



THE TEXAS A&M UNIVERSITY SYSTEM

Office of Procurement and HUB Program

REQUEST FOR PROPOSAL
RFP Number: RFP01-MKTG-23-177
Media Planning, Buying and Analytics Services

PROPOSAL MUST BE RECEIVED BEFORE:
2:00 P.M. Central Time (CDT) on July 31, 2023

EMAIL RFP RESPONSES TO:

SOPROCUREMENT@TAMUS.EDU

SUBJECT LINE: MKTG-23-177 – Media Planning, Buying and Analytics Services

NOTE: Proposal response must be received by The Texas A&M University System Office of Procurement and HUB Program before the date and time specified for receipt of proposal as stated within Section 2.3 of this RFP. After the due date and time, only the names of respondents will be made public.

REFER INQUIRIES TO:

Jeff Zimmermann, Executive Director
Procurement and Business Services | HUB Program
The Texas A&M University System
soprocurement@tamus.edu

All proposals shall become the property of The Texas A&M University System and the State of Texas upon receipt. Proposals may be subject to public review after contracts have been executed. Refer to Section 5G for more information regarding public information.

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SECTION 1 – INTRODUCTION

1.1 **Scope**

The Texas A&M University System (“A&M System”) is seeking proposals in response to this Request for Proposal (“RFP”) from qualified companies (“Respondent”) to provide media planning, buying, analytics and measurement services focused on digital student recruitment to support the A&M System and all its member universities and agencies (“Members”) as further described in Section 3.

The intent of the A&M System to establish a master services agreement (“Agreement”) with one or more companies to meet the needs of all Members. There is a preference to select a single company to provide these services, however the A&M System reserves the right to select more than one company to create a pool of vendors who may be engaged on an as-needed basis. If a pool of two or more companies are established as a result of this RFP, inclusion in the pool does not guarantee engagement in the future. The resultant Agreement will be between the selected company or companies and the A&M System for all Members to utilize at their discretion.

By submitting responses, each Respondent certifies that it understands this RFP and has full knowledge of the scope and nature of the opportunity described herein. Each Respondent also certifies that it understands that all costs relating to preparing and responding to this RFP will be the sole responsibility of the Respondent.

Respondent is to independently investigate and verify, at its own discretion, all information acquired from the A&M System or from any other source which is relied on by Respondent in the preparation of its proposal.

Proposals shall be in accordance with the terms, conditions, and requirements set forth in this RFP.

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 \$7.2 billion. Through a statewide network of 11 universities, a comprehensive health science center, eight state agencies, and the RELLIS Campus, the A&M System educates more than 152,000 students and makes more than 24 million additional educational contacts through service and outreach programs each year. System-wide, research and development expenditures exceed \$1 billion and help drive the state’s economy. More information about the Texas A&M University System and all of its Members can be found at the A&M System [About](#) page.

1.3 **Priorities/Expectations**

Respondents should note the following priorities and expectations with regard to the possibility of the A&M System establishing a contractual relationship with any Respondent:

- (a) *Ensuring a Quality Level of Service.* This priority encompasses the quality of the level of service that can be provided to all Members in a timely, cost-effective manner. The A&M System is seeking a Respondent that will ensure the provision of such quality in its delivery of service through proven techniques and established metrics.
- (b) *Level of Experience and Expertise.* Respondent must demonstrate its capabilities in providing the utmost level of experience and expertise to ensure successful completion of services determined by the A&M System.
- (c) *Delivery Efficiency as it Relates to Total Costs.* Respondent must demonstrate its ability to deliver the required services in a cost-effective and timely manner while not sacrificing the

quality required by the A&M System.

1.4 Calendar Of Events

Release of RFP.....	July 6, 2023
Deadline for Receiving Proposals.....	July 31, 2023, by 2:00 PM CDT
Interview Top Proposal Teams (A&M System’s Option)	TBD
Anticipated Award Date.....	TBD

The 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 the A&M System and/or in the event the 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.

1.5 Performance Period

Should the A&M System, in its sole discretion, enter into an Agreement with a successful Respondent(s) as a result of this RFP, the resultant Agreements shall be effective upon execution for a period of three (3) years. The resultant Agreement may be extended for up to one additional two (2) year term, provided the parties mutually agree in writing on the extension. Any extension 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.

Any engagement of services as a result of an Agreement will be documented individually by execution of a statement of work (“SOW”) or issuance of a purchase order by the A&M System or applicable Member.

SECTION 2 - INSTRUCTION FOR RESPONDENTS

2.1 General Information

This RFP outlines the scope and requirements as specified in Section 3. While it is the intent of the A&M System to establish an Agreement with one or more Respondents for the services stated within this RFP, there is no guarantee that an award will be made, or any Agreement executed. If an Agreement is established as a result of this RFP, Members will have the option to utilize the services at their discretion.

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.

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

Clause headings appearing in this RFP 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 RFP, the subject being referred to is to be a required feature of this RFP 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 RFP specifications must be clearly identified by the Respondent in its submittal.

Expenses for developing and presenting proposals shall be the entire responsibility of the Respondent and shall not be chargeable to the A&M System.

2.2 Examination of the Request for Proposal

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 the specifications of this RFP.

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 the existing and/or revised conditions and accepts them "as is."

2.3 Submittal Instructions

All proposals must be received by the A&M System, no later than **2:00:00 p.m. CDT, July 31, 2023** electronically via email to soprocurement@tamus.edu with the subject line of "**RFP01-MKTG-23-177 – Media Planning, Buying, Analytics Services**". The sent time indicated within the A&M System email server shall be used for the receipt and acceptance of the response. It is each Respondent's responsibility to ensure that the entire submittal response is received by the A&M System by the deadline stated above regardless of submission method. **Late proposals will not be considered under any circumstances.**

A file sharing tool may be used to submit the proposal response if large file sizes are an issue. If opting to use a file sharing tool it is recommended that Respondents send a test file prior to the due date.

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 – Proposal**” and II) “**company name – Documents**”.

2.4 **Proposal Components**

The following documents and all requirements from noted sections are to be returned as part of your proposal response. Failure to include these documents will be basis for response disqualification.

I. **Proposal**

- ✓ Cover Letter to include a brief introduction with interest and capability of the Respondent.
- ✓ Company Profile (Section 4.1)
- ✓ Technical Proposal (Section 4.2)
- ✓ References (Section 4.3)
- ✓ Pricing (Section 4.4)

II. **Documents**

- ✓ Signed Execution of Offer (Exhibit A)
- ✓ Non-Collusion Affidavit (Exhibit B) – signed and notarized
- ✓ HUB Subcontracting Plan (Section 4.5)

Proposal format: The proposal response shall be presented in the order listed above with sections noted accordingly for easy reference.

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 an eSignature tool.
- Non-Collusion Affidavit: The Respondent signature and notary on this document may be done electronically with an e-signature tool with that capability. An agreement may not be executed with the awarded Respondent until this document is fully signed and notarized.

2.5 **Inquiries and Interpretations**

All questions concerning this RFP are to be directed, in writing, to Jeff Zimmermann, Executive Director, Procurement and Business Services at soprocurement@tamus.edu. Respondent may not contact other individuals at the A&M System to discuss any aspect of this RFP, unless expressly authorized by the A&M System Procurement & HUB Program office to do so. The A&M System will publish all questions in the form of an addendum with responses at least two (2) days prior to the Deadline for Receiving Proposals as stated in the schedule in Section 1.4.

Responses to inquiries which directly affect an interpretation or change to this RFP will be issued in writing by addendum/amendment 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)

All such addenda issued by the A&M System prior to the time that proposals are due shall be considered part of the RFP, and the Respondent shall consider and acknowledge receipt of such in their proposal. Only formal written addenda issued by the A&M System in response to an inquiry shall be binding. Oral and other interpretations or clarification will be without legal effect.

2.6 Selection Process

The evaluation of the proposals shall be based on the information provided that the A&M System deems to represent the **best value** to the A&M System. The RFP provides the information necessary to prepare and submit proposals for consideration by the A&M System. All properly submitted proposals will be reviewed, evaluated, and ranked by the A&M System. The A&M System will rank the Respondents in the order that they provide the overall “best value” to the A&M System based on an evaluation of the responses to the RFP. The A&M System may interview one or more of the top ranked Respondents as part of the evaluation process.

The A&M System will base its choice on criteria to include, but not be limited to, the following: demonstrated competence, knowledge, and qualifications of the Respondent in respect to the services offered; impact on the ability of A&M System to comply with statutes and objectives relating to utilization of Historically Underutilized Businesses; and on the reasonableness of the proposed fee for the services; and if other considerations are equal, give preference to a Respondent whose principal place of business is in the state of Texas, will manage the contract wholly from an office in the state of Texas, or is a state of Texas certified Historically Underutilized Business.

The Respondent(s) selected will be the one(s) whose experience and qualifications, as presented in response to this RFP, establish them, in the opinion of the A&M System, as well qualified and offering the greatest benefits, experience and value to the A&M System. The A&M System may cancel this RFP or reject proposals at any time prior to an award and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. Should the A&M System determine in its sole discretion that only one Respondent is fully qualified, or that one Respondent is clearly more highly qualified than the others under consideration, a contract may be negotiated and executed with that Respondent. The contract will be an agreement incorporating by reference all the requirements, terms and conditions of the solicitation and the Respondent’s proposal as negotiated.

After proposal tabulation and such investigation of Respondents as the A&M System deems appropriate, an award may be made to the vendor or vendors whose proposal it judges to represent the best value to the A&M System. Final determination for award of the contract will be made on the overall best value to the A&M System. The A&M System reserves the right to reject any or all proposals.

By submitting its proposal in response to this RFP, Respondent accepts the evaluation process and acknowledges and accepts that determination of the “best value” firm(s) will require subjective judgments by the A&M System.

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

All proposals must be complete and convey all of the information requested to be considered responsive. If a proposal fails to conform to the essential requirements of this RFP, the A&M System alone will determine whether the variance is minor enough to consider the proposal

acceptable, and therefore a candidate for further consideration, or significant enough to consider the proposal not acceptable and therefore not considered for award.

The A&M System may perform reference checks and seek further information, as needed from all Respondents whose proposals the System, at its discretion, considers viable, based on the initial evaluation and scoring. 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 proposal.

The A&M System reserves the right to reject any or all proposals and re-solicit for new proposals, or to reject any or all proposals and temporarily or permanently abandon the project. The A&M System makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.

SECTION 3 – SCOPE

3.1 Scope and Goal

The Texas A&M University System is seeking proposals for media planning, buying, analytics and measurement services, focused on digital student recruitment, which will be available to all marketing units across the A&M System. The intent is to establish Agreements with one or more Respondents to meet the needs of the A&M System and its Members. There is a preference to select a single company to provide these services, however the A&M System reserves the right to select more than one company to create a pool of vendors who will be engaged on an as-needed basis.

The goals for the A&M System are to support student enrollment on all campuses and modalities; to enhance the image and reputation of the A&M System and its Members; and to broaden and deepen knowledge of the A&M System and its Members among their specific constituency groups.

3.2 Landscape

Individual divisions and departments within each of the Members of the A&M System are largely decentralized and have disparate resources and varying levels of staffing and skill. Some may have full teams and relevant expertise, and some may have no resources in these areas. The goal of this RFP is to identify companies that can serve as an extension of a team.

It is possible that some departments may have projects that require coordination with other vendors or in-house design or development teams. This will depend department-to-department, project-to-project.

Marketing units across the A&M System run print, out-of-home, radio/streaming audio, TV/OTT and online ads. The A&M System requires a media buying firm with extensive knowledge and experience in traditional and online advertising, as well as reliable full-service account support that is prepared to work with numerous sub-clients running different campaigns of various sizes.

The RFP relies heavily on digital marketing expertise, and budget division between digital and traditional paid media efforts hover around 80/20 or 90/10. This is merely an estimate and individual campaigns and department needs could vary widely.

Direct access to individual websites for SEO updates would be managed by each individual Member department and would depend upon their web management philosophies. Any Member content, including landing pages for individual campaigns, should be hosted on the engaging Member servers.

3.3 Media Buying Required Services

Providers awarded an Agreement as a result of this RFP shall be able to perform the following services:

- a. Make recommendations on media buying strategies, including online strategies, to reach specific target audiences and generate desired conversions.
- b. Negotiate favorable rates with media owners and/or agencies representing owners
- c. Develop creative partnerships with media suppliers and/or agencies to deliver more value for the A&M System's media budget.
- d. Place media buys.

- e. Provide follow-up reports on campaign performance.
 - Post-buy analysis/confirmation for radio and TV schedules.
 - Follow-up reports on effectiveness of online campaigns
 - Proposals to optimize future campaigns based on these results
- f. Provide access to marketing research data in support of strategies.
- g. Provide strategic marketing consulting if/as needed.
- h. Traffic supplied creative or facilitate the production of minor creative content if/as necessary.
- i. Provide strategic analysis and recommendations based on the measurement criteria agreed.

3.4 Required Capabilities

Although the A&M System may award to multiple Respondents, all Providers shall have the ability to buy media both domestically and internationally across both traditional and digital media platforms, and SEM/SEO, preferably in-house (please note any outsourcing), and including but not limited to:

A. Digital Advertising:

- Programmatic
- Website and ad click Retargeting
- Search Retargeting
- Streaming Audio
- Video
- Display
- Social Media
- Mobile

B. Search Engine Marketing (SEM)

- Conversion optimization management (paid search, reporting, competitive analysis, keyword bidding, etc.)
- Fully automated analytics package (campaign tracking, reporting)
- International SEM localization

C. Search Engine Optimization (SEO)

- Conversion optimization management (Search Engine Results Page (SERP) tracking, keyword tracking, reporting, analysis, etc.)
- Technical SEO (on-page, off-page, technical, migration, audits, testing, optimization, etc.)
- Fully automated analytics package (performance tracking, reporting)
- International SEO localization

D. Traditional Advertising:

- Newspapers
- Cable Television
- Network Television
- OTT Video Streaming
- Radio
- Out-of-Home
- Projections

- E. Ability to identify key market segments and provide recommendations on how best to reach them including:
 - Media type(s)
 - Which media platforms to leverage
 - Timing
 - Geographical location
 - Psychographic data
- F. Clear, consistent, and dependable account management strategy
- G. Ability to provide reporting on an as-needed basis
- H. Ability to provide proof of publication
- I. Dedicated project management staff
- J. Ability to create advertisements within an existing brand framework
- K. Ability to fulfill any accessibility requirements (captioning, contrast, etc.) as needed by System clients if producing ad content

3.5 Preferred Capabilities:

The following qualifications and capabilities are not required however they may be used in our evaluation of proposal responses.

- a. Understanding of higher education industry.
- b. Ability to produce or effectively outsource production of ad content and/or creative.
- c. Option to expand services to include communications through CRM systems such as Salesforce or Slate.
- d. Expertise in designing and developing holistic social media campaigns.
- e. Added-value services such as strategic consulting, market research, marketing support, and other services related to and in support of media buying and planning.

3.6 Expectations

The A&M System Marketing & Communications and other Members may engage an awarded Respondent on an as needed basis. Members will develop specific SOW's exclusive to the agreed objectives.

Audience demographics, placement schedules, success KPIs, content, and business goals would vary on a project-by-project basis. Goals, benchmarks and KPIs should be agreed upon as part of an individual project's SOW.

Selected Respondent(s) may be contacted by a Member or the A&M System Marketing & Communications for many types of projects. To the extent that the agency has visibility into multiple concurrent campaigns across the A&M System, we expect that vendor(s) will work with the A&M System Marketing & Communications to minimize duplication of efforts and/or eliminate potential accidental internal competition.

SECTION 4 – PROPOSAL RESPONSE

The Respondent recognizes that in its selection process the A&M System will rely, in part, on the answers provided in response to this Section. Accordingly, Respondent warrants to the best of its knowledge that all responses are true, correct and complete.

4.1 Company Profile

- 4.1.1 Provide a contact name for this RFP response, including title, address, telephone number and email address.
- 4.1.2 Number of Years in Business: _____
Number of Employees: _____(company wide)
- 4.1.3 Is your company currently for sale or involved in any transaction to expend or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
- 4.1.4 Provide any details of all past or pending litigation or claims filed against your company that would negatively impact your company's performance under an agreement with the A&M System.
- 4.1.5 Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If yes, specify date(s), details, circumstances, and prospects for resolution.

4.2 Technical Proposal

Respondent should describe how their experience, qualifications and services offered can address the overall needs and requirements of the A&M System as described in *SECTION 3 – SCOPE*. Proposal response shall also address each of the below items.

- Discuss and provide evidence that your company can perform each of the Required Services described in Section 3.3.
- Discuss and provide evidence that your company can perform each Required Capabilities described in Section 3.4.
- Discuss your company's ability to perform each of the Preferred Capabilities described in Section 3.5.
- Provide any other information relevant to your company's ability to best meet the needs and requirements of the A&M System to include additional services offered that may compliment those described in this RFP.

4.3 References

Respondents shall provide three (3) references, preferably at least one from an institution of higher education, for similar services provided within the last five years. Each reference shall include at least the following information:

- Company name
- Contact person name and title
- Contact phone number and email address
- General description of the completed scope and services provided
- Time period of services provided

4.4 Pricing

Describe your methodology and process for pricing to include rate sheets as applicable, and any fees associated with services offered.

- Describe in as much detail as possible the proposed methodology for pricing.
- Provide terms of payment for any services to be provided as part of the scope of this RFP.

4.5 HUB Subcontracting Plan

It is the policy of the state of Texas and the A&M System to encourage the use of Historically Underutilized Businesses (“HUB”) in our prime contracts, subcontractors, and purchasing transactions. The goal of the HUB program is to promote equal access and equal opportunity in the A&M System contracting and purchasing.

Subcontracting opportunities are defined as those opportunities contracted with a vendor to work, supply commodities, or contribute toward completing work for a governmental entity. Each Respondent shall indicate what portion(s) of the scope they anticipate to subcontract, if any. The Respondent is required to submit a properly completed HUB Subcontracting Plan (“HSP”) form to document their good faith effort to solicit and use State of Texas certified HUB vendors to perform portion(s) of the scope as defined in this RFP.

Subcontracting opportunities are possible for this RFP and, therefore, an HSP is **required**. Failure to submit a comprehensive HSP form with the RFP response will be considered a material failure to comply with the requirements of the RFP, and will result in rejection of the submittal. The HUB Subcontracting Plan (HSP) form shall be submitted with the RFP response by the date and time specified.

The HUB participation goal for this RFP is 15% and every Respondent shall endeavor to achieve this goal.

HSP Form Requirements

The HSP form can be found here: <https://www.tamus.edu/business/hub-procurement/hub-programs-3/>. The HUB goal stated in this RFP takes precedence over the standard HUB goal stated on the HSP form, unless otherwise noted. The Respondent shall complete Section 1, Section 2a, and Section 4 of the HSP form, properly completing all subsequent steps as stated on the HSP form.

If the Respondent shall subcontract with a vendor(s) with which a pre-existing agreement exists, the Respondent shall list each vendor in Section 2b of the HSP form and provide an explanation with the RFP response as to why solicitations were not done (e.g. contractual requirements). If the Respondent shall subcontract with a vendor(s) with which no pre-existing agreement exists, then the Respondent shall make a good faith effort to utilize Texas certified HUBs according to the instructions as stated on the HSP form, which may include providing supporting documentation.

If the Respondent shall self-perform the entire scope, a statement which attests that the Respondent shall perform the subcontracting opportunities identified by the A&M System with its own employees and resources is **required**. This statement shall be documented in Section 3 of the HSP form.

For information regarding the HSP form requirements, please contact Ms. Porschia Tolbert, A&M System HUB Program Director, at so-hubprogram@tamus.edu for assistance. Respondents may submit a draft of the HSP form at least five business days prior to submittal of their response to the RFP for review by Ms. Tolbert.

SECTION 5 - GENERAL TERMS AND CONDITIONS

- A. **TERMS AND CONDITIONS:** The A&M System reserves the right to accept, reject, modify, and/or negotiate any and all submittals received in conjunction with this RFP. It reserves the right to waive any defect or informality in the submittals on the basis of what it considers to be in its best interests. Any submittal which the A&M System determines to be incomplete, conditional, obscure, or which has irregularities of any kind, may be rejected. The A&M System reserves the right to award to the company, or companies, which in our sole judgment, will best serve our long-term interest.

This RFP in no manner obligates the A&M System to the eventual purchase of any products or services described, implied, or which may be proposed, until confirmed by written agreement, and may be terminated by the A&M System without penalty or obligation at any time prior to the signing of a contract.

The Respondent must include a formal copy of any Respondent terms and conditions applicable to this transaction. Evaluation and acceptance and/or modification of these terms and conditions by the A&M System Office of General Counsel are essential prior to execution of any resultant Agreement. In the event the Respondent does not supply terms and conditions with their submittal, A&M System terms and conditions will govern this transaction.

- B. **GOVERNING LAW:** Respondent agrees that, in the event of a dispute, laws of the State of Texas will prevail.
- C. **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, genetic information, veteran status or disability 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, Respondent certifies that it will conform to the provisions of the federal Civil Rights Act of 1964, as amended.
- D. **CIVIL RIGHTS REQUIREMENTS:** All Respondents must comply with applicable civil rights laws.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting a proposal, the Respondent certifies that it does not, and will not, during the performance of any resultant Agreement, employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as amended.
- F. **DEBARMENT STATUS:** By submitting a proposal, 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.
- G. **PUBLIC INFORMATION:** Respondent is hereby notified that the A&M System strictly adheres to all statutes, court decisions, and the opinions of the Texas Attorney General with respect to disclosure of public information. The A&M System may seek to protect from disclosure all information submitted in response to this RFP until such time as the resultant Agreement is executed. Upon execution of the resultant Agreement, the A&M System will consider all information, documentation, and other materials requested to be submitted in response to this RFP to be of a non-confidential and non-proprietary nature and therefore subject to public disclosure under the Texas Public Information Act, Texas Government Code, Chapter 552. Respondent will be advised of a request for public information that implicates its materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General.
- H. **ALTERNATE PROPOSALS:** The A&M System reserves the right to consider alternate proposals

submitted by Respondents. Alternate proposals shall be clearly marked "Alternate" with the proposed alternates clearly defined and all pricing/cost advantages included, if applicable.

- I. ANTITRUST: Respondent hereby assigns to the A&M System, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973) and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).
- J. EXECUTIVE HEAD OF A STATE AGENCY AFFIRMATION: In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of the A&M System or any of its Members, (2) a person who at any time during the four years before the date of the contract was the executive head of the A&M System or any of its Members, or (3) a person who employs a current or former executive head of the A&M System or any of its Members.
- K. INSURANCE: Respondent shall obtain and maintain, for the duration of any resultant Agreement or longer, the minimum insurance coverage set forth on Exhibit C attached hereto.
- L. REQUIRED CONTRACT TERMS: The terms and conditions contained in the draft agreement attached as Exhibit D or, in the sole discretion of the A&M System, terms and conditions substantially similar to those contained in the attached agreement, will constitute and govern any Agreement that results from this RFP. If Respondent takes exception to any terms or conditions set forth in the attached agreement, Respondent will submit a list of the exceptions as part of its proposal. Respondent's exceptions will be reviewed by the A&M System and may result in disqualification of Respondent's proposal as non-responsive to this RFP. If Respondent's exceptions do not result in disqualification of Respondent's proposal, then the A&M System may consider Respondent's exceptions when the A&M System evaluates the Respondent's proposal.

**EXHIBIT A
EXECUTION OF OFFER**

RFP01 MKTG-23-177
DATE: _____

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

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 proposal. Failure to complete, sign and return this execution of offer with the proposal may result in rejection of the proposal.

Signing a false statement may void the submitted proposal or any agreements or other contractual arrangements, which may result from the submission of respondent's proposal. A false certification shall be deemed a material breach of contract and, at the A&M System'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 RFP by entering yes or no in space provided and indicating date acquired. Enter "0" if none received.

No. 1 _____	Date _____	No. 3 _____	Date _____
No. 2 _____	Date _____	No. 4 _____	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 Response and all statements and information prepared and submitted in response to this RFP 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 response or any subsequent proposal. Failure to sign below, or signing a false statement, may void the response or any resulting contracts at the A&M System' 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 RFP 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 officer or employee of the A&M System;
- (v) Respondent has not been an employee of the A&M System within the immediate twelve (12) months prior to the RFP response;
- (vi) no compensation has been received for participation in the preparation of this RFP (ref. Section 2155.004 Texas Government Code);

- (vii) all services to be provided in response to this RFP 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 individual or business entity proposed by Respondent as a member of its team that will engage in the practice of engineering or architecture 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 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 may be terminated and payment may be withheld if this certification is inaccurate; and,
- (xiii) 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.

Respondent shall provide their Federal Employer Identification Number (EIN), full VENDOR name, address and contact information in the spaces below. Failure to sign manually or with electronic signature (such as DocuSign or Adobe Sign) below will disqualify the proposal response. The person signing the submittal should show title or authority to bind his/her firm in contract.

Federal EIN/Taxpayer ID#: _____

Vendor/Company Name: _____

Authorized Signature: _____

Name: _____

Title: _____

Street: _____

City/State/Zip: _____

Telephone No.: _____

Fax No.: _____

E-mail: _____

* By signing this RFP, 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 Proposal (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 Proposal, has directly or indirectly entered into any agreement or arrangement with any other Respondents, or with any official of the A&M System or any employee thereof, or any person, firm or corporation under contract with the A&M System whereby the Respondent, in order to induce acceptance of the foregoing Proposal by said the 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 Proposal.

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 the A&M System.

The prices submitted herein have been arrived at in an entirely independent and lawful manner by the Respondent without consultation with other Respondents or potential Respondents or foreknowledge of the prices to be submitted in response to this solicitation by other Respondents or potential Respondents on the part of the Respondent, its officers, partners, owners, providers, representatives, employees or parties in interest, including the affiant.

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 the A&M System, nor any officer, employee, or person, whose salary is payable in whole or in part by the A&M System, has a direct or indirect financial interest in the award of this Proposal, or in the services to which this Proposal 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 _____, 2023.

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

_____. My commission expires: _____

**EXHIBIT C
INSURANCE REQUIREMENTS**

A. PROVIDER shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. 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 PROVIDER under this Agreement. PROVIDER shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PROVIDER is not relieved of any liability or other obligations assumed pursuant to this 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.

1. Worker’s Compensation

Worker’s compensation insurance with the following minimum limits of coverage:

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.

If this coverage is waived by System Risk Management, PROVIDER, his/her employees and subcontractors must sign a hold harmless and indemnification agreement.

2. 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;

3. Commercial General Liability

Commercial general liability insurance with the following minimum limits of coverage:

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 must be issued on a form that insures PROVIDER’s

or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

4. Umbrella Liability Insurance \$5,000,000

5. Cyber Liability

Contractor shall procure and maintain, for the duration of this Agreement and for such length of time as is necessary to cover any and all claims, cyber liability insurance with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. The cyber liability policy shall be sufficiently broad to cover Contractor's duties and obligations under this Agreement and include coverage for claims involving: invasion of privacy; loss, damage, theft, alteration or other misuse of data; unauthorized exposure or breach of data; privacy event expenses such as mandatory/voluntary notification costs, credit monitoring, call center services, forensic costs, and any other fees, costs, or expenses necessary to comply with any applicable breach notification laws; privacy regulatory proceedings (including fines and penalties); cyber extortion payments; and network security.

6. 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 PROVIDER and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, PROVIDER 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 two (2) years after the expiration of cancellation of this Agreement.

- B. PROVIDER shall 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 prior to the execution and delivery of this Agreement and prior to the performance of any services by PROVIDER under this Agreement. PROVIDER shall provide additional evidence of insurance 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.
- C. Commercial General Liability and Auto Liability policies must be endorsed to name The Texas A&M University System Board of Regents ("Board of Regents") and The Texas A&M University System as additional insureds up to the actual liability limits of the policies maintained by PROVIDER. The commercial general liability additional insured endorsements must include on-going and completed operations afforded by CG 20 10 (10 01 Edition or equivalent) and CG 20 37 (10 01 Edition or equivalent). Commercial general liability and business auto liability policies must be written on a primary and non-contributory basis. Copies of each endorsement must be submitted with the certificate of insurance. The Umbrella policy, at minimum, must follow form.
- D. All insurance policies must be endorsed to provide a waiver of subrogation in favor of the Board of Regents and A&M System.
- E. 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 non-renewal relating to any insurance policy.

- F. Any deductible or self-insured retention must be declared to and approved by A&M System prior to the performance of any services by PROVIDER under this Agreement. PROVIDER shall pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions must be shown on the certificates of insurance.
- G. Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be emailed to the following A&M System contact in SOProurement@tamus.edu.
- H. The insurance coverage required by this Agreement must be kept in force until all services have been fully performed and accepted by A&M System in writing.

**EXHIBIT D
REQUIRED CONTRACT TERMS**

MASTER SERVICES AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM
AND _____

This Master Services Agreement (“Agreement”) is entered into and effective _____ (the “Effective Date”), by and between The Texas A&M University System (hereafter referred to as “A&M System”), an agency of the state of Texas, and _____ [Insert PROVIDER’s complete legal name], a _____ [Insert type of entity, such as corporation, limited liability company, partnership, and state of incorporation; remove this reference if contracting with an individual] (hereafter referred to as “PROVIDER”). A&M System and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively).

A&M System and PROVIDER hereby agree as follows:

1. SCOPE OF WORK

PROVIDER will perform the services as set forth in Exhibit A, Scope of Work, attached hereto (“Services”), in accordance with the terms and subject to the conditions contained in this Agreement.

This Agreement is not a contract to perform specific work but is intended to demonstrate the ability of A&M System and its member universities (hereafter referred to as “Member” or “Members”) to contract individually with the PROVIDER for the Services by executing an order form or purchase order (each an “Order Form”) with PROVIDER. The terms of this Agreement shall be incorporated into all Order Forms executed by a Member and PROVIDER for the Services during the term of this Agreement. Upon execution of such Order Form, such Member is only responsible for its own compliance with the terms and conditions of this Agreement.

2. PROVIDER OBLIGATIONS

- A. PROVIDER will perform the Services in accordance with the standards of care, skill, and diligence expected of a qualified, competent and experienced professional in the provision of the type of services required under this Agreement.
- B. PROVIDER will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for PROVIDER’s performance of this Agreement.
- C. PROVIDER represents and warrants that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent PROVIDER’s performance of the Services.

3. TERM AND TERMINATION

- A. This Agreement will commence on the Effective Date and continues through _____ (the “Term”), unless earlier terminated as provided herein; provided, however, that the terms of this Agreement shall remain applicable to any Order Form that was executed prior to the expiration or termination of this Agreement, but whose period of performance extends beyond the expiration or termination of this Agreement. The Term of the Agreement may be extended for ____ () additional ____ () year periods upon mutual written agreement executed by the Parties, provided that the total

term of the Agreement shall not exceed five (5) years. The term and termination of any Order Form will be as provided in the Order Form and the termination of any one Order Form will not affect any other Order Form.

- B. In the event of a breach of a material term of this Agreement by a Party, the non-defaulting Party may terminate this Agreement upon fifteen (15) days' prior written notice to the other Party detailing the nature of the breach and the other Party fails to fully cure the breach within such 15-day period. In the event that A&M System terminates this Agreement pursuant to this Section, A&M System shall receive a pro-rata refund of any pre-paid amounts.
- C. A&M System may terminate this Agreement without cause upon thirty (30) days' prior written notice to PROVIDER.
- D. A&M System may immediately terminate this Agreement if (i) the PROVIDER's insurance coverage required under this Agreement is cancelled or non-renewed; or (ii) the PROVIDER declares bankruptcy, is placed into involuntary bankruptcy or receivership or becomes insolvent.

4. PAYMENT TERMS

- A. The A&M System shall not pay any costs or fees as a direct result of this Agreement. For the services rendered under this Agreement, Members shall pay PROVIDER based on the rate schedule attached as Exhibit B and made a part of this Agreement. The rate schedule may be renegotiated at the discretion of A&M System upon renewal of this Agreement. Additional rates and fees may be negotiated on a Member specific Order Form.
- B. PROVIDER shall invoice Member for amounts due consistent with the payment schedule as negotiated per Order Form. Each invoice must reference the Order Form and Member's purchase order number (if applicable) and include a description of services provided along with documentation that Members may reasonably request to support the invoice amount. Member will make payment on a properly prepared and submitted invoice in accordance with Chapter 2251, Texas Government Code (the "Texas Prompt Payment Act"), which shall govern remittance of payment and remedies for late payment and non-payment.
- C. As applicable, reasonable business-related travel, lodging and/or meal expenses validly incurred directly and solely in support of the Services and approved by Member in advance, PROVIDER will be reimbursed by Member according to the State of Texas rates, rules, and regulations (<https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>). When requesting such reimbursement, PROVIDER will submit to Member receipts, invoices and other documentation as required by Member. Under no circumstances will PROVIDER be reimbursed for alcohol purchases. State travel rates are subject to change without notice and will be adjusted accordingly. Mileage rates will be calculated from point-to-point (PROVIDER's place of business to job site) using the State of Texas mileage. Should the Agreement be renewed for an additional term, travel reimbursement amounts will be renegotiated at that time.
- D. All payments will be made by electronic direct deposit. PROVIDER is required to complete and submit to Member a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at:
<https://www.tamus.edu/business/budgets-and-accounting/accounting/general/>

5. OWNERSHIP OF CREATED WORKS

PROVIDER irrevocably assigns, transfers and conveys to A&M System, for no additional consideration, all of PROVIDER's ownership, rights, title and interest in and to all works prepared by PROVIDER under this Agreement ("Deliverables"), including, without limitation, all copyrights, patents, trademarks, trade secrets and other intellectual property rights and all other rights that may hereafter be vested relating to the Deliverables under law. PROVIDER certifies that all Deliverables will be original, or that PROVIDER will have obtained all rights necessary for the ownership and unrestricted use of the Deliverables by A&M System. PROVIDER shall secure for A&M System all consents, releases, and contracts and perform other reasonable acts as A&M System may deem necessary to secure and evidence A&M System's rights in any Deliverable.

6. CONFIDENTIALITY

- A. The Parties anticipate that under this Agreement it may be necessary for a Party (the "Disclosing Party") to transfer information of a confidential nature ("Confidential Information") to the other Party (the "Receiving Party"). The Disclosing Party shall clearly identify Confidential Information at the time of disclosure by (i) appropriate stamp or markings on the document exchanged, or (ii) written notice, with attached listings of all material, copies of all documents, and complete summaries of all oral disclosures (under prior assertion of the confidential nature of the same) to which each notice relates, delivered within thirty (30) days of the disclosure to the other party. "Confidential Information" does not include information that: (i) is or becomes publicly known or available other than as a result of a breach of this Agreement by the Receiving Party; (ii) was already in the possession of the Receiving Party as the result of disclosure by an individual or entity that was not then obligated to keep that information confidential; (iii) the Disclosing Party had disclosed or discloses to an individual or entity without confidentiality restrictions; or (iv) the Receiving Party had developed or develops independently before or after the Disclosing Party discloses equivalent information to the Receiving Party.
- B. The Receiving Party shall use the same reasonable efforts to protect the Disclosing Party's Confidential Information as it uses to protect its own confidential information of a similar nature. The Receiving Party may only disclose Confidential Information to its personnel having a need to know the Confidential Information to fulfill the Receiving Party's obligations under this Agreement. The Receiving Party may not reproduce, disclose, or use Confidential Information except in performing its obligations under this Agreement. If the Receiving Party is legally required to disclose Confidential Information, the Receiving Party shall, to the extent allowed by law, promptly give the Disclosing Party written notice of the requirement so as to provide the Disclosing Party a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If the Receiving Party complies with the terms of this Section, disclosure of that portion of the Confidential Information, which the Receiving Party is legally required to disclose, will not constitute a breach of this Agreement.
- C. The Receiving Party shall, upon request of the Disclosing Party, promptly return or destroy all materials embodying Confidential Information other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense, except that the Receiving Party may securely retain one (1) copy in its files solely for record purposes. The Receiving Party's obligations as to Confidential Information will survive the termination or expiration of this Agreement for a period of three (3) years.

7. COMPLIANCE WITH LAWS

- A. PROVIDER shall comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement.
- B. Each Party shall comply with U.S. export control regulations. If either Party desires to disclose to the other Party any information, technology, or data that is identified on any U.S. export control list, the disclosing Party shall advise the other Party at or before the time of intended disclosure and may not provide export-controlled information to the other Party without the written consent of the other Party. PROVIDER certifies that none of its personnel participating in the activities under this Agreement is a “restricted party” as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.

8. INDEMNIFICATION

PROVIDER shall indemnify and hold harmless A&M System, and their regents, employees and agents (collectively, the “A&M System Indemnitees”) from and against any third-party claims, damages, liabilities, expense or loss asserted against A&M System Indemnitees arising out of any acts or omissions of PROVIDER or its employees or agents pertaining to the activities and obligations under this Agreement, except to the extent such liability, loss or damage arises from an A&M System Indemnitee’s gross negligence or willful misconduct.

9. INSURANCE

Insurance requirements as stated within Exhibit C, attached hereto.

10. MISCELLANEOUS

- A. **Entire Agreement.** This Agreement constitutes the entire and only agreement between the Parties hereto and supersedes any prior understanding, written or oral agreements between the Parties, or “side deals” which are not described in this Agreement. This Agreement may be amended only by a subsequent written agreement signed by authorized representatives of both parties. In the event of a conflict between the terms of this Agreement and any other documents constituting part of this Agreement, the terms of this Agreement shall control.
- B. **Authority to Contract.** Each Party represents and warrants that it has full right, power and authority to enter into and perform its obligations under this Agreement, and that the person signing this Agreement is duly authorized to enter into this Agreement on its behalf.
- C. **Representations & Warranties.** If PROVIDER is a business entity, PROVIDER warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of PROVIDER has been duly authorized to act for and bind PROVIDER.
- D. **Independent Contractor.** Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by

PROVIDER's Service to A&M System. Except as specifically required under the terms of this Agreement, PROVIDER (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of A&M System. As an independent contractor, PROVIDER is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. PROVIDER and its employees shall observe and abide by all applicable A&M System policies, regulations, rules and procedures, including those applicable to conduct on its premises.

- E. **Use of Name.** Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading. The Parties will mutually agree in advance upon any public announcements, or communications to the media regarding this Agreement or the Services to be provided pursuant to this Agreement.
- F. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M System.
- G. **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- H. **Survival.** Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement. This includes a Member's specific Order Form which imposes an obligation after expiration or termination of this Agreement, and will survive unless otherwise stated within the Member specific Order Form.
- I. **Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).

- J. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed given: (i) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (ii) the next business day after it is sent by overnight carrier, (iii) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (iv) on the date of delivery if delivered personally. A&M System and PROVIDER can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

A&M System: The Texas A&M University System
 301 Tarrow St., Suite 273
 College Station, Texas 77840
 Attention: Jeff Zimmermann
 Phone: (979) 458-6410
 E-mail: zimmermann@tamus.edu

PROVIDER: **[Insert PROVIDER's complete legal name]**
 [Insert PROVIDER's address]
 Attention: _____
 Phone: _____
 Email: _____

- K. **Governing Law.** The validity of this Agreement and all matters pertaining to this 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.
- L. **Venue.** Pursuant to Section 85.18(b), *Texas Education Code*, mandatory venue for all legal proceedings against A&M System is to be in the county in which the principal office of A&M System's governing officer is located.
- M. **Non-Waiver.** A&M System is an agency of the state of Texas and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the Constitution and the laws of the state of Texas. PROVIDER expressly acknowledges that A&M System is an agency of the state of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M System of its right to claim such exemptions, remedies, privileges, and immunities as may be provided by law, including the sovereign immunity of A&M System.
- N. **Dispute Resolution.** To the extent that Chapter 2260, Texas Government Code is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by A&M System and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to the Deputy Chancellor and Chief Financial Officer of A&M System, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim. This provision and nothing in this Agreement waives A&M System's sovereign immunity to suit or liability, and A&M System has not waived its right to seek redress in the courts.

- O. **Public Information Act.** PROVIDER 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 Agreement, as well as any other disclosure of information required by applicable Texas law. Upon A&M System's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System to A&M System in a non-proprietary format acceptable to A&M System that is accessible by the public. PROVIDER acknowledges that A&M System may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and PROVIDER agrees that this Agreement can be terminated if PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.
- P. **Certification Regarding Business with Certain Countries and Organizations.** PROVIDER represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, Texas Government Code. PROVIDER acknowledges this Agreement may be terminated immediately if this certification is inaccurate.
- Q. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, Texas Family Code, PROVIDER certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- R. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER 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.
- S. **State Auditor's Office.** PROVIDER understands that acceptance of funds under this 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. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- T. **HUB Subcontracting Plan.**
- It is the policy of the state of Texas and A&M System to encourage the use of Historically Underutilized Businesses ("HUB") in our contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in A&M System contracting and purchasing. PROVIDER will use good faith efforts to subcontract work performed under this Agreement in accordance with the HUB subcontracting plan attached hereto as Exhibit

____ (“HSP”). Except as specifically provided in the HSP, PROVIDER will not subcontract any of its duties or obligations under this Agreement, in whole or in part. Furthermore, PROVIDER will comply with all of its duties and obligations under Section 20.285 of the Texas Administrative Code.

- U. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Chapter 2271, Texas Government Code, is applicable to this Agreement, PROVIDER certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the Term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- V. **Verification Regarding Discrimination Against Firearm Entities and Trade Associations.** To the extent that Chapter 2274, Texas Government Code, is applicable to this Agreement, PROVIDER verifies that (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- W. **Verification Regarding Boycotting Energy Companies.** To the extent that Chapter 2274, Texas Government Code, is applicable to this Agreement, PROVIDER verifies that (1) it does not boycott energy companies, and (2) it will not boycott energy companies during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- X. **Loss of Funding.** Performance by A&M System under this 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 PROVIDER and A&M System may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of A&M System. In the event of a termination or cancellation under this Section, A&M System will not be liable to PROVIDER for any damages that are caused or associated with such termination or cancellation.
- Y. **Prior Employment.** PROVIDER acknowledges that Section 2252.901, Texas Government Code, prohibits A&M System from using state appropriated funds to enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by A&M System during the twelve (12) month period immediately prior to the effective date of the Agreement. If PROVIDER is an individual, by signing this Agreement, PROVIDER represents and warrants that it is not a former or retired employee of A&M System that was employed by A&M System during the twelve (12) month period immediately prior to the effective date of the Agreement.
- Z. **Conflict of Interest.** PROVIDER certifies, to the best of their knowledge and belief, that no member of the A&M System’s Board of Regents, nor any employee of A&M System, has a direct or indirect financial interest in PROVIDER or in the transaction that is the subject of the Agreement.
- AA. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.

- BB. **Not Eligible for Rehire.** PROVIDER is responsible for ensuring that its employees involved in any work being performed for A&M System under this Agreement have not been designated as “Not Eligible for Rehire” as defined in System policy 32.02, *Discipline and Dismissal of Employees*, Section 4 (“NEFR Employee”). In the event A&M System becomes aware that PROVIDER has a NEFR Employee involved in any work being performed under this Agreement, A&M System will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by A&M System.
- CC. **Campus Secure Areas; Research Activities; Confidentiality.** The parties acknowledge that activities at the RELLIS Campus involve the conduct of research, which may be highly sensitive in nature. The parties agree that PROVIDER’s access to the RELLIS Campus (including access by its employees, agents, and subcontractors) shall be restricted to the locations and purposes described herein, or otherwise authorized by A&M System. The parties agree that all research and testing information and activities (“Research Activities”) conducted or accessed on the RELLIS Campus shall be considered Confidential Information (as defined herein) belonging to A&M System or the individual researcher or licensee conducting the Research Activities. PROVIDER agrees that it (including its employees, agents, and subcontractors) shall comply with any security processes and procedures communicated to PROVIDER before or during PROVIDER’s access to the RELLIS Campus, and shall not attempt to access the Research Activities at the RELLIS Campus. In the event that PROVIDER (including its employees, agents, and subcontractors) should view, receive, hear, observe, or access Research Activities of any entity at the RELLIS Campus (whether from air space, office, hangar, common area, electronically, or by any other means), PROVIDER (including its employees, agents, and subcontractors) shall treat all such information as Confidential Information and shall use reasonable care to protect the Confidential Information from disclosure and not disclose, copy, photograph, record, retain, use or discuss any such Confidential Information. For purposes of this section, Confidential Information means any information not publicly known or available, including, but not limited to, sensitive, proprietary or other non-public information, or trade secrets, written or oral, whether or not it is marked as such, that is disclosed or made available to the receiving party, directly or indirectly, through any means of communication or observation. PROVIDER is responsible for ensuring compliance of its employees, agents and subcontractors with this section.

(SIGNATURES TO FOLLOW ON NEXT PAGE)

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

The Texas A&M University System

By _____
Jeff Zimmermann
Executive Director, Procurement

Date

[Insert PROVIDER's complete legal name]

By _____

Date

- Exhibit A – Scope of Work
- Exhibit B – Payment Terms
- Exhibit C - Insurance

DRAFT