAS A&M UNIVERSITY SYSTEM

Office of HUB & Procurement Programs

**Request for Qualifications
Construction Audit Services
RFQ NUMBER: RFQ01 FPC-20-082**

**SUBMITTAL MUST BE RECEIVED BEFORE:
2:00 P.M. Central Time on August 5, 2020**

**EMAIL RFQ RESPONSES TO:
SOPROCUREMENT@TAMUS.EDU
SUBJECT LINE: RFQ01 FPC-20-082
Attn: Jeff Zimmermann**

NOTE: SUBMITTAL must be received by The Texas A&M University System Office of Procurement & HUB Program before the date and time specified for receipt of submittal as stated within Section 2.4 of this RFQ. After response due date, only the names of Respondents will be made public.

REFER INQUIRIES TO:

Jeff Zimmermann, Director
The Texas A&M University System
Office of HUB & Procurement Programs
soprocurement@tamus.edu

All submittals shall become the property of the State of Texas upon receipt. Submittals may be subject to public review after contracts have been executed. Refer to Section 2.8 for more information regarding public information.

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SECTION 1

GENERAL INFORMATION

1.1 Scope

The Texas A&M University System (A&M System), Office of Facilities Planning & Construction (FP&C) is soliciting statements of qualifications from firms with an established history of providing construction closeout auditing services for construction manager at risk (CMAR) and design-build (D-B) delivery methods in accordance with the terms, conditions, and requirements set forth in this Request for Qualifications (RFQ).

A&M System is dedicated to the ongoing program to improve and expand all physical facilities in support of the teaching, research and service missions of each university and agency (collectively referred to as "Members") of the A&M System.

These expertise and qualifications shall be administered in accordance with the terms, conditions, and requirements set forth in this Request for Qualifications (RFQ) for A&M System Office managed construction projects. All Members have the option to utilize any firm awarded as a result of this RFQ for their institutional/agency managed construction projects.

By submitting a response, each Respondent certifies that it understands this RFQ and has full knowledge of the scope, nature, quality, and the amount of the work to be performed, the detailed requirements of the services to be provided, and the conditions under which the services are to be performed.

1.2 About the A&M System

The Texas A&M University System is one of the largest systems of higher education in the nation with a budget of \$6.3 billion. The A&M System is a statewide network of 11 universities; a comprehensive health science center, eight state agencies, including the Texas Division of Emergency Management; and the RELLIS Campus. The A&M System educates more than 151,000 students and makes more than 22 million additional educational contacts through service and outreach programs each year. System-wide, research and development expenditures exceeded \$1 billion in FY 2019 and helped drive the state's economy. More information about the Texas A&M University System and all of its Members can be found at <http://www.tamus.edu/about/>.

1.3 Purpose

The purpose of this RFQ is to solicit qualifications from Respondents who can provide construction auditing services to the A&M System. Refer to Section 3 for the full Scope of Work and requirements.

The intent of this RFQ is to allow all interested / prospective firms to provide a sufficient amount of data that will enable the A&M System to assess the qualifications of the Respondent. To this end, each Respondent shall furnish, as a part of the qualifications, a complete general description of experience in their respective fields.

By submitting qualifications, each Respondent certifies that it understands this RFQ and has full knowledge of the scope, nature, quality, and the amount of the work to be performed, the detailed requirements of the services to be provided, and the conditions under which the services are to be performed. Each Respondent also certifies that it understands that all costs relating to preparing and responding to this RFQ will be the sole responsibility of the Respondent.

1.4 Priorities/Expectations

- (a) *Ensuring a Quality Level of Service.* This priority encompasses the quality of the level of service that can be provided to the A&M System in a timely, cost effective manner. The A&M System is

seeking a Respondent(s) that will ensure the provision of such quality in its delivery of service through proven techniques and established practices.

- (b) *Level of Experience and Expertise.* Respondent must demonstrate its capabilities in providing the utmost level of experience and expertise to ensure a successful project as determined by the A&M System.
- (c) *Delivery Efficiency.* Respondent must demonstrate its ability to deliver the required services in a timely manner while not sacrificing the quality required by the A&M System.

1.5 Performance Period

The intention of this RFQ is to qualify firms to be included in a pool for the services defined in this RFQ from which it will periodically select participants to assist A&M System on an as-needed basis. Should A&M System, in its sole discretion, enter into an agreement with the successful Respondent(s) as a result of this RFQ, the agreement shall be effective as of the date that is agreed upon by A&M System and successful Respondent(s). A&M System anticipates that the initial term of any resultant agreement will extend for three (3) years, with the option to renew for up to two (2) one-year terms, providing all parties mutually agree on the extension. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by A&M System and negotiated in writing with the successful Respondent(s).

SECTION 2 INSTRUCTION FOR RESPONDENTS

2.1 General Information

A&M System is soliciting submittals from qualified firms, hereafter referred to as Respondent(s), who have significant experience in providing construction closeout auditing services for institutions of higher education. These basic services are outlined in the Scope of Work (Section 3).

Submittals are to be in accordance with the outline and specifications contained herein, are to remain in effect a minimum of 120 days from the date of submission, and may be subject to further extensions as negotiated. A statement to this effect should be contained in the Respondent's cover letter.

The Respondent(s) selected shall have an excellent track record for providing these services relative to the size and scope of A&M System projects and shall agree to provide these services to A&M System with a top priority commitment. A&M System may select as many Respondents as needed to ensure coverage throughout the State of Texas.

This RFQ contains specific requests for information. Respondents are encouraged to examine all sections of this RFQ carefully, in that the degree of interrelationship between sections is critical. In responding to this RFQ, Respondents are encouraged to provide any additional information they believe relevant.

Clause headings appearing in this RFQ have been inserted for convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the respective clauses. Whenever the terms "must", "shall", "will", "is required", or "are required" are used in the RFQ, the subject being referred to is to be a required feature of this RFQ and critical to the resulting submittal.

In those cases where mandatory requirements are stated, material failure to meet those requirements could result in disqualification of the Respondent's response. Any deviation or exception from RFQ specifications must be clearly identified by the Respondent in its submittal.

2.2 Calendar of Events

<u>Activity</u>	<u>Responsibility</u>	<u>Date</u>
Release of Request for Qualifications	A&M System	July 17, 2020
Deadline to Submit Questions	Respondent	July 27, 2020
Release of Response to Questions	A&M System	July 29, 2020
RFQ Responses Due	Respondent	August 5, 2020
Selection of Qualified Respondents	A&M System	TBD

A&M System will make every effort to adhere to the above schedule. The schedule, however, is subject to change. This may be in the event that further clarification of responses or terms of contract are in the best interest of A&M System and/or in the event A&M System requires more time to assure that the selection of the Respondent is in accordance with its policies, rules and regulations, as well as actual timing needs.

2.3 Examination of the Request for Qualifications

Before submitting, each Respondent will be held to have examined the A&M System requirements outlined in Section 3, and satisfied itself as to the existing conditions under which it will be obligated to perform in accordance with specifications of this RFQ.

No claim for additional compensation will be allowed due to unfamiliarity with the specifications and/or existing conditions. It shall be understood that the Respondent has full knowledge of all of the existing and/or revised conditions and accepts them "as is."

2.4 Submittal Instructions

All qualification submittals must be received by A&M System **no later than 2:00:00 p.m. Central Time (CDT), August 5, 2020**, electronically via email to soprocurement@tamu.edu with the subject line of "RFQ01 FPC-20-082 – Construction Audit Services". The sent time indicated within the A&M System email server shall be used for the receipt and acceptance of the response. **Late submittals will not be considered under any circumstances.**

Submittal Format: Submission shall be saved as two (2) separate files in Adobe Portable Document Format (PDF) according to the items listed below and named as such; I) "**company name – Forms**, II) "**company name – Qualification Statement**".

2.5 Submittal Components

The following documents are to be returned as part of your qualification submittal. Failure to include these sections/documents will be basis for response disqualification.

I. **Forms**

- ✓ Signed Execution of Offer (Exhibit A)
- ✓ Signed and notarized Non-Collusion Affidavit (Exhibit B)
- ✓ HUB Participation Plan (Section 3.5)

II. **Qualification Statement**

- ✓ Qualification Statement (Section 3.4)
- ✓ Service Location Matrix (Exhibit C)

Other Requirements:

- Qualification Statement shall be a MAXIMUM of forty (40) pages. The cover letter, table of contents, divider pages, HUB Subcontracting Plan, and the Exhibits do not count toward this maximum page count.
- Additional attachments shall NOT be included with the Qualification Statement. Only the responses provided by the Respondent to the questions identified in Section 3 of this RFQ will be used by the A&M System for evaluation.
- Submittals shall include a "Table of Contents" and give page numbers for each part of the Qualifications.
- Number all pages of the submittal sequentially using Arabic numerals (1, 2, 3, etc.).

Qualification Statement shall consist of answers to questions identified in Section 3.4 of the RFQ. It is not necessary to repeat the question in the Qualifications; however, it is essential to reference the question number with the corresponding answer.

Failure to comply with all requirements contained in this Request for Qualifications may result in the rejection of the submittal.

Note: Additional information regarding the Execution of Offer and Non-Collusion Affidavit.

- Execution of Offer: The signature in the Execution of Offer within the electronic copy shall serve as the official signature of record. Signature can be done electronically with DocuSign, Adobe or another similar tool.
- Non-Collusion Affidavit: The Respondent signature on this document may be done electronically with DocuSign, Adobe or another similar tool. While the document must also be notarized, this may be done at a later date due to the COVID-19 pandemic. An agreement may not be executed with the awarded Respondent(s) until this document is fully signed and notarized.

2.6 Inquiries and Interpretations

All technical and scope of work questions concerning this RFQ are to be directed to Jeff Zimmermann, Director of Procurement & Business Services, in writing, at soprocurement@tamus.edu no later than July 27, 2020. Respondent may not contact other individuals at A&M System to discuss any aspect of this RFQ, unless expressly authorized by the A&M System Procurement Office to do so. A&M System will publish all questions with responses according to the calendar in Section 2.2.

Responses to inquiries which directly effect an interpretation or change to this RFQ will be issued in writing by addendum/amendment and and posted to the Electronic State Business Daily (ESBD) at the following site; <http://www.txsmartbuy.com/sp> (Input Agency Number "710" and select "Posted" for the Status)

It is the responsibility of all REPONDENTS to check the ESBD for any and all addenda issued for this RFQ. All such addenda/amendments issued by A&M System prior to the time that qualifications are received shall be considered part of the RFQ, and the Respondent shall consider and acknowledge receipt of such in the Execution of Offer.

Only those A&M System replied to inquiries which are made by formal written addenda/amendments shall be binding. Oral and other interpretations or clarification will be without legal effect.

2.7 Selection Process

It is the intention of A&M System to utilize the information received from responding firms to form a pool of pre-qualified firms from which it will periodically select participants to assist A&M System on an as-needed basis. Each transaction will be documented individually and will extend for as long as agreed to by the parties. A&M System will base its choice on demonstrated competence, knowledge, and qualifications of the Respondent.

The Respondent(s) selected will be the one who's experience and qualifications, as presented in response to this RFQ, establish them, in the opinion of A&M System, as well qualified and offering the greatest benefits, experience and value to A&M System. A&M System may cancel this RFQ or reject Qualifications at any time prior to an award, and is not required to furnish a statement of the reasons why a particular qualification was not deemed to be the most advantageous.

Submission of qualifications indicates Respondent's acceptance of the evaluation techniques and the recognition that subjective judgments must be made by A&M System during the evaluation process.

It is the intent of A&M System to qualify multiple submissions. A&M System, at its sole discretion, may select as many firms as deemed to be in A&M System's best interest to be included in the pool to meet the needs throughout The Texas A&M University System. The selection of the successful submission(s) may be made by A&M System on the basis of the submissions initially submitted,

without discussion, clarification, or modification. In the alternative, selection of the successful submission(s) may be made by A&M System on the basis of negotiation with any of the Respondents. A&M System shall not disclose any information derived from the submissions provided by competing Respondents in conducting such discussions.

All submissions must be complete and convey all of the information requested to be considered responsive. If a submission fails to conform to the essential requirements of the RFQ, A&M System alone will determine whether the variance is significant enough to consider the submission susceptible to being made acceptable, and therefore a candidate for further consideration, or not susceptible and therefore not considered for award.

The A&M System may perform reference checks and seek further information, as needed from all Respondents whose submission the A&M System, at its discretion, considers viable, based on the initial evaluation and ranking. The Respondent's response to this requirement officially authorizes the A&M System to contact these organizations to discuss the services and other considerations which the Respondent has provided to such organizations and authorizes the organizations to provide such information to the A&M System and Respondent shall and hereby does release and hold harmless the A&M System, the state of Texas, and the organization of any and all liability whatsoever, in connection with providing and receiving all such information. Any negative responses received from reference checks may be grounds for disqualification of the submission.

A&M System reserves the right to accept or reject any or all offers, to waive informalities and technicalities, to accept qualifications considered most advantageous, and/or to make the award to the most responsive Respondent(s).

2.8 Public Information Act

- (a) Respondent acknowledges that A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this solicitation or any resultant agreement, as well as any other disclosure of information required by applicable Texas law.
- (b) Upon A&M System's written request, Respondent will promptly provide specified contracting information exchanged or created under any resultant agreement for or on behalf of A&M System.
- (c) Respondent acknowledges that A&M System may be required to post a copy of any resultant fully executed agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
- (d) The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to any resultant agreement and the Respondent agrees that the agreement can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

SECTION 3 SCOPE OF WORK

3.1 Goal

The A&M System is soliciting statements of qualifications from firms with an established history of providing construction closeout auditing services for construction manager at risk (CMAR) and design-build (D-B) delivery methods. It is the intent of the A&M System to contract with multiple Respondents to provide a pool of firms who can provide these services for A&M System Offices managed construction projects. All Members have the option to utilize any firm in this pool for their System institutional/agency managed construction projects.

3.2 Services Required

Specific requirements include, but are not limited to, the following activities:

- Perform a review of billings on construction manager at risk (CMAR) and design-build (D-B) projects for compliance with terms of agreements prior to final payment. Review to include but not limited to general conditions costs and supporting documentation and subcontractor and purchase order amounts compared with schedule of values.
- Provide a written report to FPC on findings of reviews and any potential cost recovery items.

3.3 Project Assignments

Construction auditing services will be assigned when required on a FP&C project or projects from the pool of vendors established by this RFQ. Note that inclusion in the pool is not a guarantee of work or project assignments. Below describes the process typically used by the FP&C office regarding assignment of a project or projects.

- Request sent to all vendors from our pool to submit a not to exceed quote, resumes of personnel and timeline for the audit based on an audit scope.
- FP&C reviews responses based on cost, qualifications, experience, and any other factor deemed relevant to make a selection. In many cases cost may be the determining factor. FP&C's decision on each project selection shall be final.
- Upon approval of selection, the awarded vendor will be issued a purchase order and a contact person to begin the audit.

3.4 Statement of Qualifications

Respondents shall carefully read the information contained in the following criteria and submit a complete statement of qualifications to all items listed below. Response shall be formatted as directed. Incomplete qualifications may be considered non-responsive and subject to rejection.

3.4.1 **Criterion One**

Statement of Qualifications and Availability to Undertake the Services:

- Provide a statement of interest including a narrative describing the firm's qualifications and availability.
- Provide a brief history of the firm including all office location(s), legal status and officers.
- Address the "Specific Qualifications" and ability to perform the "Scope of Services" in the specific area of expertise.
- Complete and provide Exhibit C – Service Location Matrix to indicate the locations the Respondent is willing and able to provide services required of this RFQ.

3.4.2 Criterion Two

Audit Team Profile:

- Identify key personnel who will negotiate for the firm and who will be assigned to manage an agreement and describe their respective roles and locations.
- Provide a resume for each individual identified to demonstrate their relevant experience to fulfill requirements under an agreement.
- Provide the firm's organization chart to demonstrate how project personnel will be organized to fulfill requirements under an agreement.
- Provide evidence that the firm is legally capable of performing the stated services in Texas.

3.4.3 Criterion Three

Previous Audit Experience:

- List a minimum of three (3) examples of relevant, previous projects undertaken by the firm that best demonstrates the firm's capacity and expertise to fulfill the requirements of the stated services. Each example should be well organized, and, when applicable, identify key personnel proposed for the A&M System contract who worked on the example project. List the projects in order of priority, with the most relevant project listed first. Provide the following information for each project listed:
 - Project name, location, and description.
 - Final construction cost, including change orders.
 - Actual start and finish dates for construction audit.
 - The owner's name and representative(s) who would be most familiar with the construction audit of the project, including telephone number.

References shall be considered relevant based on specific project participation and experience with the Respondent. TAMUS may contact references during any part of this process. The TAMUS reserves the right to contact any other references at any time during the RFQ process.

Note: Examples that involve public higher education projects are preferred. Past experience in the state of Texas and demonstrated knowledge and understanding of Texas statutes is also preferred.

3.5 HUB Subcontracting Plan

It is the policy of the A&M System to involve qualified HUBs to the greatest extent allowed by law in the A&M System's construction contracting, professional services, and purchase, lease, or rental of all supplies, materials, services and equipment. All A&M System members are responsible for making a good faith effort of ensuring that HUBs are afforded an equitable opportunity to compete for all procurement and contracting activities of the System.

Subcontracting opportunities are possible for the scope of this RFQ and therefore submission of a HUB Subcontracting Plan (HSP) is required. Failure to submit an HSP will constitute an irregular response, which will be rejected. The instructions for completing the HSP are provided below. The HSP submitted with this RFQ shall become part of any master agreement resulting from this RFQ.

a) RFQ Submission Requirements

The following items (1-3) must be submitted with your RFQ response in order to meet the HUB Subcontracting Plan requirements.

- 1) Letter of transmittal attesting that the respondent has read and understands the Policy on Historically Underutilized Businesses (see Exhibit D)
- 2) State of Texas Historically Underutilized Business Subcontracting Plan (HSP): Complete the HSP form by submitting Sections 1, Section 2, Section 4, and Method A or Method B as applicable based on the response to Section 2c-d. If subcontracting, the goal for this RFQ is 10% for "Other Services". The opportunities listed in Section 2b shall be those that you anticipate on a typical project of A&M System including estimated percentages.

The State of Texas HUB Subcontracting Plan forms shall be accessed at the following site:

<http://www.tamus.edu/business/hub-procurement/hub-programs-3/system-offices-hub-program/>

Self-Performing: If the Respondent is completing as self-performing, a statement shall be provided which attests that the entire scope of work shall be performed with its own employees and resources. The sections in the HSP form to be completed are Section 1, 2a (check "No"), 3 (with your statement included in the open text field), and 4. The additional information requested below is not needed for self-performing plans.

- 3) **Supporting Documentation (if applicable):** If Method B is being used based on the response to Section 2c-d, inclusion of supporting documentation is required as stated within Method B, Section B-3.

Please contact Mr. Keith Williams, HUB Coordinator, Procurement & Business Services, soprocurement@tamus.edu, (979) 458-3265 for assistance in proper completion of the HSP. Respondents have the opportunity to submit a draft of the HSP, prior to submittal of their response to the RFQ, for review by Mr. Williams.

b) Awarded Respondents

If awarded a project as a result of a Master Agreement, the VENDOR may be required to complete a revised HSP in full to identify the subcontractors needed for that specific project and the applicable percentages.

SECTION 4 GENERAL TERMS AND CONDITIONS

4.1 Dispute Resolution

The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by A&M System and Respondent to attempt to resolve any claim for breach of contract made by Respondent that cannot be resolved in the ordinary course of business. Respondent shall submit written notice of a claim of breach of contract under this Chapter to the Deputy Chancellor and Chief Financial Officer for A&M System, who shall examine Respondent's claim and any counterclaim and negotiate with Respondent in an effort to resolve the claim.

4.2 Insurance

Respondent shall obtain and maintain, for the duration of a resultant agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to A&M System. By requiring such minimum insurance, A&M System shall not be deemed or construed to have assessed the risk that may be applicable to Respondent under a resultant agreement. Respondent shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Respondent is not relieved of any liability or other obligations assumed pursuant to a resultant agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation.

Coverage

Limit

A. Worker's Compensation

Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for A&M System. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

B. Automobile Liability

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

C. Commercial General Liability

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000

Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures Respondent's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of a resultant agreement.

Additional Endorsements

The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System as additional insureds.

D. Professional Liability (Errors & Omissions)

Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of Respondent and its subcontractors under a resultant agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of a resultant agreement. If coverage is written on a claims-made basis, Respondent agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (3) years after the expiration of cancellation of a resultant agreement.

E. Respondent will deliver to A&M System:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of a resultant agreement and prior to the performance of any services by Respondent under a resultant agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by Respondent. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-Contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to A&M System ten (10) days prior to the effective date of cancellation, material change, or nonrenewal relating to any insurance policy required in this Section.

Any deductible or self-insured retention must be declared to and approved by A&M System prior to the performance of any services by Respondent under a resultant agreement. Respondent is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by a resultant agreement will be mailed, faxed, or emailed to the SREO.

The insurance coverage required by a resultant agreement will be kept in force until all services have been fully performed and accepted by A&M System in writing, except as may be noted.

4.3 Terms and Conditions

- 4.3.1 **Indemnification.** Respondent agrees to indemnify and hold harmless A&M System from any claim, damage, liability, expense or loss to the extent arising out of Respondent's negligent or willful errors or omissions under a resultant agreement.
- 4.3.2 **Independent Contractor.** Respondent is an independent contractor, and neither Respondent nor any employee of Respondent shall be deemed to be an agent or employee of A&M System. A&M System will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Respondent shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of A&M System relative to conduct on its premises.
- 4.3.3 **Not Eligible for Rehire.** Respondent is responsible to ensure that employees participating in work for any A&M System member have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy 32.02, Section 4. Non-conformance to this requirement may be grounds for termination of any resultant agreement.
- 4.3.4 **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, Texas Government Code, Respondent agrees that any payments owing to Respondent under any resultant agreement may be applied directly toward certain debts or delinquencies that Respondent owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- 4.3.5 **State Auditor's Office.** Respondent understands that acceptance of funds under a resultant agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. Respondent agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Respondent will include this provision in all contracts with permitted subcontractors.
- 4.3.6 **Entire Agreement.** Any resultant agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of a resultant agreement. A resultant agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- 4.3.7 **Severability.** If any provisions of a resultant agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making a resultant agreement, as modified, enforceable, and the remainder of a resultant agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- 4.3.8 **Force Majeure.** Neither party will be in breach of its obligations under any resultant agreement (other than payment obligations for services received up to Force Majeure event) or incur any liability to the other party for any losses or damages of any nature whatsoever incurred or suffered by that other party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure (as defined below), except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure had not occurred. "Force Majeure" is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation

- facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the party whose performance is affected and which by the exercise of all reasonable due diligence, such party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform the obligation(s). Written notice of a party's failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). Notwithstanding the foregoing, a party's financial inability to perform its obligations shall in no event constitute a Force Majeure. For the avoidance of doubt, COVID-19 and any governmental changes or closures related thereto shall be deemed Force Majeure events under this Section, even to the extent reasonably foreseeable by either party as of the Effective Date.
- 4.3.9 **Loss of Funding.** Performance by A&M System under any resultant agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, A&M System will issue written notice to Respondent and A&M System may terminate a resultant agreement without further duty or obligation hereunder. Respondent acknowledges that appropriation of funds is beyond the control of A&M System.
- 4.3.10 **Governing Law.** The validity of a resultant agreement and all matters pertaining to a resultant agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- 4.3.11 **Venue.** Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against A&M System shall be in the county in which the primary office of the chief executive officer of A&M System is located, which is Brazos County, Texas.
- 4.3.12 **Non-Discrimination.** The parties agree that in the performance of any contract they shall not discriminate in any manner on the basis of race, color, national origin, age, religion, sex, sexual orientation, disability, genetic information, veterans status or gender identity as protected by law. Such action shall include, but is not limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation. By submitting a submittal, Respondents certify that they will conform to the provisions of the Federal Civil Rights Action of 1964, as amended.
- 4.3.13 **Conflict of Interest.** By executing a resultant agreement, Respondent and each person signing on behalf of Respondent certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this RFQ, or in the services to which this RFQ relates, or in any of the profits, real or potential, thereof.
- 4.3.14 **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Texas Government Code, Chapter 2271 is applicable to a resultant agreement, the Respondent certifies it does not and will not, during the performance of any resultant agreement, boycott

Israel. Respondent acknowledges any resultant agreement may be terminated if this certification is or becomes inaccurate.

- 4.3.15 **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Respondent certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Respondent acknowledges that any resultant agreement may be terminated if this certification is or becomes inaccurate.
- 4.3.16 **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in any resultant agreement is not ineligible to receive the specified contract and acknowledges that resultant agreement may be terminated and payment withheld if this certification is inaccurate.
- 4.3.17 **Records Retention.** Respondent will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to resultant agreement for the duration of the resultant agreement and for seven years after the conclusion of the resultant agreement.
- 4.3.18 **Immigration Reform and Control Act of 1986.** By submitting a statement of qualification, the Respondent certifies that it does not and will not, during the performance of the resultant agreement, employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- 4.3.19 **Debarment Status.** By submitting a statement of qualification, Respondent certifies that it is not currently debarred from submitting submittals on contracts nor is it an agent of any person or entity that is currently debarred from submitting bids on contracts.
- 4.3.20 **Modification of Service.** The A&M System reserves the right to modify the services during the course of any resultant agreement. Any changes in pricing and rates proposed by the Respondent resulting from such changes are subject to acceptance by the A&M System. In the event prices and rates cannot be negotiated to the satisfaction of both parties, any resultant agreement may be terminated by A&M System.
- 4.3.21 **Publicity.** Respondents must refrain from giving any reference to this project, whether in the form of press releases, brochures, photographic coverage, or verbal announcements, without specific written approval from the A&M System.
- 4.3.22 **Ownership of Documents.** Upon completion or termination of any resultant agreement, all documents prepared by the Respondent for the benefit of the A&M System shall become the property of the A&M System. The A&M System acknowledges that the documents are prepared only for the contracted services specified. Prior to completion of the contracted services, the A&M System shall have a recognized proprietary interest in the work product of the Respondent.

EXHIBIT A**EXECUTION OF OFFER****RFQ01 FPC-20-082****DATE EXECUTED: _____**

In compliance with this RFQ, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services.

A.1 Respondent Affirmation

NOTE TO RESPONDENTS: SUBMIT ENTIRE SECTION WITH RESPONSE.

This execution of offer must be completed, signed, and returned with the respondent's qualifications. Failure to complete, sign and return this execution of offer with the qualifications may result in rejection of the qualifications.

Signing a false statement may void the submitted qualifications or any agreements or other contractual arrangements, which may result from the submission of respondent's qualifications. A false certification shall be deemed a material breach of contract and, at owner's option, may result in termination of any resulting contract or purchase order.

Addenda Acknowledgment:

Receipt is hereby acknowledged of the following addenda to this RFQ by entering yes or no in space provided and indicating date acquired. Enter "0" if none received.

No. 1 _____ Date _____

No. 2 _____ Date _____

A.2 Signature

By signing below, the Respondent hereby certifies as follows, and acknowledges that such certifications will be included in any resulting contract:

- (i) the Qualifications and all statements and information prepared and submitted in response to this RFQ are current, complete, true and correct;
- (ii) it is not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount trip, favor or service to a public servant in connection with the submitted Qualifications or any subsequent proposal. Failure to sign below, or signing a false statement, may void the Response or any resulting contracts at A&M System's option, and the Respondent may be removed from all future proposal lists at this state agency;
- (iii) the individual signing this document and the documents made part of the RFQ is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract which may result from the submission of the Response;
- (iv) no relationship, whether as a relative, business associate, by capital funding agreement or by any other such kinship exists between Respondent and an employee of The Texas A&M University System;
- (v) Respondent has not been an employee of the A&M System within the immediate twelve (12) months prior to the RFQ response;
- (vi) no compensation has been received for participation in the preparation of this RFQ (ref. Section 2155.004 Texas Government Code);
- (vii) all services to be provided in response to this RFQ will meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health law (Public Law 91-596) and its regulations in effect as of the date of this solicitation;

- (viii) Respondent complies with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action;
- (ix) to the best of its knowledge, no member of the Board of Regents of The Texas A&M University System, or the Executive Officers of the Texas A&M University System or its member institutions or agencies, has a financial interest, directly or indirectly, in the Project;
- (x) each Respondent will be selected based on demonstrated competence and qualifications only;
- (xi) if the Respondent is subject to the Texas franchise tax, it is not currently delinquent in the payment of any franchise tax due under Chapter 171, Texas Tax Code, or is exempt from the payment of such taxes. A false certification may result in the Respondent's disqualification;
- (xii) under Section 231.006, Family Code, the Respondent 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 may be terminated and payment may be withheld if this certification is inaccurate; and,
- (xiii) under Section 2155.006, Government Code, the Respondent 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.
- (xiv) the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this bid and resultant agreement and the PROVIDER agrees that the resultant agreement can be terminated if the PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

Respondent shall provide their Federal Employer Identification Number (EIN), full VENDOR name, address and contact information in the spaces below. Failure to either manually or electronically (i.e. DocuSign) sign in the Authorized Signature line below will disqualify the submission. The person signing shall show title and have authority to bind his/her firm into a contractual relationship.

Federal EIN/Taxpayer ID#: _____

Vendor/Company Name: _____

Authorized Signature: _____

Name: _____

Title: _____

Street: _____

City/State/Zip: _____

Telephone No.: _____

Fax No.: _____

E-mail: _____

* By signing this RFQ, Respondent certifies that if a Texas address is shown as the address of the respondent, respondent qualifies as a Texas Resident Bidder as defined in Texas Government Code, § 2252.001(4)

EXHIBIT B
NON-COLLUSION AFFIDAVIT

The undersigned, duly authorized to represent the persons, firms and corporations joining and participating in the submission of the foregoing Qualifications (such persons, firms and corporations hereinafter being referred to as the "Respondent"), being duly sworn, on his or her oath, states that to the best of his or her belief and knowledge no person, firm or corporation, nor any person duly representing the same joining and participating in the submission of the foregoing Qualifications, has directly or indirectly entered into any agreement or arrangement with any other Respondents, or with any official of A&M System or any employee thereof, or any person, firm or corporation under contract with A&M System whereby the Respondent, in order to induce acceptance of the foregoing Qualifications by said A&M System, has paid or is to pay to any other Respondent or to any of the aforementioned persons anything of value whatever, and that the Respondent has not, directly or indirectly entered into any arrangement or agreement with any other Respondent or Respondents which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing Qualifications.

The Respondent hereby certifies that neither it, its officers, partners, owners, providers, representatives, employees and parties in interest, including the affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Respondent, potential Respondent, firm or person, in connection with this solicitation, to submit a collusive or sham bid, to refrain from bidding, to manipulate or ascertain the price(s) of other Respondents or potential Respondents, or to obtain through any unlawful act an advantage over other Respondents or A&M System.

CONFLICT OF INTEREST

The undersigned Respondent and each person signing on behalf of the Respondent certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of A&M System, nor any employee, or person, whose salary is payable in whole or in part by A&M System, has a direct or indirect financial interest in the award of this RFQ, or in the services to which this RFQ relates, or in any of the profits, real or potential, thereof, except as noted otherwise herein.

Signature _____

Company Name _____

Date _____

Subscribed and sworn to before me this

_____ day of _____, 2020.

Notary Public in and for the County of _____, State of

_____. My commission expires: _____

THE EXECUTION OF OFFER AND NON-COLLUSION AFFIDAVIT MUST BE COMPLETED, SIGNED, AND RETURNED WITH RESPONDENT'S SUBMISSION. FAILURE TO SIGN AND RETURN THESE DOCUMENTS WILL RESULT IN THE REJECTION OF YOUR SUBMISSION.

EXHIBIT C
SERVICE LOCATION MATRIX

Please indicate by an "X" locations the firm is willing and able to provide services.

SERVICE LOCATIONS		AVAILABILITY
	College Station Texas	
	Prairie View Texas	
	Galveston Texas	
	Stephenville Texas	
	Commerce Texas	
	Texarkana Texas	
	Canyon Texas	
	Kingsville Texas	
	Corpus Christi Texas	
	Laredo Texas	
	San Antonio Texas	
	Killeen Texas	
	Dallas/Ft Worth, Texas	
	Houston, Texas	
	McAllen, Texas	

EXHIBIT D
HSP Letter of Transmittal

(SUBMIT ON YOUR BUSINESS LETTERHEAD)

The Texas A&M University System
Moore/Connally Building
301 Tarrow, Suite 273
College Station, Texas 77840
Attn: Jeff Zimmermann

Subject: HSP Letter of Transmittal

Dear Mr. Zimmermann:

I am pleased to forward this HUB Subcontracting Plan as an integral part of our written response submitted in connection with your solicitation # _____.

This letter shall attest that (company name) has read and understands The Texas A&M University System's Policy on Utilization of Historically Underutilized Businesses (HUBs) as stated within the solicitation. (Company name) also understands the HUB participation goal for this solicitation is 10% and if subcontracting will make a full good faith effort to obtain that goal. For any questions regarding this HUB Subcontracting Plan, my contact information is below.

Sincerely,

(Signature)

(Printed Name)

(Printed Title)

(Email)

(Phone)