# REQUEST FOR QUALIFICATIONS AND PROPOSAL

by

The University of Texas at Austin

for

Selection of a Developer/Operator to Provide Funding, Development, and Operation Services

related to a

**New Arena and Basketball Training Facility** 

**Request No. 721-1805** 

Qualifications Submittal Deadline: 2:30 p.m. CST on March 8, 2018

(Phase One)

Proposal Submittal Deadline: 2:30 p.m. CST on June 18, 2018

(Phase Two)

Issued: February 2, 2018

# REQUEST FOR QUALIFICATIONS AND PROPOSAL

# **TABLE OF CONTENTS**

SECTION 1 INTRODUCTION	3
SECTION 2 GENERAL INFORMATION FOR THIS REQUEST	7
SECTION 3 SCOPE OF SERVICES	9
SECTION 4 REQUEST FOR QUALIFICATIONS	12
SECTION 5 REQUEST FOR PROPOSAL	20

# Attachments:

APPENDIX ONE: TERMS TO BE INCLUDED IN THE DEFINITIVE AGREEMENTS

APPENDIX TWO: CERTIFICATION OF PROPOSAL

APPENDIX THREE: ADDENDA CHECKLIST

APPENDIX FOUR: CERTIFICATE OF INTERESTED PARTIES

APPENDIX FIVE: HUB SUBCONTRACTING PLAN

#### **SECTION 1**

# INTRODUCTION

### 1.1 Purpose of Request for Qualifications and Proposal

The University of Texas at Austin ("University") through its Department of Athletics ("Texas Athletics") is soliciting developers and operators ("Developer/Operator") to submit qualifications to provide funding, development, and/or operation services ("Services") relating to a new arena to host University Men's and Women's Home Basketball Games and a new basketball training facility, which Services are more specifically described in Section 3 (Scope of Services) of this Request for Qualifications and Proposal ("Request"). The University through its Department of Athletics is further soliciting Developers/Operators identified by the University as Qualified Proposers (ref. Section 4.5) to submit proposals to provide the Services in accordance with the terms and conditions set forth in this Request and the definitive agreements that may result from this Request.

This Request contemplates, and is accordingly separated into, two phases. "Phase One" is comprised of **Section 4** below and contains all necessary information and instructions for Developer/Operator to submit to the University qualifications to provide the Services. During Phase One, the University will identify which Developers/Operators are Qualified Proposers that may submit proposals in response to this Request (ref. **Section 4.5**). "Phase Two" is comprised of **Section 5** below and the appendices that follow **Section 5** and contains all necessary information and instructions for a Qualified Proposer to submit proposals in response to this Request. Only a Developer/Operator that is identified by the University as a Qualified Proposer (ref. **Section 4.5**) needs to read the portions of this Request contained in Phase Two. The University will only accept proposals submitted by Qualified Proposers so-identified by the University (ref. **Section 4.5**). All proposals submitted by non-Qualified Proposers will be rejected by the University and returned unopened to the submitting party.

DEVELOPER/OPERATOR IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS REQUEST CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL APPLICABLE REQUIREMENTS AND QUESTIONS AS, AND ONLY IF, DIRECTED IN THIS REQUEST.

# 1.2 Description of the University and Texas Athletics

The University is the largest academic component of The University of Texas System, a major research university, and home to more than 50,000 students and 14,855 faculty and staff members.

The University of Texas was established by the state legislature in 1881; by popular vote, the Main University was located at Austin and the Medical Branch at Galveston. The Austin campus was opened in September, 1883, with a faculty of 8 and a student body of 218. The central campus has grown from 40 to more than 360 acres, while the student body has increased to about 38,000 undergraduates and 12,000 graduate students. In 1967, with the creation of The University of Texas System, the name of the Main University was changed to The University of Texas at Austin.

The University is accredited by the Southern Association of Colleges and Schools and is one of three universities in Texas that are members of the Association of American Universities.

Through teaching, research, and public service, the University's activities support its core purpose: To transform lives for the benefit of society through the core values of learning, discovery, freedom, leadership, individual opportunity, and responsibility.

University students represent both a diverse population of the State of Texas and the full range of contemporary scholarship: an undergraduate may choose courses from more than 160 fields of study while pursuing any of more than 100 majors. Undergraduate study is supported by extensive computing infrastructure and by one of the largest academic libraries in the nation. Students also benefit from the broad range of scholarly and technical research conducted by the faculty and the research staff.

The City of Austin, with a population of about 820,000, is a dynamic and cosmopolitan setting for the University. The City of Austin is well known for its world-class, pro-business environment. In addition, the City of Austin is home to respected professional communities in theatre, dance, art, and music, offering a wide range of cultural events. Students may also take part in recreational activities made possible by the temperate climate and Austin's location in the Hill Country of central Texas.

Texas Athletics is one of the premier athletic departments in the United States and owns a range of practice and performance facilities to support Texas Athletics sport programs (a few facilities are shared through arrangements with the University's recreational sports program). The University offers training, conditioning, and academic support programs within several shared venues. The goal of every Texas Athletics program is to reach an NCAA championship level.

# 1.3 Background and Special Circumstances for Request for Qualifications and Proposal

The Frank C. Erwin, Jr. Special Events Center ("Frank Erwin Center") (the current venue for Men's and Women's Home Basketball Games) and the Denton A. Cooley Pavilion (the current practice facility for the Men's and Women's Basketball Programs) will be replaced with a new arena to host University Men's and Women's Home Basketball Games and a new basketball training facility ("New Arena Project"). The University is considering options for funding, developing, and operating the New Arena Project, including possible leasing, operation, and management by a private business enterprise. Importantly, the New Arena Project will be—regardless of the party responsible for its operation and management—exclusively used for the performance of the duties and functions of the University and exclusively operated as a public facility for the benefit of the University in serving the public. The New Arena Project must drive:

- Recruiting and retaining the most talented student-athletes
- Attracting and retaining the best coaches and staff
- Providing state-of-the-art academic support, strength and conditioning, and sports medicine facilities as well as student-athlete amenity areas
- Emphasizing the achievement and overall well-being of student-athletes

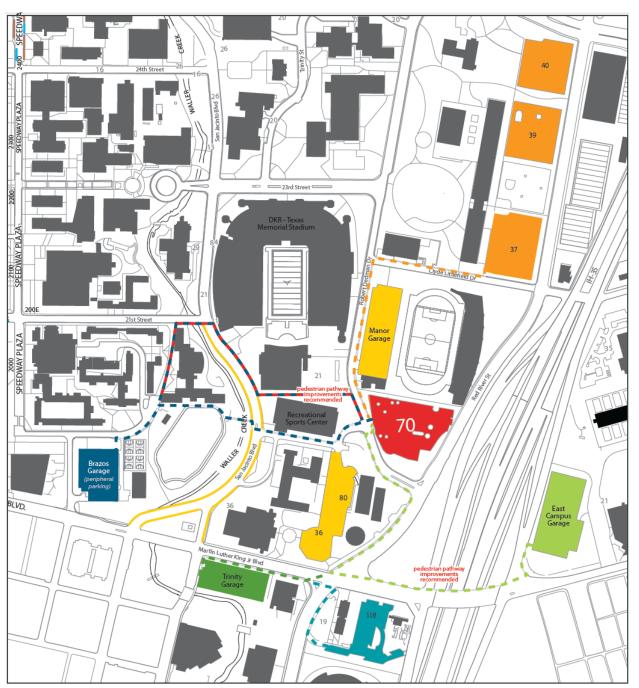
The New Arena Project will be located on the University's main campus and will serve as a world-class venue and as the home of the University Men's and Women's Basketball Programs, a menu of selected University events as well as a variety of music, entertainment, and sports events. There are two potential site options on which to locate the New Arena Project:

- First option: South of Mike A. Myers Stadium between Red River Street and Robert Dedman Drive on Lot 70 ("Highway Site")
- Second option: South of Darrell K Royal-Texas Memorial Stadium between Robert Dedman Drive and San Jacinto Boulevard and between E. Martin Luther King Jr. Boulevard and East 23rd Street ("Creek Site")

As with most Texas Athletics facilities, the potential sites for the New Arena Project are located within the area defined by the 2012 Campus Master Plan as the "Central Campus" (which is generally located between Waller Creek, Interstate 35, Dean Keeton Street, and E. Martin Luther King Jr. Boulevard). The University will ultimately decide the location for the New Arena Project.

The University has developed a preliminary concept design for the New Arena Project that integrates the new arena and the new basketball training facility. The architectural design incorporates the required programmatic elements necessary for Texas Athletics as well as many of the 'best practices' of top-tier Division 1 collegiate arenas and practice facilities. The Texas Athletics brand is integrated throughout the design of the new arena and the new basketball training facility. This will create a sense of energy and "branding" that speaks specifically to the character, traditions, and history of the Men's and Women's Basketball Programs. The design is intended to meet the needs of the University, Texas Athletics, the Men's and Women's Basketball Programs, and other University user groups. The new arena has been conceptually designed to provide a 'home court advantage' for both the Men's and Women's Basketball Programs as well as flexibility in seating arrangements based on anticipated attendance for any particular event. The development and operation of the New Arena Project is guided by the March 2016 Texas Athletics Master Plan. which is available at the following http://www.texassports.com/documents/2016/5/26//Final UT Austin Texas Athletics Master PI an March 2016.pdf?id=5142.

Surface lot and University garage parking areas are in close proximity to both potential sites for the New Arena Project. A map indicating parking facilities within proximity of these potential sites follows this page. These facilities can provide parking for event attendees and operational staff for the New Arena Project. Access to these parking facilities is limited on weekdays during daytime hours and generally more available in the evening and on weekends. Use of such parking facilities for the New Arena Project will be consistent with current and historical use by the Frank Erwin Center and subject to a parking agreement between the University and the selected Qualified Proposer. The availability of these parking facilities and the availability of new parking facilities may change over time due to future development of the Central Campus; however, it is expected that reasonably equivalent parking amenities will be available to the New Arena Project in the event of such change. Parking and Transportation Services ("PTS") is well versed in coordinated operations with the University's various entities as well as state, county, and city agencies for parking, transportation, and traffic control. PTS regularly coordinates with the Frank Erwin Center and will similarly coordinate with the new arena staff, Texas Athletics staff, and the University's Police Department. Revenues from the existing parking garages (as well as all other legally available revenues for debt issued on behalf of The University of Texas System) are pledged as security for The University of Texas System Revenue Financing System ("RFS"). More information regarding the RFS can be found at the following website: https://www.utsystem.edu/offices/finance/frequently-asked-questions.



Location	Spaces
Brazos Garage	1,537
East Campus Garage	1,182
Health Center Garage	1,196
Manor Garage	1,179
San Jacinto Garage	1,024
Trinity Garage	937

Location	Spaces
Lot 37	347
Lot 39	249
Lot 40	266
Lot 108	177
Lot 118	181
TOTAL	8,275

- pedestrian pathways

# **SECTION 2**

# **GENERAL INFORMATION FOR THIS REQUEST**

### 2.1 Inquiries and Interpretations

Interested parties may direct questions about this Request to Felix Alvarez, Assistant Vice President for Procurement, Contracts, and Payment Services ("University Contact") via email (arena@austin.utexas.edu). The University will provide responses as soon as practicable following any applicable deadlines set forth or described in this Request; however, the University reserves the right to decline to respond to any question.

#### 2.2 Addendum to this Request

The University may in its sole discretion respond in writing to written inquiries concerning this Request and may (i) mail its response as an Addendum to all parties recorded by the University as having received a copy of this Request or (ii) post its response as an Addendum to the same website where this Request is posted. Only the University's responses that are made by formal written Addenda will be binding on the University. Any verbal or written responses, interpretations, or clarifications other than Addenda to this Request will be without legal effect. All Addenda issued by the University prior to the Proposal Submittal Deadline will be and are hereby incorporated as a part of this Request for all purposes.

Any interested party that receives this Request by means other than directly from the University is responsible for notifying the University that it has received a Request package, and should provide its name, address, telephone and facsimile (FAX) numbers, and email address to the University, so that if the University issues Addenda to this Request or provides written answers to questions, that information can be provided to that party.

# 2.3 Public Information

Developer/Operator is hereby notified that the University strictly adheres to all statutes, court decisions, and the opinions of the Texas Attorney General with respect to disclosure of public information. The University may seek to protect from disclosure all information submitted in response to this Request until such time as final agreements are executed. Upon execution of final agreements, the University will consider all information, documentation, and other materials requested to be submitted in response to this Request to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the Texas Public Information Act (ref. Chapter 552, Government Code). Developer/Operator 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. Certain information may be protected from release under §§552.101, 552.104, 552.110, 552.113, and 552.131, Government Code. Subject to the foregoing, the University will take reasonable efforts to avoid disclosing to the public any material submitted in response to this Request that is conspicuously marked confidential but will have no liability for failure to do so.

# 2.4 Solicitation

Developer/Operator understands and agrees that (i) this Request is a solicitation for qualifications and proposals, and the University has made no representation, warranty, or guarantee, written or oral, that one or more agreements with the University will be awarded as a result of this Request; and (ii) the University issues this Request predicated on the University's anticipated requirements for the Services, and the University has made no representation, written or oral, that any particular scope of services will actually be required by the University.

The University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this Request when deemed to be in the University's best interest.

The University reserves the right to (i) enter into an agreement for all or any portion of the requirements and specifications set forth in this Request with one or more parties, (ii) reject any and all proposals and re-solicit proposals, or (iii) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the University's best interest.

# 2.5 Preparation Costs

Developer/Operator submits qualifications and/or a proposal at its own risk. Developer/Operator will bear, as its sole risk and responsibility, any cost that arises from Developer/Operator's preparation of materials to submit in response to this Request. The University will not provide compensation to Developer/Operator for any expenses incurred by Developer/Operator for preparation of materials to be submitted in response to this Request or for demonstrations or oral presentations that may be made by Developer/Operator.

### 2.6 Acceptance of Terms and Conditions

Developer/Operator, by submitting qualifications, and Qualified Proposer, by submitting a proposal, accepts all requirements and specifications set forth in this Request and acknowledges that the University must make some subjective judgments during the Request process.

#### **SECTION 3**

# **SCOPE OF SERVICES**

The University is seeking a qualified Developer/Operator to participate in the New Arena Project through the funding of all or a substantial portion of the costs and expenses to develop and construct the New Arena Project, the development and construction of the New Arena Project, and/or the operation of the New Arena Project following completion of construction and, in connection therewith, provide a combination, if not all, of the following services to the University:

- **3.1** Provide for design, permitting, development, and construction of the New Arena Project with minimal University financial participation.
- **3.2** Create a best-in-class arena that is flexible, functional, efficient, cost effective, and sustainable.
- 3.3 Create a best-in-class basketball training facility for Texas Athletics' exclusive use that is flexible, functional, efficient, cost effective, and sustainable.
- **3.4** Provide an intimate and state-of-the-art venue to serve as the home for the University Men's and Women's Basketball Programs.
- 3.5 Identify the best facilities for recruiting student-athletes and serving the needs of the University Men's and Women's Basketball Programs.
- 3.6 Design and develop the New Arena Project in order to maximize utilization, serve all University stakeholders, and attract and present a variety of music, entertainment, and touring sports to serve the regional market.
- 3.7 Create a unique, state-of-the-art brand experience for all University stakeholders, including recruits, student-athletes, students, donors, alumni, spectators, faculty, staff, corporate partners, visitors, and vendors.
- 3.8 Develop a venue that offers a unique game-day experience (concourses, etc.) that engages all University stakeholders. In addition, multiple game-day experiences should be designed specifically for students.
- **3.9** Provide for the development of the conceptual project design and venue operations in a manner that integrates with, and enhances connections to, other University events, the student population, faculty, staff, and alumni.
- 3.10 Involve all segments of the University community, especially University students, in employment and business opportunities directly or indirectly created by the operation of the New Arena Project. The New Arena Project should be used as a laboratory for students by offering year-round internships, mentoring programs, learning opportunities with management during events, and employment opportunities.
- 3.11 Create guest amenities and public spaces that are multi-functional and address the needs of multiple stakeholders. Amenities should be focused on maximizing revenue generation for the University and Texas Athletics wherever possible.
- **3.12** Ensure that the New Arena Project and its spaces maximize efficiency and create potential revenue opportunities.
- 3.13 Incorporate University and Texas Athletics quality standards, as applicable, into the New Arena Project design, including safety, Texas hospitality, teamwork, and efficiency.

- **3.14** Provide next generation technology solutions (production studio and control facilities, video, audio, customer engagement, payment processing, etc.).
- **3.15** Provide for a continuous, successful, and sustainable operation as a world-class venue with minimal ongoing University financial participation.
- **3.16** Provide for mitigation of transportation impacts due to project construction and venue operations.
- 3.17 Manage and be responsible for all aspects of the new arena's day-to-day operation, including full and part-time personnel, fiscal procedures and controls, safety and security, repairs and maintenance, facility cleaning, improvements to the physical plant, exterior maintenance (including landscaping and maintenance of sidewalks, driveways, and parking areas) as well as the purchasing of all required services (including the hiring, coordination, and oversight of contractors, vendors, and suppliers).
- 3.18 Protect the ongoing investment in the New Arena Project through the highest level of maintenance, repair, capital upgrades, Texas Athletics branding, signage, and overall operational standards (as each may evolve and change over time), which shall be implemented throughout the term of the Services.

# PHASE ONE

#### **SECTION 4**

# **REQUEST FOR QUALIFICATIONS**

The University requests Developer/Operator to submit qualifications to allow the University to determine, in the University's sole discretion, if Developer/Operator is qualified to provide the Services.

# 4.1 Questions Regarding Request for Qualifications

Developer/Operator may direct questions about this request for qualifications to the University Contact via email (<a href="mailto:arena@austin.utexas.edu">arena@austin.utexas.edu</a>). The University instructs Developers/Operators to restrict all contact and questions regarding this request for qualifications to written communications delivered no later than 12:00 p.m. CST on February 13, 2018 ("Qualifications Question Deadline"). The University will provide responses as soon as practicable following the Qualifications Question Deadline; however, the University reserves the right to decline to respond to any question.

# 4.2 Minimum Qualification Requirements

Developer/Operator must meet each of the following requirements to be qualified to provide the Services ("Minimum Qualification Requirements"):

- 4.2.1 Experience developing and/or operating first-in-class, multipurpose basketball arenas with associated training facilities and fan amenities that have a minimum cost ranging from \$350,000,000 to \$450,000,000.
- 4.2.2 Financial capability to monetarily contribute towards all or a substantial portion of the cost to develop and construct the New Arena Project of the first-in-class scope described in **Section 4.2.1** above.

#### 4.3 Qualification Materials

Developer/Operator must submit to the University (ref. **Section 4.4**) the following requested items and responses ("**Qualification Materials**"):

- 4.3.1 Provide Developer/Operator's legal name and state of incorporation, and the legal name and state of incorporation of Developer/Operator's parent corporation, if any.<sup>1</sup>
- 4.3.2 Provide the address of Developer/Operator's principal place of business and, if different than the Developer/Operator's principal place of business, the address of the office that would be providing services under any agreement(s) resulting from this Request.
- 4.3.3 Provide the number of years Developer/Operator has been in business, the number of employees Developer/Operator has, and Developer/Operator's annual revenues volume.
- 4.3.4 Provide a brief history of Developer/Operator's experience with developing and/or operating first-in-class projects of the scope described in **Section 4.2.1** above. Developer/Operator is encouraged to provide additional information describing Developer/Operator's experience with relevant or comparable large-scale development projects, similar sports and entertainment projects, and projects with universities as well as the results of those projects that may be useful to the University in determining whether Developer/Operator meets the Minimum Qualification Requirements.

<sup>&</sup>lt;sup>1</sup> If Developer/Operator is a subsidiary, the University prefers to enter into a contract or agreement with the parent corporation or to receive assurances of performance from the parent corporation.

- 4.3.5 Provide a description of Developer/Operator's qualifications that demonstrate extensive industry experience.
- 4.3.6 Provide a university/college reference as well as a customer reference list of no less than three (3) organizations with which Developer/Operator currently has contracts and/or to which Developer/Operator has previously provided services of a type and scope (in whole or in part) similar to the Services. Such university/college reference and customer reference list should include the university/college's name or customer's company name (as applicable), contact person, telephone number, project description, length of business relationship, and background of services provided by Developer/Operator. Developer/Operator is encouraged to provide additional references, if available, with respect to current contracts and previously provided services that may be useful to the University in determining whether Developer/Operator meets the Minimum Qualification Requirements.
- 4.3.7 Provide summary resumes for Developer/Operator's principals who will be overseeing or managing the performance of the Services under any contract or agreement resulting from this Request (if any), including their specific experiences with similar projects and number of years of employment with Developer/Operator. Such summary resumes should indicate the percentage of time that such principals will devote to overseeing or managing the performance of the Services.
- 4.3.8 Provide reasonable assurances (including credit information, credit references, and audited financial statements) of Developer/Operator's financial capability (1) to contribute a minimum of \$350,000,000 towards the cost to develop and construct the New Arena Project and (2) to perform the ongoing Services following completion of construction of the New Arena Project.
- 4.3.9 Provide a financial rating of Developer/Operator and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Developer/Operator, and state whether Developer/Operator will provide a copy of its financial statements for the past two (2) years, if requested by the University.
- 4.3.10 If Developer/Operator is currently for sale or involved in any transaction to expand or to become acquired by another business entity, explain the expected impact thereof, both in organizational and directional terms.
- 4.3.11 Provide details of all past or pending litigation or claims filed against Developer/Operator that would affect its performance under any contract or agreement resulting from this Request (if any).
- 4.3.12 Provide the pertinent date(s), details, and circumstances in connection with any default on any loan agreement or financing agreement with any bank, financial institution, or other entity, together with the current prospects for resolution of any such default.
- 4.3.13 Explain any existing relationship (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Developer/Operator and any employee of the University.
- 4.3.14 Provide the name and Social Security Number for each person having at least twenty-five percent (25%) ownership interest in Developer/Operator.<sup>2</sup>

<sup>&</sup>lt;sup>2</sup> This disclosure is mandatory pursuant to §231.006, *Family Code*, and will be used for the purpose of determining whether an owner of Developer/Operator with an ownership interest of at least twenty-five

4.3.15 Provide a signed and completed Certification of Qualifications (the form of which is located at the end of this **Section 4**).

NOTICE: With few exceptions, individuals are entitled on request to be informed about the information that governmental bodies of the State of Texas collect about such individuals. Under §§552.021 and 552.023, Government Code, individuals are entitled to receive and review such information. Under §559.004, Government Code, individuals are entitled to have governmental bodies of the State of Texas correct information about such individuals that is incorrect.

#### 4.4 Submission of Qualification Materials

The University will accept sealed Qualification Materials from Developers/Operators until 2:30 p.m. CST on March 8, 2018 ("Qualifications Submittal Deadline"). Developers/Operators must submit Qualification Materials as follows:

4.4.1 Sealed Qualification Materials must be delivered on or before the Qualifications Submittal Deadline to:

The University of Texas at Austin
Procurement and Payment Services
1616 Guadalupe St., Ste. 3.302, Austin, Texas 78701
Attention: Felix Alvarez, Assistant Vice President for Procurement,
Contracts, and Payment Services

The University will not under any circumstances review Qualification Materials that are received after the Qualifications Submittal Deadline; provided, however, that the University reserves the right to extend the Qualifications Submittal Deadline. The University will not accept Qualification Materials submitted by email, telephone, or FAX transmission.

- 4.4.2 Qualification Materials must include the items and responses requested in **Section 4.3**. Developer/Operator must reference the item number and repeat the request set forth in **Section 4.3** for each response. In cases where a request does not apply or if unable to respond, Developer/Operator should refer to the item number, repeat the request, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Developer/Operator must explain the reason when responding N/A or N/R.
- 4.4.3 Qualification Materials must include the Certification of Qualifications. The Certification of Qualifications must be signed by a representative of Developer/Operator that is duly authorized to make the representations, warranties, certifications, and other statements therein on behalf of Developer/Operator.
- 4.4.4 Developer/Operator must submit (i) a total of ten (10) complete and identical copies of its Qualification Materials, and (ii) one (1) complete electronic copy of its Qualification Materials in a single .pdf file on a flash drive. An original signature by an authorized representative of Developer/Operator must appear on the Certification of Qualifications of at least one (1) copy of the submitted Qualification Materials. The copy of Developer/Operator's Qualification Materials bearing an original signature should contain the mark "original" on the front cover of the Qualification Materials.

percent (25%) is more than thirty (30) days delinquent in paying child support. Further disclosure of this information is governed by the Texas Public Information Act (ref. <u>Chapter 552</u>, <u>Government Code</u>) and other applicable law.

4.4.5 The Request No. and Qualifications Submittal Deadline must be clearly shown in the lower-left hand corner on the top surface of any envelope or package containing the Qualification Materials. In addition, the name and the return address of Developer/Operator must be clearly visible in any envelope or package containing the Qualification Materials.

Developer/Operator should carefully read the information contained herein and submit all Qualification Materials as directed. If a Developer/Operator submits Qualification Materials that fail to comply with the requirements contained in this **Section 4.4**, then the University may reject such Developer/Operator's submission of Qualification Materials in the University's sole discretion. Qualification Materials and any other information submitted by Developer/Operator in response to this Request will become the property of the University. **False or inaccurate Representations or Certifications Made by Developer/Operator Within Its Qualification Materials May Result in the Disqualification of Developer/Operator or the Termination of Any Agreements Between Developer/Operator and the University Resulting From this Request (IF Any).** 

#### 4.5 Review of Qualification Materials and Determination of Qualified Proposers

The University will review Qualification Materials that are properly submitted to the University by Developer/Operator in accordance with the instructions set forth in **Section 4.4**. Following the University's review of a Developer/Operator's Qualification Materials, the University will notify such Developer/Operator as to whether or not it meets each of the Minimum Qualification Requirements, as determined by the University in its sole discretion. A Developer/Operator that is notified by the University that it meets the Minimum Qualification Requirements is referred to herein as a "Qualified Proposer". Only Qualified Proposers will be permitted to participate In the proposal process set forth in Phase Two of this Request.

# 4.6 Key Events Schedule for Phase One

Date Request Issued February 2, 2018

Qualifications Question Deadline 12:00 p.m. CST on February 13, 2018

Qualifications Submittal Deadline 2:30 p.m. CST on March 8, 2018

Determination of Qualified Proposers March 30, 2018

(tentative)

# **CERTIFICATION OF QUALIFICATIONS**

THIS CERTIFICATION OF QUALIFICATIONS MUST BE COMPLETED, SIGNED, AND RETURNED WITH DEVELOPER/OPERATOR'S QUALIFICATION MATERIALS. FAILURE TO COMPLETE, SIGN, AND RETURN THIS CERTIFICATION OF QUALIFICATIONS WITH THE DEVELOPER/OPERATOR'S QUALIFICATION MATERIALS MAY RESULT IN THE DISQUALIFICATION OF DEVELOPER/OPERATOR.

- **1. Representations and Warranties**. Developer/Operator represents, warrants, certifies, acknowledges, and agrees as follows:
  - (a) The Request is a solicitation for the submission of qualifications and is not a contract or an offer to contract. Submission of Qualification Materials by Developer/Operator in response to the Request will not create a contract between the University and Developer/Operator. The University has made no representation, warranty, or guarantee, written or oral, that one or more contracts with the University will be awarded under the Request. Developer/Operator will bear, as its sole risk and responsibility, any cost arising from Developer/Operator's preparation of Qualification Materials.
  - (b) Developer/Operator is a reputable company that is lawfully and regularly engaged in providing the Services.
  - (c) Developer/Operator has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.
  - (d) Developer/Operator is aware of, is fully informed about, and is in full compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances relating to performance of the Services.
  - (e) Developer/Operator understands the requirements and specifications set forth in the Request.
  - (f) All statements, information, and representations contained in Developer/Operator's Qualification Materials are current, complete, true, and accurate. The University will rely on such statements, information, and representations in determining whether a Developer/Operator is a Qualified Proposer. If the University determines that Developer/Operator is a Qualified Proposer, such Developer/Operator will notify the University immediately of any material change in any matters with regard to which Developer/Operator has made a statement or representation or provided information.
  - (g) Pursuant to Chapter 2270, Government Code, Developer/Operator certifies that Developer/Operator (i) does not currently boycott Israel; and (ii) will not boycott Israel during the term of any agreements or other contractual arrangements resulting from the Request. Developer/Operator acknowledges that any agreements or other contractual arrangements resulting from the Request may be terminated and payment withheld if this certification is inaccurate.
  - (h) Pursuant to Subchapter F, Chapter 2252, Government Code, Developer/Operator certifies that Developer/Operator is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Developer/Operator acknowledges that any agreements or other contractual arrangements resulting from the Request may be terminated and payment withheld if this certification is inaccurate.
- 2. No Benefit to Public Servants. Developer/Operator has not given or offered to give, nor does Developer/Operator intend 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 its submission of Qualification Materials. Failure to sign this Certification of Qualifications, or signing with a false statement, may void any proposal submitted by Developer/Operator or any resulting agreement(s) from the Request, and Developer/Operator may be removed from all proposer lists at the University.

- **3. Tax Certification**. Developer/Operator certifies that it is not currently delinquent in the payment of any taxes due under <u>Chapter 171</u>, <u>Tax Code</u>, or Developer/Operator is exempt from the payment of those taxes, or Developer/Operator is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach, and may result in termination, of any resulting contract(s) or agreement(s) from the Request.
- **4. Antitrust Certification**. Developer/Operator certifies that neither Developer/Operator nor any firm, corporation, partnership, or institution represented by Developer/Operator, nor anyone acting for such firm, corporation, partnership, or institution, has violated the antitrust laws of the State of Texas, codified in §15.01 et seq., *Business and Commerce Code*, or the Federal antitrust laws
- **5. Authority Certification**. Developer/Operator certifies that the individual signing this document is authorized to sign documents on behalf of Developer/Operator and to bind Developer/Operator under any agreement(s) resulting from the Request.
- **6. Child Support Certification**. Under §231.006, *Family Code*, relating to child support, the individual or business entity named in Developer/Operator's Qualification Materials certifies that it is not ineligible to receive an award of any agreement(s) resulting from the Request, and any agreement(s) resulting from the Request may be terminated if this certification is inaccurate.
- 7. **Relationship Certifications**. Developer/Operator certifies that:
  - No relationship, whether by blood, marriage, business association, capital funding agreement, or by any other such kinship or connection exists between the owner of any Developer/Operator that is a sole proprietorship, the officers or directors of any Developer/Operator that is a corporation, the partners of any Developer/Operator that is a partnership, the joint venturers of any Developer/Operator that is a joint venture, or the members or managers of any Developer/Operator that is a limited liability company, on one hand, and an employee of any member institution of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to the University in writing.
  - Developer/Operator has not been an employee of any member institution of The University of Texas System within the immediate twelve (12) months prior to the Proposal Submittal Deadline.
  - No person who in the past four (4) years served as an executive of a state agency was involved with or has any interest in Developer/Operator's proposal, if any, or any contract resulting from the Request (ref. §669.003, Government Code).

All disclosures by Developer/Operator in connection with this certification will be subject to administrative review and approval before the University enters into any agreement(s) resulting from the Request.

8. Compliance with Equal Employment Opportunity and Affirmative Action Laws.

Developer/Operator is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

# 9. Conflict of Interest Certification. Developer/Operator certifies that:

- Developer/Operator is not a debarred vendor or the principal of a debarred vendor (i.e., owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.
- Developer/Operator's provision of services or other performance under any agreement(s) resulting from the Request will not constitute an actual or potential conflict of interest.
- Developer/Operator has disclosed any personnel who are related to any current or former employees of the University.
- Developer/Operator has not given, nor does Developer/Operator intend to give, at any time, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to an officer or employee of the University in connection with the Request.

				•
10.	Developer/Operator must complete the following info	ormation:		
	If Developer/Operator is a Corporation, then	provide the	State of	Incorporation:
	If Developer/Operator is a Corporation, then provide Number:	Developer/Ope	erator's Cor <sub>l</sub>	porate Charter
	Request No.:			
INFORM UNDER SUCH	E: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED OF ATION THAT GOVERNMENTAL BODIES OF THE STATE OF TO \$\\ \_\\$\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	EXAS COLLECT LS ARE ENTITLE , INDIVIDUALS	ABOUT SUC D TO RECEN ARE ENTIT	H INDIVIDUALS. /E AND REVIEW LED TO HAVE
Submit	ted and Certified By:			
(Develo	oper/Operator's Name)	_		
(Signat	ure of Duly Authorized Representative)	_		
(Printed	d Name/Title)	_		
(Date S	Signed)	_		
(Develo	oper/Operator's Street Address)	_		
(City, S	state, Zip Code)	_		
(Teleph	none Number)	_		
		_		

(FAX Number)

# PHASE TWO

(For Qualified Proposers Only)

# **SECTION 5**

# **REQUEST FOR PROPOSAL**

The University requests Qualified Proposers (and only Qualified Proposers) so-identified by the University (ref. Section 4.5) to submit proposals in response to this Request. The University will only accept Proposals submitted by Qualified Proposers so-identified by the University (ref. Section 4.5). All Proposals submitted by non-Qualified Proposers will be rejected by the University and returned unopened to the submitting party. Only Qualified Proposers so-identified by the University (ref. Section 4.5) need to continue reading the remainder of this Request.

# 5.1 Notice Package from the University

As part of the University's notice to a Qualified Proposer that it meets the Minimum Qualification Requirements (ref. **Section 4.5**), the University will provide a package containing additional information and materials regarding Phase Two of this Request. Such information and materials will include dates discussed in this **Section 5**, copies of any previously issued Addenda to this Request, and a Non-Disclosure Agreement ("**NDA**"). Qualified Proposers are required to execute and submit to the University an NDA in order to access a data site ("**Data Site**") containing materials referenced in the remainder of this Request (as well as additional materials relevant to preparing and submitting a proposal). Following the University's receipt of a signed NDA from a Qualified Proposer, such Qualified Proposer will be provided instructions on how to access the Data Site.

# 5.2 Questions Regarding Request for Proposal

Qualified Proposers may direct questions about this request for proposal to the University Contact via email (<a href="mailto:arena@austin.utexas.edu">arena@austin.utexas.edu</a>). The University instructs Qualified Proposers to restrict all contact and questions regarding this request for proposal to written communications delivered on or before a "Proposal Question Deadline" to be provided to Qualified Proposer by the University. The University will provide responses as soon as practicable following the Proposal Question Deadline; however, the University reserves the right to decline to respond to any question.

# 5.3 Conference and Site Visits

The University will hold a conference prior to the Proposal Submittal Deadline at the Frank Erwin Center to allow representatives of Qualified Proposers to ask the University's representatives relevant questions and the University's representatives to clarify provisions of this Request. The University will notify Qualified Proposers of when the conference is to occur. Following the conference, representatives of Qualified Proposers will tour the potential sites for the New Arena Project with University representatives. Attendance for the conference and the site visits is mandatory, and the University reserves the right to reject a proposal from a Qualified Proposer that fails to attend the conference or the site visits.

#### 5.4 Information to be Included in Proposal

A proposal submitted to the University in response to this Request must include the following requested items and responses:

5.4.1 Identify and confirm which Services Qualified Proposer will perform if selected by the University as a result of this Request, including whether Qualified Proposer will develop and construct the New Arena Project and/or contribute monetarily to the costs and

expenses of the New Arena Project.<sup>3</sup> If a Qualified Proposer proposes to contribute monetarily to the costs and expenses of the New Arena Project, specify the level of such monetary contribution (which should be consistent with the reasonable assurances of Qualified Proposer's financial capability included in Qualified Proposer's Qualification Materials [ref. **Section 4.3.8**]).

- 5.4.2 Briefly describe Qualified Proposer's approach for each of the Services Qualified Proposer proposes to provide and perform, together with (i) an estimate of the earliest starting date Qualified Proposer can commence providing and performing such Services following execution of the definitive agreement(s) resulting from this Request (if any), and (ii) a description of any difficulties Qualified Proposer anticipates in performing such Services and how Qualified Proposer plans to manage these difficulties.
- 5.4.3 If Qualified Proposer takes exception to any terms or conditions set forth in **APPENDIX ONE** (*Terms to be Included in the Definitive Agreements*), Qualified Proposer must submit a list of such exceptions. Qualified Proposer's exceptions will be reviewed by the University and may result in disqualification of Qualified Proposer's proposal as non-responsive to this Request. If Qualified Proposer's exceptions do not result in disqualification of Qualified Proposer's proposal, then the University may consider Qualified Proposer's exceptions when the University evaluates Qualified Proposer's proposal.
- 5.4.4 Provide any information that would be appropriate and helpful in determining Qualified Proposer's capabilities and reliability to provide any proposed level of funding and to perform the Services, including marketing materials, background information, and descriptive examples of Qualified Proposer's work. These materials should be included as an exhibit to Qualified Proposer's proposal.
- 5.4.5 Taking into consideration the University's objective of minimal financial participation in the development and construction of the New Arena Project and minimal financial exposure in the operation of the New Arena Project, specify any assistance of any nature that Qualified Proposer will request from the University in connection with the development, construction, or operation of the New Arena Project, including any tax exemption or concession, any tax-exempt financing, any in-kind contribution, any use of University facilities (other than the new arena) or services, or any direct payment.
- 5.4.6 Provide a financing plan for the development and construction of the New Arena Project that includes all information required to provide the University with sufficient data to evidence that the New Arena Project can be financed (and/or construction costs funded), constructed, and delivered in a timely fashion. The financing plan should, at a minimum, contain a sources and uses of funds statement and financing (and/or funding) schedule. The University may request a Qualified Proposer to submit a supplemental financing plan setting forth such information as the University deems helpful or relevant in evaluating such Qualified Proposer or any aspect of its proposal.
- 5.4.7 Provide an operating pro forma for both startup and stable years (and any other relevant information) to evidence that the New Arena Project can operate successfully for a sustained period of time with sufficient return to pay debt service, reinvest in maintenance and capital needs, and fund future improvements to the facility to ensure its continuation as a world-class facility. The pro forma should, at a minimum, contain the following:

<sup>&</sup>lt;sup>3</sup> If the selected Qualified Proposer constructs the New Arena Project as a to be University owned building, then such Qualified Proposer will be subject to certain University policies, standards, and guidelines for construction of the New Arena Project.

- Estimated facility revenues by type, including, without limitation, concessions and other ancillary revenue (sponsorship, naming rights, facility fees, ticketing)
- Estimated parking revenues based on projected usage (for both general and premium parking)<sup>4</sup>
- Estimated number of events and attendance per event by type
- Event revenue and expenses by event type (including University, community, state and local municipality events traditionally held at the Frank Erwin Center)
- Estimated facility operating expenses by type (including contributions to any routine and major maintenance and capital reserve funds)
- Estimated taxes, fees, or other charges paid or collected and submitted by the selected Qualified Proposer to a taxing or other governmental authority, including in connection with a long-term possessory interest in the new arena
- 5.4.8 Review and provide input on the New Arena Project Schedule (which will be available in the Data Site). The New Arena Project Schedule incorporates milestones from the issuance of this Request to the opening of the New Arena Project and includes the following:
  - The University's issuance of this Request
  - Qualifications Submittal Deadline
  - The University's identification of Qualified Proposers
  - Qualified Proposers' execution of NDAs and access to the Data Site
  - Proposal Submittal Deadline
  - The University's evaluation of proposals
  - The University's selection of a Qualified Proposer and negotiation of definitive agreements
  - Any due diligence period after selection of a Qualified Proposer
  - The University's selection of the site for the New Arena Project
  - Arena and basketball training facility design kickoff
  - The commencement of construction
  - The commencement of operations

Estimated parking revenues generated from the University's parking facilities that are to be retained by the selected Qualified Proposer will be taken into consideration in any valuation of the University's monetary contribution to the New Arena Project.

Information pertaining to which parking facilities are utilized by the Frank Erwin Center, both currently and historically, will be available in the Data Site.

Specify a "not to exceed" time period for each milestone that is or would be within the selected Qualified Proposer's control based on the Services that Qualified Proposer proposes to provide and perform.

- 5.4.9 Review and provide input on the preliminary plans for the New Arena Project, which will be available in the Data Site and include the following:
  - General site plan, with sustainable transportation (transit, walking, and bicycling) access, and freight loading docks/areas identified
  - Concept level design work, including scope narrative, elevations, floor plans, cross sections, and other drawings needed to convey design intent

Qualified Proposer may suggest modifications to the preliminary plans for the New Arena Project as long as the University's needs and goals for the New Arena Project are met and achieved.

- 5.4.10 Submit a work plan with key dates and milestones for the pre-opening Services. The work plan should include:
  - Identification of tasks to be performed
  - Time frames to perform the identified tasks
  - Project management methodology
  - Implementation strategy
  - The expected time frame for commencement and completion of the pre-opening Services
- 5.4.11 Describe the proposed operation and management plan for the New Arena Project following completion. At a minimum, such plan should include concept-level plans for:
  - Organizational Structure
  - Staffing (full and part-time)
  - Ticket Operations
  - Marketing and Promotion
  - Concessions
  - Merchandising
  - Security
  - Tenancy for the Men's and Women's Basketball Programs
  - Usage by other University programs, the community, and other public users
- 5.4.12 If available, provide a copy of Qualified Proposer's contingency plan or disaster recovery plan in the event of a disaster.

- 5.4.13 Describe Qualified Proposer's quality assurance program, quality requirements, and how they are measured.
- 5.4.14 Describe the types of reports or other written documents Qualified Proposer will provide (if any) and the frequency of reporting. Include samples of reports and documents if appropriate.
- 5.4.15 The current operator of the Frank Erwin Center provides event staffing and peer security for events held at Darrell K Royal-Texas Memorial Stadium and UFCU Disch–Falk Field. Confirm whether Qualified Proposer would provide similar services and how such services would be implemented.
- 5.4.16 Confirm Qualified Proposer's commitment to a long-term lease or operating agreement, and provide the minimum length of term and the maximum length of term for any such agreement that Qualified Proposer will accept or require.
- 5.4.17 Confirm Qualified Proposer's commitment to creating a capital reserve fund for capital expenditures for the New Arena Project.
- 5.4.18 Specify any "exclusive" rights that Qualified Proposer proposes to impose on the New Arena Project or the University, and the applicable terms, conditions, and limitations thereon. The response should identify any key terms for coordinating naming rights, sponsorship, promotion and marketing, concessions, merchandise, etc. for the New Arena Project.
- 5.4.19 Describe Qualified Proposer's intended use of the University's trademarks and other intellectual property in connection with the operation of the New Arena Project, including naming, advertising, and merchandising.
- 5.4.20 Provide details describing any unique or special services or benefits offered or advantages to be gained by the University from doing business with Qualified Proposer. Additional services or benefits must be directly related to the Services solicited under this Request.

# 5.5 Historically Underutilized Businesses Subcontracting Plan

All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses ("HUBs") in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this Request, the selected Qualified Proposer subcontracts any Services, then the selected Qualified Proposer must make a good faith effort to utilize HUBs certified by the Statewide Procurement Division of the Texas Comptroller of Public Accounts. Compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this Request. By submitting a proposal, Qualified Proposer acknowledges that, if selected by the University, its obligation to make a good faith effort to utilize HUBs when subcontracting any Services will continue throughout the term of any agreements and contractual arrangements resulting from this Request. Furthermore, any subcontracting of Services by the selected Qualified Proposer is subject to review by the University to ensure compliance with the HUB program.

A HUB Subcontracting Plan ("HSP") is a required part of the proposal (ref. Section 5.6.2). The HSP will be developed and administered in accordance with the University's Policy on Utilization of Historically Underutilized Businesses, attached as APPENDIX FIVE. Each Qualified Proposer must complete and return the HSP in accordance with the terms and conditions of this Request,

including **APPENDIX FIVE**. Qualified Proposer will not be permitted to change its HSP unless: (1) Qualified Proposer completes a new HSP in accordance with the terms of **APPENDIX FIVE**, setting forth all modifications requested by Qualified Proposer, (2) Qualified Proposer provides the modified HSP to the University, (3) the University approves the modified HSP in writing, and (4) all agreements resulting from this Request are amended in writing to conform to the modified HSP.

The University may offer Qualified Proposer an opportunity to seek informal review of its draft HSP by the University's HUB Office before the Proposal Submittal Deadline (ref. **Section 5.6**). If the University extends this offer, details will be provided at the pre-proposal conference (ref. **Section 5.3**) or by other means. Informal review is designed to help address questions Qualified Proposer may have about how to complete its HSP properly. Concurrence or comment on Qualified Proposer's draft HSP by the University will not constitute formal approval of the HSP and will not eliminate the need for Qualified Proposer to submit its final HSP to the University.

# 5.6 Submission of Proposal and HSP

The University will accept sealed proposals and sealed HSPs from Qualified Proposers until 2:30 p.m. CST on June 18, 2018 ("Proposal Submittal Deadline").

- 5.6.1 Qualified Proposers must submit **proposals** as follows:
  - 5.6.1.1 Sealed proposals must be delivered on or before the Proposal Submittal Deadline to:

The University of Texas at Austin
Procurement and Payment Services
1616 Guadalupe St., Ste. 3.302, Austin, Texas 78701
Attention: Felix Alvarez, Assistant Vice President for Procurement,
Contracts, and Payment Services

The University will not under any circumstances consider proposals that are received after the Proposal Submittal Deadline; provided, however, that the University reserves the right to extend the Proposal Submittal Deadline. The University will not accept proposals submitted by email, telephone, or FAX transmission.

- 5.6.1.2 Proposals must include the items and responses requested in **Section 5.4**. Qualified Proposer must reference the item number and repeat the request set forth in **Section 5.4** for each response. In cases where a request does not apply or if unable to respond, Qualified Proposer should refer to the item number, repeat the request, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Qualified Proposer must explain the reason when responding N/A or N/R.
- 5.6.1.3 Proposals must include the Certification of Proposal attached as **APPENDIX TWO**. The Certification of Proposal must be signed by a representative of Qualified Proposer duly authorized to bind Qualified Proposer to its submitted proposal and to make the representations, warranties, certifications, and other statements therein on behalf of Qualified Proposer.
- 5.6.1.4 Proposals must include the Addenda Checklist attached as **APPENDIX THREE**. The Addenda Checklist must be signed by a representative of Qualified Proposer duly authorized to bind Qualified Proposer to its submitted

proposal and confirm Qualified Proposer's receipt of all Addenda to this Request.

- 5.6.1.5 Each proposal must state that it will remain valid for the University's acceptance for a minimum of one hundred eighty (180) days after the Proposal Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays. Except as otherwise provided in this Request, no submitted proposal may be changed, amended, or modified after the Proposal Submittal Deadline. A proposal may be withdrawn and resubmitted at any time prior to the Proposal Submittal Deadline. No proposal may be withdrawn after the Proposal Submittal Deadline without the University's consent, which will be based on a Qualified Proposer's written request explaining and documenting the reason for withdrawal, which is acceptable to the University in its sole discretion.
- 5.6.1.6 Qualified Proposer must submit (i) a total of ten (10) complete and identical copies of its entire proposal, and (ii) one (1) complete electronic copy of its entire proposal in a single .pdf file on a flash drive. An original signature by an authorized officer or other authorized representative of Qualified Proposer must appear on the Certification of Proposal and Addenda Checklist of at least one (1) copy of the submitted proposal. The copy of Qualified Proposer's proposal bearing original signatures should contain the mark "original" on the front cover of the proposal.
- 5.6.1.7 The Request No. and Proposal Submittal Deadline must be clearly shown in the lower-left hand corner on the top surface of any envelope or package containing the proposal. In addition, the name and the return address of Qualified Proposer must be clearly visible in any envelope or package containing the proposal.

Qualified Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed. If a Qualified Proposer submits a proposal that fails to comply with the requirements contained in this **Section 5.6.1**, then the University may reject such proposal in the University's sole discretion. Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this Request in any way; or (iii) contain irregularities of any kind, are subject to disqualification by the University, at the University's sole discretion. Proposals and any other information submitted by Qualified Proposer in response to this Request will become the property of the University. **FALSE OR INACCURATE REPRESENTATIONS OR CERTIFICATIONS MADE BY QUALIFIED PROPOSER WITHIN ITS PROPOSAL MAY RESULT IN THE DISQUALIFICATION OF QUALIFIED PROPOSER OR THE TERMINATION OF ANY AGREEMENTS BETWEEN QUALIFIED PROPOSER AND THE UNIVERSITY RESULTING FROM THIS REQUEST (IF ANY).** 

- 5.6.2 Qualified Proposers must submit **HSPs** as follows:
  - 5.6.2.1 A sealed HSP <u>under separate cover</u> and <u>in a separate envelope</u> ("HSP Envelope") must be submitted simultaneously with a Qualified Proposer's proposal. The University will open Qualified Proposer's HSP Envelope <u>prior</u> to opening its proposal to confirm Qualified Proposer submitted the HSP. The University will not accept HSPs submitted by email, telephone, or FAX transmission.
  - 5.6.2.2 The top outside surface of the HSP Envelope must clearly indicate: (i) the Request No. and the Proposal Submittal Deadline in the lower-left hand corner, (ii) the name and the return address of Qualified Proposer, and (iii) the phrase "HUB Subcontracting Plan".

5.6.2.3 Qualified Proposer must submit (i) a total of ten (10) complete and identical copies of its entire HSP, and (ii) one (1) complete electronic copy of its entire HSP in a single .pdf file on a flash drive. An original signature by an authorized officer or other authorized representative of Qualified Proposer must appear on at least one (1) copy of the submitted HSP. The copy of Qualified Proposer's HSP bearing an original signature should contain the mark "original" on the front cover of the HSP.

ANY PROPOSAL SUBMITTED IN RESPONSE TO THIS REQUEST THAT IS NOT ACCOMPANIED BY THE HSP IN AN HSP ENVELOPE MEETING THE ABOVE REQUIREMENTS MAY BE REJECTED BY THE UNIVERSITY AND RETURNED TO QUALIFIED PROPOSER UNOPENED AS NON-RESPONSIVE DUE TO MATERIAL FAILURE TO COMPLY WITH ADVERTISED SPECIFICATIONS.

# 5.7 Requests for Clarification

Following the submission of proposals from Qualified Proposers, the University may send requests for clarification directly to a proposer. The University may require a proposer to respond to any request for clarification prior to any deadline set forth in such request, and a proposer's failure to timely respond may result in the disqualification of a proposal from such proposer as non-responsive to this Request.

# 5.8 Post-Proposal Presentations

Following the submission of proposals and any requests for clarification, the University will select a date for Qualified Proposers to conduct presentations explaining their respective proposals. The post-proposal presentations will allow the University's representatives to ask each Qualified Proposer that submitted a proposal relevant questions and each Qualified Proposer to clarify provisions of its proposal prior to the University's selection of a Qualified Proposer. Post-proposal presentations will be conducted at the Frank Erwin Center. The University will notify each Qualified Proposer that submits a proposal of the date and time when such Qualified Proposer may conduct its presentation.

# 5.9 Process for Evaluation of Proposals; Refinement of Scope of Services

The University will select a Qualified Proposer by using a competitive sealed proposal process.

The evaluation of proposals and the selection of a Qualified Proposer will be based on the information provided in the proposal; provided, however, that the University reserves the right (i) to consider additional information if the University determines the information is relevant, and (ii) to seek clarification from any Qualified Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to the University, at the University's sole discretion.

The University may discuss and negotiate all elements of a proposal with the submitting Qualified Proposer. For purposes of negotiation, the University may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, the University may defer further action on proposals not included within the competitive range pending the selection of a Qualified Proposer; provided, however, that the University reserves the right to include additional proposals in the competitive range if deemed to be in the best interest of the University.

Following the University's evaluation of the proposals but before final selection of a Qualified Proposer, the University may refine the Scope of Services based on which Services each Qualified Proposer offered to perform in its original proposal and may permit a Qualified Proposer to revise its proposal in order to obtain such Qualified Proposer's best and final offer. In that

event, representations made by a Qualified Proposer in its revised proposal, including the level of monetary contribution and revenue sharing offered by Qualified Proposer, will be binding on Qualified Proposer. The University will provide Qualified Proposers, or the Qualified Proposers within an established competitive range if applicable, with an equal opportunity for discussion and revision of their respective proposals.

Each Qualified Proposer is hereby notified that the University will maintain in its files concerning this Request a written record of the basis upon which a selection, if any, is made by the University.

# 5.10 Criteria to Consider in Evaluating Proposals and Selecting a Qualified Proposer

The Qualified Proposer selected by the University through this Request, if any, will be the Qualified Proposer that submits a proposal that is the most advantageous to the University. Each Qualified Proposer is encouraged to propose terms and conditions offering the maximum benefit to the University in terms of (1) monetary contribution, (2) revenue sharing, (3) service, (4) total overall cost, and (5) project management expertise. The University is not obligated to select the Qualified Proposer offering the most attractive economic terms if that Qualified Proposer is not the most advantageous to the University overall, as determined by the University in its sole discretion.

Criteria to be considered by the University in evaluating proposals and selecting a Qualified Proposer, to the extent applicable, will consist of the following:

#### 5.10.1 Threshold Criteria Not Scored

- 5.10.1.1 Ability of the University to comply with laws regarding Historically Underutilized Businesses; and
- 5.10.1.2 Ability of the University to comply with laws regarding purchases from persons with disabilities.
- 5.10.2 Scored Criteria (and the weighting of scores for each category)
  - 5.10.2.1 The financial terms offered to the University by Qualified Proposer, including the level of funding to be contributed towards the cost to develop and construct the New Arena Project, the extent of revenue sharing, and the extent of the Qualified Proposer's responsibility (as opposed to the University's responsibility) for the total long-term costs of maintaining, operating, and providing capital funding for ongoing improvements to the New Arena Project (50%);
  - 5.10.2.2 The quality and level of Qualified Proposer's experience in developing and/or operating first-in-class projects of the scope described in **Section 4.2.1** above (25%);
  - 5.10.2.3 The extent to which the Services Qualified Proposer is offering to perform and provide meet the University's and Texas Athletics' needs described in this Request (20%); and
  - 5.10.2.4 Qualified Proposer's past relationship with the University (5%).

# 5.11 Negotiation and Execution of Definitive Agreements

Following the University's refinement of the Scope of Services, receipt of revised proposals containing Qualified Proposers' best and final offers, and evaluation of such revised proposals using the criteria set forth in **Section 5.10**, the University will invite one or more Qualified Proposers with proposals most advantageous to the University to negotiate terms for definitive agreements based on the refined Scope of Services.

Following the negotiation of terms for definitive agreements, the University and the selected Qualified Proposer(s) will enter into definitive agreements for the Scope of Services (as may be refined), which definitive agreements must be acceptable to the University in its sole discretion.

# 5.12 Key Events Schedule for Phase Two<sup>5</sup>

Conference and Site Visits April or May of 2018

(only estimate; Qualified Proposers will be notified of the

time and date for the conference and site visits)

Proposal Question Deadline April or May of 2018

(only estimate; Qualified Proposers will be notified of the

Proposal Question Deadline)

Proposal Submittal Deadline 2:30 p.m. CST on June 18, 2018

(subject to extension by the University)

Post-Proposal Presentations July of 2018

(only estimate; Qualified Proposers will be notified of the

time and date for the post-proposal presentations)

Selection of Qualified Proposer September of 2018

(only estimate)

<sup>&</sup>lt;sup>5</sup> A Qualified Proposer will be granted access to the Data Site following the University's receipt of a signed NDA from such Qualified Proposer.

# **APPENDIX ONE**

# TERMS TO BE INCLUDED IN THE DEFINITIVE AGREEMENTS

In addition to the Scope of Services set forth in **Section 3** of the **Request**, the below terms and conditions will be included in the definitive agreements entered into by the University and the selected Qualified Proposer(s) for the New Arena Project. The definitive agreements will also contain additional terms and conditions required by the University, including, as applicable, but without limitation, customary provisions for development, construction, repair, operation, maintenance, capital improvements, parking rights, security, insurance, indemnity, hazardous materials, default and remedy, dispute resolution, casualty and condemnation, assignment, compliance with laws (including Texas ethics statutes), and statutorily required certifications.

# 1. Development, Design, and Construction Terms

- 1.1 The selected Qualified Proposer will be responsible for a to-be-agreed-to amount of the funding to complete the development and construction of the New Arena Project, including assurances for covering cost overruns.<sup>6</sup>
- 1.2 The selected Qualified Proposer will be subject to the University's building standards, guidelines, and policies (including meeting an acceptable LEED rating and acceptable standards for energy use, water use, and construction waste diversion) or any alternatives to such standards, guidelines, and policies approved by the University.<sup>7</sup>
- 1.3 The University will be responsible for rerouting and extending to the property line all existing utilities for the selected site for the New Arena Project. If the Highway Site is the selected site for the New Arena Project, then the selected Qualified Proposer will be responsible for all utility connections, excavation, and tree mitigation and the cost associated with the relocation of the portion of Red River Street adjacent to Interstate 35 so that the realigned Red River Street aligns with the existing Robert Dedman Street (the relocation of Red River Street will create a larger land area to accommodate the New Arena Project, fire lane accessibility, and a potential game day plaza). If the Creek Site is the selected site for the New Arena Project, then the selected Qualified Proposer will be responsible for demolishing the Recreational Sports Center and the building currently housing the Steve Hicks School of Social Work. The terms and conditions for replacing the Recreational Sports Center and the building currently housing the Steve Hicks School of Social Work, including who will be responsible for rebuilding and the funding thereof, are undetermined at this time, but the commencement and completion of construction of the New Arena Project are not contingent on any such replacement(s). Otherwise, the sites are being provided "as-is," and the selected Qualified Proposer will be familiar with the sites as well as any existing land use conditions, zoning restrictions, landmarks requirements, encumbrances, University plans for infrastructure changes, and other laws, rules, and regulations affecting the development of the New Arena Project.
- 1.4 The New Arena Project design will be consistent with the March 2016 Texas Athletics Master Plan.

<sup>&</sup>lt;sup>6</sup> In a timeframe to be established by the University to adequately verify adequate funding for the New Arena Project, the selected Qualified Proposer will be required to demonstrate to the University that such amount of the development and construction funds are or will be irrevocably committed.

<sup>&</sup>lt;sup>7</sup> The University's Sustainable Building Policy Documentation can be found at the following website: <a href="https://sustainability.utexas.edu/conservation/greenbuilding">https://sustainability.utexas.edu/conservation/greenbuilding</a>. Other documentation outlining applicable University standards can be found at the following website: <a href="https://pmcservices.utexas.edu/dcstandards/">https://pmcservices.utexas.edu/dcstandards/</a>.

- 1.5 The design of the New Arena Project must comply with the Americans with Disabilities Act (ADA). As a public entity, the University is subject to Title II of the ADA, and the selected Qualified Proposer will consider guidelines of both Title II and III of the ADA. In cases where the standards differ, the design and construction of the New Arena Project will be held to the standard that provides the highest degree of access to individuals with disabilities. The provisions of the ADA may exceed requirements contained in building codes and other regulations, and in such instances, the ADA requirements shall control.
- 1.6 The selected Qualified Proposer will be responsible for compliance with all regulatory requirements, including University standards and ordinances.
- 1.7 The University will require that as part of the New Arena Project design, and to the extent possible during construction, portions of the exterior pedestrian walkways, landscaping, and hardscaping and other amenities in, and adjacent to, the selected site for the New Arena Project will remain available for University stakeholder use.
- 1.8 The selected Qualified Proposer will be required to deposit with the University a to-be-determined amount that will not be refundable on account of any other contingencies in favor of the selected Qualified Proposer, but that will be refundable to the selected Qualified Proposer only in the event that the University commits an uncured event of default or if the University exercises a termination right for reasons other than the selected Qualified Proposer's uncured event of default. Upon substantial completion of the selected Qualified Proposer's development and construction obligations, such deposit shall be credited towards any rent or fees coming due for the selected Qualified Proposer's right to operate and use the New Arena Project.

# 2. Operation and Use Rights and Obligations

- 2.1 The selected Qualified Proposer will be responsible for 100% of costs of operation and maintenance of the new arena, including, without limitation, assurances for covering cost overruns, booking, scheduling, marketing and promotion, event operation, ticketing, concessions, insurance, utilities, permits and licenses, taxes, repairs, replacements, capital improvements, and funding a capital improvement reserve.
- 2.2 The selected Qualified Proposer will be responsible for the maintenance of the structure of the new basketball training facility and its mechanical, electrical, and plumbing systems. Texas Athletics will be responsible for the day-to-day maintenance of the new basketball training facility.
- 2.3 The definitive agreements will contain rent and/or revenue sharing requirements;<sup>8</sup> a specified number of rent-free use days for community, state and local municipality events traditionally held at the Frank Erwin Center; and terms and conditions of use, including permitted uses and accommodations for certain ongoing or anticipated future uses.
- 2.4 The selected Qualified Proposer will be solely responsible for and will pay all charges for utilities used or consumed at the New Arena Project during development, construction, and operations. Utilities include, but are not limited to, gas, electric, water, sewer, storm water, garbage and recycling collection, and telecommunication services. The University will provide to the New Arena Project thermal utilities and, provided the University owns the New Arena Project, power, and the New Arena Project's power consumption will be metered and paid for by the selected Qualified Proposer (except as otherwise agreed to in connection with University events).

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<sup>8</sup> The extent of rent and/or revenue sharing requirements will be determined by the University based on the level of funding a Qualified Proposer contributes to the development and construction costs for the New Arena Project.

- 2.5 After the selected Qualified Proposer's right to use the New Arena Project expires, all existing improvements and all additions and replacements will be owned by the University.
- 2.6 Texas Athletics, in conjunction with the selected Qualified Proposer, will determine which obligations associated with the presentation of University Men's and Women's Basketball Games, other University athletic programs, and other University events will be assumed by the selected Qualified Proposer. However, the University will have ultimate control over all University events held at the New Arena Project so as to allow the University to interact with representatives, and comply with all rules and demands, of NCAA, athletic conferences, and other similar institutions.
- 2.7 The selected Qualified Proposer will have rights for the use and operation of the new arena subject to (i) certain University rights, including, without limitation, pourage, campus sponsorship, and broadcasting rights, and (ii) the rules and demands of NCAA, athletic conferences, and other similar institutions.
- 2.8 The University's trademarks will remain the exclusive property of the University. Certain licensing rights will be provided to the selected Qualified Proposer (with appropriate limitations on the use to protect the University) in connection with the operation of the New Arena Project. All of such licensed usage rights will remain subject to the University's prior approval in its sole discretion. In-arena sponsorship and advertising (in all forms of media, now existing or hereafter created) will also be subject to the University's prior approval as well as the prior approval, where applicable, of the NCAA. Similar rights to the commercialization or sale of merchandise and the transmission (by various mediums, now existing or hereafter created) of broadcast rights will be subject to the University's prior approval. Similar to-be-negotiated restrictions shall be required by the University with respect to naming rights and exterior arena signage and displays. The selected Qualified Proposer will also be subject to certain existing and future University agreements relating to sponsorship, merchandising, branding, and media rights. All intellectual property rights (and the revenues derivable therefrom) that relate to Texas Athletics shall remain with Texas Athletics.
- 2.9 Any events or activities contrary to the University's morals or good customs, or otherwise adversely affecting the University's goodwill or reputation, are prohibited from taking place at the New Arena Project.
- 2.10 The selected Qualified Proposer will provide any required and convenient services to manage, operate, and maintain the New Arena Project in accordance with the highest industry quality standards, any operations manual approved by the University, and any performance indicators developed by the University. The selected Qualified Proposer will require all consultants, contractors or sub-contractors, employees, and any companies associated with the selected Qualified Proposer to provide services under the same quality standards referred to above. The selected Qualified Proposer will be obligated to provide enhancements to maintain the New Arena Project as a "state of art" facility and make upgrades to the New Arena Project as needed to prominently display the University's and Texas Athletics' evolving branding.
- 2.11 The selected Qualified Proposer will take all reasonable and usual precautions to prevent any damage to people, property, or infrastructure in relation to the New Arena Project.
- 2.12 All contracts entered into by the selected Qualified Proposer in connection with the New Arena Project must contain certain University required provisions. The University (or a third party selected by the University) will have the right to audit such contracts to ensure compliance with said requirement.

- 2.13 The selected Qualified Proposer will negotiate, execute, perform, and manage compliance with all service contracts for the new arena.
- 2.14 The selected Qualified Proposer will keep detailed, accurate, and complete financial records and other records of all the activities at the new arena in accordance with generally accepted accounting principles, applied on a consistent basis, which records shall be made available to the University and its representatives upon request.

### 3. University's and Texas Athletics' Rights to Use and Revenues

- 3.1 Texas Athletics will have the exclusive right to operate and use the new basketball training facility on a year-round, fulltime basis and will retain all sponsorship and other proprietary rights of Texas Athletics in the new arena and basketball training facility.
- 3.2 University events, Texas Athletics events, coaches/practice camps, and cheerleading camps will be charged no rent, and the University or such other users will pay only event-related expenses incurred by the venue. A list of such events and camps historically held at the Frank Erwin Center will be available in the Data Site.
- 3.3 Athletic events scheduled by third parties, including NCAA, athletic conferences, and other similar institutions, shall have scheduling priority over all other events held at the new arena. The definitive agreements will contain detailed booking policies for these reserved event days for athletic events and for all other events at the new arena.
- 3.4 The following revenue streams will remain with Texas Athletics:
  - All net ticket sales for Men's and Women's Basketball
  - All net ticket sales for University events (non-competitive)
  - All net ticket sales for any other University athletic programs that play at the new arena
  - All net merchandise revenues for Men's and Women's Basketball and other University athletic programs
  - All net concession revenues for Men's and Women's Basketball and other University athletic programs
  - All net revenues for coaches/practice camps and cheerleading camps
  - All donations for seating (including premium seating, e.g., suites and club seats)
  - Texas Athletics originated sponsorship revenues

The University may carry out audits with respect to the selected Qualified Proposer's calculation of revenues, and the selected Qualified Proposer shall ensure full access to all documents and accounting records.

# 4. General Terms and Conditions

4.1 The definitive agreements will include appropriate risk allocations and will, at a minimum, require the selected Qualified Proposer to defend, hold harmless, and indemnify the University for any costs, expenses, or losses arising from the selected Qualified

- Proposer's activities related to its due diligence and for the design, construction, and operation of the New Arena Project.
- 4.2 The selected Qualified Proposer will be responsible for the conduct of its business and liable for any risk entailed by the performance of its duties, including, but not limited to, any labor accidents suffered by the selected Qualified Proposer's employees and any damages caused to third parties as a result of any act or omission of the selected Qualified Proposer's employees, contractors, sub-contractors, consultants, or agents.
- 4.3 The selected Qualified Proposer will pay all applicable taxes, including license, occupation, and State of Texas leasehold excise taxes (unless the selected Qualified Proposer provides evidence of exemption satisfactory to the University in its sole discretion). The selected Qualified Proposer must have a City of Austin Business License and pay all taxes due before entering into any agreement with the University.
- 4.4 The definitive agreements will require a guaranty or other form of recourse liability from any entity on which the selected Qualified Proposer relies for financial capacity.

Only Qualified Proposers soidentified by the University (ref. Section 4.5 of the Request) are to complete and submit with their proposals the Certification of Proposal that follows this page

# **APPENDIX TWO**

# **CERTIFICATION OF PROPOSAL**

THIS CERTIFICATION OF PROPOSAL MUST BE COMPLETED, SIGNED, AND RETURNED WITH QUALIFIED PROPOSER'S PROPOSAL. FAILURE TO COMPLETE, SIGN, AND RETURN THIS CERTIFICATION OF PROPOSAL WITH THE QUALIFIED PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

- **1. Representations and Warranties**. Qualified Proposer represents, warrants, certifies, acknowledges, and agrees as follows:
  - (a) Qualified Proposer will furnish Services to the University and comply with all terms, conditions, requirements, and specifications set forth in the Request, the attached appendices, and any resulting agreement(s).
  - (b) The Request is a solicitation for a proposal and is not a contract or an offer to contract. Submission of a proposal by Qualified Proposer in response to the Request will not create a contract between the University and Qualified Proposer. The University has made no representation, warranty, or guarantee, written or oral, that one or more contracts with the University will be awarded under the Request. Qualified Proposer will bear, as its sole risk and responsibility, any cost arising from Qualified Proposer's preparation of a response to the Request.
  - (c) Qualified Proposer is a reputable company that is lawfully and regularly engaged in providing the Services.
  - (d) Qualified Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.
  - (e) Qualified Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances relating to performance of the Services.
  - (f) Qualified Proposer understands the requirements and specifications set forth in the Request.
  - (g) Qualified Proposer will not delegate any of its duties or responsibilities under the Request or any agreements or other contractual arrangements resulting from the Request to any sub-contractor, except as expressly permitted in such agreements or other contractual arrangements.
  - (h) Qualified Proposer will maintain any insurance coverage required by the agreement(s) resulting from the Request during the entire term of such agreement(s).
  - (i) All statements, information, and representations prepared and submitted in response to the Request are current, complete, true, and accurate. The University will rely on such statements, information, and representations in selecting a Qualified Proposer. Qualified Proposer will notify the University immediately of any material change in any matters with regard to which Qualified Proposer has made a statement or representation or provided information.
  - (j) Qualified Proposer will defend with counsel approved by the University, indemnify, and hold harmless the University, The University of Texas System, the State of Texas, and all of their regents, officers, agents, employees, and legal counsel, from and against all

actions, suits, demands, costs, damages, liabilities, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending, or settling any of the foregoing, arising out of, connected with, or resulting from any negligent acts or omissions or willful misconduct of Qualified Proposer or any agent, employee, subcontractor, or supplier of Qualified Proposer in the execution or performance of any contract or agreement resulting from the Request.

- (k) Pursuant to §§2107.008 and 2252.903, Government Code, any payments owing to Qualified Proposer under any agreement(s) resulting from the Request may be applied directly to any debt or delinquency that Qualified Proposer owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.
- (I) Any terms, conditions, or documents attached to or referenced in Qualified Proposer's proposal are applicable to this procurement only to the extent that they (i) do not conflict with the laws of the State of Texas or the Request, and (ii) do not place any requirements on the University that are not set forth in the Request. Submission of a proposal is Qualified Proposer's good faith intent to enter into an agreement or agreements with the University as specified in the Request and that Qualified Proposer's intent is not contingent upon the University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Qualified Proposer's proposal.
- (m) Pursuant to Chapter 2270, Government Code, Qualified Proposer certifies that Qualified Proposer (i) does not currently boycott Israel; and (ii) will not boycott Israel during the term of any agreements or other contractual arrangements resulting from the Request. Qualified Proposer acknowledges that any agreements or other contractual arrangements resulting from the Request may be terminated and payment withheld if this certification is inaccurate.
- (n) Pursuant to Subchapter F, Chapter 2252, Government Code, Qualified Proposer certifies that Qualified Proposer is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Qualified Proposer acknowledges that any agreements or other contractual arrangements resulting from the Request may be terminated and payment withheld if this certification is inaccurate.
- 2. No Benefit to Public Servants. Qualified Proposer has not given or offered to give, nor does Qualified Proposer intend 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 its proposal. Failure to sign this Certification of Proposal, or signing with a false statement, may void the submitted proposal or any resulting agreement(s) from the Request, and Qualified Proposer may be removed from all proposer lists at the University.
- 3. Tax Certification. Qualified Proposer certifies that it is not currently delinquent in the payment of any taxes due under <u>Chapter 171</u>, <u>Tax Code</u>, or Qualified Proposer is exempt from the payment of those taxes, or Qualified Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach, and may result in termination, of any resulting contract(s) or agreement(s) from the Request.
- 4. Antitrust Certification. Qualified Proposer certifies that neither Qualified Proposer nor any firm, corporation, partnership, or institution represented by Qualified Proposer, nor anyone acting for such firm, corporation, partnership, or institution, has violated the antitrust laws of the State of Texas, codified in §15.01 et seq., Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

- **5. Authority Certification**. Qualified Proposer certifies that the individual signing this document and the documents made a part of the Request, is authorized to sign the documents on behalf of Qualified Proposer and to bind Qualified Proposer under any agreement(s) resulting from the Request.
- **6. Child Support Certification**. Under §231.006, *Family Code*, relating to child support, the individual or business entity named in Qualified Proposer's proposal is not ineligible to receive an award of any agreement(s) resulting from the Request, and any agreement(s) resulting from the Request may be terminated if this certification is inaccurate.
- 7. **Relationship Certifications**. Qualified Proposer certifies that:
  - No relationship, whether by blood, marriage, business association, capital funding agreement, or by any other such kinship or connection exists between the owner of any Qualified Proposer that is a sole proprietorship, the officers or directors of any Qualified Proposer that is a corporation, the partners of any Qualified Proposer that is a partnership, the joint venturers of any Qualified Proposer that is a joint venture, or the members or managers of any Qualified Proposer that is a limited liability company, on one hand, and an employee of any member institution of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to the University in writing.
  - Qualified Proposer has not been an employee of any member institution of The University of Texas System within the immediate twelve (12) months prior to the Proposal Submittal Deadline.
  - No person who in the past four (4) years served as an executive of a state agency was involved with or has any interest in Qualified Proposer's proposal or any contract resulting from the Request (ref. §669.003, Government Code).

All disclosures by Qualified Proposer in connection with this certification will be subject to administrative review and approval before the University enters into any agreement(s) resulting from the Request with Qualified Proposer.

- 8. Compliance with Equal Employment Opportunity and Affirmative Action Laws. Qualified Proposer is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 9. Compliance with Safety Standards. All products and services offered by Qualified Proposer to the University in response to the Request meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (<u>Public Law 91-596</u>) and the Texas Hazard Communication Act, <u>Chapter 502</u>, <u>Health and Safety Code</u>, and all related regulations in effect or proposed as of the date of the Request.
- **10. Exceptions to Certifications.** Qualified Proposer will and has disclosed, as part of its proposal, any exceptions to the information stated in this Certification of Proposal. All information will be subject to administrative review and approval prior to the time the University makes an award or enters into any agreement(s) with the selected Qualified Proposer.
- Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification. If Qualified Proposer will sell or lease computer equipment to the University under any agreement resulting from the Request then, pursuant to §361.965(c). Health & Safety Code, Qualified Proposer is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Chapter 361, Subchapter Y, Health & Safety Code, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in 30 TAC Chapter 328.

§361.952(2), *Health & Safety Code*, states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

#### **12. Conflict of Interest Certification**. Qualified Proposer certifies that:

- Qualified Proposer is not a debarred vendor or the principal of a debarred vendor (i.e., owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.)
   either at the state or federal level.
- Qualified Proposer's provision of services or other performance under any agreement(s) resulting from the Request will not constitute an actual or potential conflict of interest.
- Qualified Proposer has disclosed any personnel who are related to any current or former employees of the University.
- Qualified Proposer has not given, nor does Qualified Proposer intend to give, at any time, any
  economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or
  service to an officer or employee of the University in connection with the Request.

#### 13. Qualified Proposer should complete the following information:

ΙŤ	Qualified	l Propo	oser i	s a	Corporation,	then	provide	the	State	of	Incorp	oration:
	Qualified umber:		er is a	Corpo	oration, then	provided	Qualified	l Pro	poser's	Corp	orate	Charter
Re	equest No.	.:										

NOTICE: With few exceptions, individuals are entitled on request to be informed about the information that governmental bodies of the State of Texas collect about such individuals. Under §§552.021 and 552.023, Government Code, individuals are entitled to receive and review such information. Under §559.004, Government Code, individuals are entitled to have governmental bodies of the State of Texas correct information about such individuals that is incorrect.

By signing this Certification of Proposal, Qualified Proposer agrees to comply with Certificate of Interested Parties laws (ref. §2252.908, Government Code and 1 TAC §§46.1 through 46.5) as implemented by the Texas Ethics Commission (TEC), including, among other things, providing TEC and the University with information required on the form promulgated by TEC and set forth in APPENDIX FOUR. Qualified Proposer may learn more about these disclosure requirements, including applicable exceptions and use of the TEC electronic filing system, by reviewing §2252.908, Government Code, and information on the TEC website at <a href="https://www.ethics.state.tx.us/whatsnew/FAQ Form1295.html">https://www.ethics.state.tx.us/whatsnew/FAQ Form1295.html</a>. The Certificate of Interested Parties must only be submitted by the selected Qualified Proposer upon delivery to the University of the signed agreement(s) resulting from the Request.

Submitted and Certified By:	
(Qualified Proposer's Name)	
(Signature of Duly Authorized Representative)	

ualified Proposer's Street Address)										
(Date Signed)										
(Qualified Proposer's Street Address)										
(City, State, Zip Code)										
(Telephone Number)										
(FAX Number)										

## **APPENDIX THREE**

### **ADDENDA CHECKLIST**

Proposal of:	
Proposal of:(Qualified Proposer Name)	
<b>To</b> : University	
Request No.:	
Ladies and Gentlemen:	
The undersigned Qualified Proposer hereby captioned Request (initial blanks for any Adden	acknowledges receipt of the following Addenda to the da issued).
No. 1 No. 2	No. 3 No. 4 No. 5
	Respectfully submitted,
	Qualified Proposer:
	By:(Authorized Signature for Qualified Proposer)
	Name:
	Title:
	Date:

#### **APPENDIX FOUR**

#### **CERTIFICATE OF INTERESTED PARTIES** (TEXAS ETHICS COMMISSION FORM 1295)

This is a sample Texas Ethics Commission's FORM 1295 - CERTIFICATE OF INTERESTED PARTIES. If not exempt under Section 2252.908(c), Government Code, Qualified Proposer must use the Texas **Ethics** Commission electronic filing web page https://www.ethics.state.tx.us/whatsnew/FAQ Form1295.html) to complete the most current Certificate of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and the University. The Certificate of Interested Parties will be submitted only by the selected Qualified Proposer to the University with the signed definitive agreements resulting from the Request.

CERTIFICATE OF INTE	ERESTED PARTIES			FORM <b>1295</b>
Complete Nos. 1 - 4 and 6 if th Complete Nos. 1, 2, 3, 5, and 6	ere are interested parties.		OFFI	CE USE ONLY
Name of business entity filing form, entity's place of business.	and the city, state and country of the busi	ness		
Name of governmental entity or state which the form is being filed.	e agency that is a party to the contract fo	r		
and provide a description of the ser	sed by the governmental entity or state ag vices, goods, or other property to be prov			
4 Name of Interested Party	City, State, Country (place of business)	Natu	re of Interest	(check applicable)
	20 1	D Co	ntrolling	Intermediary
	Methics state it.			
	tile etat			
	Mishics			
	ay.			
72	7			
5 Check only if there is NO Interested	Party.	-		1
6 AFFIDAVIT	I swear, or affirm, under penalty of perjui			
AFFIX NOTARY STAMP / SEAL ABOVE	Signature of authorized a	agent of o	ontracting busi	ness entity
Sworn to and subscribed before me, by the of, 20, to cer	saidtify which, witness my hand and seal of office.		, this the	day
Signature of officer administering oath	Printed name of officer administering oath		Title of offic	er administering oath
ADI	D ADDITIONAL PAGES AS NECE	SSARY	<i>(</i>	
Form provided by Texas Ethics Commission	www.ethics.state.tx.us			Bevised 4/8/2016

www.ethics.state.tx.us

Revised 4/8/2016

## **APPENDIX FIVE**

### **HUB SUBCONTRACTING PLAN**

[The HUB Subcontracting Plan follows this cover page.]



HUB/SB Program Office 512-471-2863 https://financials.utexas.edu/hub

# Policy on Utilization of Historically Underutilized Businesses

Non Scope Defined\* (NSD)

## **UT Austin Administration Only**

For questions or clarifications regarding the HUB Subcontracting Plan, please contact the University Contact via email: <a href="mailto:arena@austin.utexas.edu">arena@austin.utexas.edu</a>

Revision 2 dated December 19, 2017

\* Non Scope Defined in Solicitation



# **Table of Contents**

l.	Instructions to Complete the Self-Performing HSP	Page 3
II.	Letter of Transmittal	Page 4
III.	Section 1: Respondent and Requisition Information	Page 5
IV.	Section 2: Respondent's Subcontracting Intentions	Page 6
V.	Section 3: Self Performing Justification	Page 7
VI.	Section 4: Affirmation	Page 7
VII.	Sample Prime Contractor Progress Assessment Report (PAR)*	Page 8

<sup>\* &</sup>lt;u>Note 1</u>: If awarded a contract, the Prime Contractor Progress Assessment Report (PAR) is a required form with any payment application submitted. This form is a condition of payment.

# UT Austin Administration Historically Underutilized Subcontracting Plans (HSP)

#### Option 1 - Complete a Self-Performing HSP as follows:

#### Section 1

Respondent and Requisition Information. Complete as indicated on the form. VID # refers to the tax ID number.

#### Section 2A

Mark the "NO", I will not be sub-consulting any portion of the contract, and I will be fulfilling the entire contract with my own resources. Continue to Section 3.

#### Section 3

Mark the "NO" box and in the space provided indicate how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.

has the resources to complete all scopes of services set forth in the request with our own equipment, supplies, materials and personnel. If sub-contracting opportunities are identified at a future date, we will immediately contact the project manager and HUB Coordinator and commit to perform a Good Faith Effort through solicitation of HUB firms and submit an amended HUB Subcontracting Plan.

#### Section 4

> Sign the form. Include your e-mail address and contact phone number should UT Austin HUB have any questions.

#### **HUB Subcontracting Plan Required Documents**

HUB forms may also be downloaded at: https://financials.utexas.edu/hub/resources

#### Changes to the Plan

Once the HUB Plan has been submitted, any changes to the HSP must be approved in writing by the UT Austin HUB Coordinator **prior** to any work commencing by the new subcontractor. Once any contract has been awarded, the HSP is considered part of such contract(s). Violations to the HSP can be deemed a breach of contract by UT Austin.

#### Reporting – After Award

Prime contractor payment requests shall include: Prime Contractor Progress Assessment Report (PAR) identify all HUB and Non-HUB subcontractor payments. PAR form and instructions for completion can be found at: <a href="https://financials.utexas.edu/hub/resources">https://financials.utexas.edu/hub/resources</a>

<u>NOTE</u>: PROPOSALS THAT DO NOT INCLUDE AN HSP WILL BE REJECTED AS A MATERIAL FAILURE TO COMPLY WITH ADVERTISED SPECIFICATIONS IN ACCORDANCE WITH THE REQUEST FOR QUALIFICATIONS AND PROPOSAL.

Use this Letter of Transmittal for: Commodities, Other Services, Special Trades, Miscellaneous Professional Services

Insert your company's logo here
-ORprint this letter on your company letterhead
(note: all script in red should be deleted
prior to printing)

cc: Project Executive

**HUB Coordinator** Historically Underutilized Business/Small Business (HUB/SB) Program Office The University of Texas at Austin 1616 Guadalupe St. Ste 3.302, Austin, Texas 78701 RE: Historically Underutilized Business Plan for (Request No.): I have read and understand The University of Texas at Austin Policy on Utilization of Historically Underutilized Businesses ("HUBs") as an integral part of our proposal in connection with your request for proposal, referencing Request No. \_\_\_\_\_\_. I am pleased to forward this Letter of Intent Transmittal as a confirmed commitment to comply with historically underutilized businesses ("HUB") subcontracting requirements in accordance with Texas Government Code §2161.253. Good Faith Effort will be documented by a two-part HUB Subcontracting Plan ("HSP") process. Part One (1) of the HSP submission will reflect self-performance with the appropriate sections completed as outlined in the HSP Instruction sheet located on page 3 of The University of Texas Austin Policy on Utilization of Historically Underutilized Businesses. As the scope of work/project is defined under the terms of any contract(s) resulting \_\_\_\_\_\_, Part Two (2) of the process will require a revised HUB Subcontracting Plan for any work/project value that meets or exceeds \$100,000.00 over the duration of any contract(s) resulting from Request No. \_\_\_\_\_\_. A revised HUB Subcontracting Plan will be submitted to the HUB Coordinator prior to execution of each contract and/or amendment process. A final HUB Subcontracting Plan will be submitted upon substantial completion of each project. A Progress Assessment Report (PAR) is required as a condition of any payment with any monthly billing in conjunction with the contract(s) resulting from Request No. \_\_\_\_\_\_. Sincerely, (sianature) (print name)



# **HUB Subcontracting Plan (HSP)**

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

#### NOTE: Proposals that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- · 23.7 percent for professional services contracts,
- · 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

#### - - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent does not have a continuous contract\* in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

- Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the proposal to be considered non-responsive.
- Prime Contractor Progress Assessment Report (PAR) shall be submitted with each request for payment as a condition of payment. A copy of the UT Austin Contract Management System (UTCMS) Compliance Report shall be attached to the State of Texas HUB PAR and shall be submitted with any request for payment as a condition of payment.
- Please note that phone logs are no longer acceptable documentation of Good Faith Effort. Only fax, email and certified letter are acceptable.

#### SECTION 1: RESPONDENT AND REQUISITION INFORMATION

a.	Respondent (Company) Name:		State of Texas VID #:
	Point of Contact.*		Phone #:
	E-mail Address:		Fax #:
b.	Is your company a State of Texas certified HUB?	] - Yes	
c	Requisition#	**	Rid OpenDate:

(mm/dd/yyyy)

<sup>\*</sup>Point of Contact is person who will complete this HSP form

<sup>\*\*</sup>Requisition is the Solicitation/RFP/RFQ number

Enter your company's name here:	Requisition#:

#### SECTION 2: Respondent's Subcontracting Intentions

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including contracted staffing, goods and services will be subcontracted. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

- a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:
  - Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b of this SECTION and continue to Item c of this SECTION.)
  - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If No, continue to SECTION 3 and SECTION 4.)
- b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

		HU	Non-HUBs			
Item#	Subcontracting Opportunity Description	Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.		
1		%	%	%		
2		%	%	%		
3		%	%	%		
4		%	%	%		
5		%	%	%		
6		%	%	%		
7		%	%	%		
8		%	%	%		
9		%	%	%		
10		%	%	%		
11		%	%	%		
12		%	%	%		
13		%	%	%		
14		%	%	%		
15		%	%	%		
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%		

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <a href="https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php">https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php</a>

c.	c. Check the appropriate box (Yes or No) that indicates whether you will be using <u>only</u> Texture 1.	exas certified HUBs to perform <u>all</u> of the subcontracting opportunities
	you listed in SECTION 2, Item b.	

	- Yes	(If Yes	, continue	e to SEC	TION 4 and	complete an	"HSP Goo	d Faith Effort	- Method A	(Attachment A	4)" for <u>each</u>	of the subcontrac	ting oppo	rtunities y	ou listed.)
_															

- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you do not have a continuous contract\* in place with for more than five (5) years meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

╝-	Y	es (I	f <b>Y</b> e	<b>es</b> , (	cont	inue	to:	SEC	CTI	NC	4 an	d c	omp	lete a	an "	HSF	5 G	000	d F	aith	Eff	fort	: - M	eth	od ,	A (,	Atta	ach	ıme	nt A	۱)" f	or	eac	<u>h</u> 0	f the	sub	ocon	ntrac	cting	op	por	tunitie	es yo	ou lis	stec	l
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- No (If No. continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities yould	listed	ווחע פב	artunitie	a onno	racting	subcontr	of the s	each of	for e	nt R)"	achme	R (Att	ethod	ort - N	Fff	l Faith	Good	n "HSP	omolete a	4 and 0	SECTION	continue to	(If No	7 - Nc	П
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\*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here:		Requisition#:	
	TIFICATION (If you responded "No" to SECTION 2, Item space provided below explain how your company w		
SECTION 4: AFFIRMATION			
	that I am an authorized representative of the respor HSP are true and correct. Respondent understands		
The respondent will provide notice as so contract. The notice must specify at a m subcontracting opportunity they (the subthe total contract that the subcontracting opportunity they).	oon as practical to all the subcontractors (HUBs and inimum the contracting agency's name and its point ocontractor) will perform, the approximate dollar value opportunity represents. A copy of the notice require than ten (10) working days after the contract is awar	Non-HUBs) of their selection as a subcontra of contact for the contract, the contract awar e of the subcontracting opportunity and the e ed by this section must also be provided to the	ctor for the awarded rd number, the expected percentage of
	ompliance reports (Prime Contractor Progress Assesuse of and expenditures made to its subcontractors g/vendor/hub/forms.php).		
The respondent must seek approval fro subcontractors and the termination of a	m the contracting agency prior to making any modific subcontractor the respondent identified in its HSP. It any and all enforcement remedies available under t	f the HSP is modified without the contracting	agency's prior
	ow the contracting agency to perform on-site reviews imentation regarding staffing and other resources.	s of the company's headquarters and/or work	-site where services are
Signature	Printed Name	Title	Date (mm/dd/yyyy)
Reminder:	Email Address	Phone Number	

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort Method A (Attachment A)" for <u>each</u> of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort Method B (Attachment B)" for <u>each</u> of the subcontracting opportunities you listed in SECTION 2, Item b.



# HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report

This form must be complet	ted and submitted to the o	contracting	g agency <u>each mon</u>	<u>th</u> to document com	oliance with your H	SP.
Contract/Requisition Number:			Date of Award:	(mm/dd/yyyy)	Object Code:	
		•		(mm/dd/yyyy)	•	(Agency Use Only)
Contracting Agency/University Name:						
Contractor (Company) Name:				State of Texas VID #:		
· · · -· -						
Point of Contact:				_ Phone #:		
					•	
Reporting (Month) Period:			Total Amount Pa	aid this Reporting Period	to Contractor: \$	
Report HU	JB <u>and</u> Non-	-HUB	subconti	ractor info	rmation	
		*Texas Certified	Total Contract \$	Total \$ Amount Paid	Total Contract \$	
	Subcontractor's VID or HUB	HUB?	Amount from HSP	This Reporting Period	Amount Paid to Date	Object Code
Subcontractor's Name	Certificate Number	(Yes or No)		to Subcontractor	to Subcontractor	(Agency Use Only)
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			\$	\$	\$	
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	/		\$	\$	\$	
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Signature:		_ Title:_		Date	e:	
Printed Name:		_ Phoi	ne #:			