

Texas A&M AgriLife Research
Agency 556

REQUEST FOR PROPOSALS

RFP No. 556-20-1A

Peanut Shelling Equipment Line – RFP 2
Texas Foundation Seed Service
Texas A&M AgriLife Research
Vernon, Texas
February 4, 2020 Project No. 0198

NIGP CLASS ITEM(s)
020-74

Proposal Due Date: March 4 ,2020
Proposal Due Time: 3:00 pm (Central Time)

Posting Date: 2-4-2020

****NOTE**** This RFP is composed of two parts: (1) Part A: Special Instructions, (including attachments and appendices, if any) and (2) Part B: General Instructions and Contract Terms and Conditions (including attachments and appendices, if any). In the event an instruction or term in Part A conflicts with an instruction or term in Part B, the instruction or term in Part A prevails, and any addenda or amendments to either Part A or Part B control over the original versions.

See Schedule of Events and Notice of Preproposal Conference and Mandatory Site Visit

RESPONSE SUBMISSION CHECKLIST

IMPORTANT: Please read all instructions, documentation, and requirements contained within this RFP. RESPONDENTS MUST ADDRESS ALL INQUIRIES AND COMMUNICATIONS CONCERNING THIS RFP TO THE INDIVIDUAL LISTED IN [SECTION A.11.5](#) – POINT- OF-CONTACT OR THE HUB COORDINATOR IN SECTION A.12. COMMUNICATIONS WITH ANYONE OTHER THAN THE POINT-OF-CONTACT OR THE HUB COORDINATOR MAY RESULT IN DISQUALIFICATION OF A RESPONSE.

All proposals must be complete and convey all of the information requested to be considered responsive. If a proposal fails to conform to the essential requirements of the RFP, the Agency alone will determine whether the variance is significant enough to consider the proposal susceptible to being made acceptable, and therefore a candidate for further consideration, or not susceptible and therefore not considered for award.

The Agency reserves the right to accept or reject any or all offers, to waive informalities and technicalities, to accept the offer considered most advantageous, and/or to make the award to the most responsive RESPONDENT.

Respondents must complete and submit all required documents or documentation requested in this RFP to be considered responsive for evaluation and award.

Reference [Section A.15](#) – Organization of the Proposal for Submission.

Texas A&M AgriLife Research may disqualify responses received without the required documentation identified below:

	CONFIDENTIAL/PROPRIETARY INFORMATION MUST BE CLEARLY IDENTIFIED
	COMPANY OVERVIEW WITH CAPABILITIES STATEMENT A.7.2
	RESPONDENT INFORMATION FORM – ATTACHMENT B
	EXECUTION OF PROPOSAL-ATTACHMENT A - SIGNED
	CONFLICT OF INTEREST DISCLOSURE/NON -COLLUSION ATTACHMENT D - SIGNED
	PROPOSED SOLUTION/DRAWINGS/SYSTEM DETAILS
	MANDATORY PRICING SHEET OR COMPENSATION/FEE SCHEDULE – ATTACHMENT C
	REFERENCES - ATTACHMENT E
	WARRANTY INFO & AUTHORIZED WARRANTY SERVICE PROVIDER – SEE SECTION A.8.4
	HUB SUBCONTRACTING PLAN – REFERENCE SECTION A.12 - SIGNED
	ASSUMPTIONS AND EXCEPTIONS
	ACKNOWLEDGEMENT OF ADDENDA TO RFP ON ATTACHMENT A

RESPONDENT MUST SUBMIT THE MANDATORY PRICE SHEET ELECTRONICALLY IN THE ORIGINAL FORMAT.

Respondent must submit an electronic response to the following e-mail address: bids@ag.tamu.edu

Texas A&M AgriLife Research (the Agency) recommends beginning the process well in advance of 3:00 pm on the due date.

PART A: SPECIAL INSTRUCTIONS

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A.1 DEFINITIONS

When capitalized, the following terms and acronyms have the meaning set forth below. All other terms have the meaning set forth in Merriam-Webster's Collegiate® Dictionary, Eleventh Edition. These definitions also apply to Part B of this RFP.

TERM	DEFINITION
Agency	Texas A&M AgriLife Research, the agency issuing this solicitation. (the Agency)
Change Order	Means a written modification to the purchase order between the Agency and the Contractor. Process will be in written with change to purchase order signed by an authorized purchasing agent.
Close-out Documents	Means the product brochures, product/equipment maintenance and operations instructions, manuals, and other documents/warranties. Including toll free numbers for service and support.
Contract	Any contract(s) resulting from this solicitation, consisting of the contract documentation as provided in Section B.3.4. Texas A&M - AgriLife Research / AgriLife Extension / Forest Service / Veterinary Medical Diagnostic Lab reserves the right to substitute the word "Purchase Order" for "Contract" in the documents whenever it feels that a signed Purchase Order will expedite the Project
Contractor	The Respondent(s) awarded a Contract as a result of the RFP.
ESBD	The Electronic State Business Daily, which is available online at http://esbd.cpa.state.tx.us/
Party or Parties	Either Texas A&M AgriLife Research or Respondent, separately or collectively
Proposal	A response submitted to the Agency as a result of this solicitation.
Respondent	Any person or vendor who submits a Proposal in response to this solicitation. Unless the context clearly indicates otherwise, all terms and conditions of this Contract that refer to Respondent apply with equal force to Contractor.
RFP	Request for Proposals, which is the type of solicitation embodied in this document.

A.2 PROJECT VISION AND SCOPE OF WORK OVERVIEW

Texas A&M AgriLife Research is the state's premier research agency in agriculture, natural resources, and the life sciences. We conduct hundreds of projects spanning many scientific disciplines to deliver life-sustaining and industry-changing impacts to citizens throughout Texas and around the world.

A member of The Texas A&M University System, AgriLife Research collaborates with the Texas A&M University College of Agriculture and Life Sciences, the Texas A&M AgriLife Extension Service, and many others to help fulfill the A&M System's land-grant mission of teaching, research, extension, and service.

The Texas Foundation Seed Service (TFSS) organization started back in the 1950s with a seed plant near Texas A&M University in College Station. Then in 1990, TFSS purchased an old seed conditioning facility and green house near Vernon, and 5 acres of land were donated by Pioneer, the original owners of the conditioning facility. A large warehouse was constructed, and conditioning equipment was installed

with funds provided by the Texas Wheat Producers Board, the E. Paul and Helen Buck Waggoner Foundation and the Vernon Industrial Foundation.

The original mission of TFSS was to produce and market genetically pure seed of new cultivars developed by the scientists of Texas A&M AgriLife. Although the name implies that TFSS works only with seed, it is involved with production and distribution of vegetatively propagated plant materials too.

TFSS handles revenues from seed sales and non-licensed products. All funds generated by the sale of foundation seed are used to support the effort of providing quality seed of new, high yielding, better-adapted crop varieties to the agricultural industry.

Services offered include:

- sales and marketing vehicle for the three USDA Plant Materials Centers (PMC) located in Texas
- manage business aspects of research commercialization to remove the burden from scientists
- production and/or seed conditioning services to public and private breeding programs.
- liaison between AgriLife and companies that want to license or market the plant materials
- longer term investment (funding) in AgriLife plant breeding programs. This is specifically for production of breeder seed in programs that have commercial potential but lack adequate funding for these small and very expensive production blocks.

Texas A&M AgriLife Purchasing on behalf of Texas A&M AgriLife Research, Foundation Seed Service is requesting proposals to furnish all labor, materials, fabrication and equipment necessary to design, furnish and install a line of peanut shelling equipment capable of processing approximately one (1) ton per hour. The resulting system is to incorporate agency owned equipment as outlined in Attachment F.

A.3 TERM OF THE CONTRACT

The Contract commences upon the issuance of a purchase order. The term (“**Initial Term**”) of this agreement will begin on the Effective Date and expire on completion of initial warranty or extended service agreement(s) whichever is later.

A.4 PRICING

Pricing:

Complete the Pricing Schedule, Attachment C for each product/service to be performed in response to this RFP. Pricing To include design, equipment, construction and turnkey installation is firm fixed lump sum pricing. The cost of any such bonding must be included in the proposed cost. No additional charges will be allowed for bonding.

A.5 INSURANCE

A.5.1 Insurance

In its proposal, Respondent must provide a statement of its intent to obtain and maintain for the term of the Contract the minimum insurance coverage specified. Respondent should also describe other insurance coverage maintained by Respondent in the ordinary course of business and provide proof of same in its proposal. Proof of insurance may be provided in the form of current certificates of

insurance.

Each subcontracted courier provider will be required to have the same minimum insurance coverage as the contractor.

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

Insurance:

Coverage

Limit

A. Worker’s Compensation

Statutory Benefits (Coverage A)
Employers Liability (Coverage B)

Statutory
\$1,000,000 Each Accident
\$1,000,000 Disease/Employee
\$1,000,000 Disease/Policy Limit

Workers’ Compensation policy must include under Item 3.A. on the information page of the workers’ compensation policy the state in which work is to be performed for [Member]. Workers’ compensation insurance is required, and no “alternative” forms of insurance will be permitted

B. Automobile Liability

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

If transporting hazardous materials, vendor must provide the MCS-90 endorsement and CA9948 Broadened Pollution Liability endorsement on the Business Auto Liability policy. Policy limits must be in line with Federal requirements.

Additional Endorsements

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

C. Commercial General Liability

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

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

D. Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000 and will be excess over and be no less broad than and "following form" of all included coverage described above. Inception and expiration dates will be the same as the underlying policies. Drop-down coverage will be provided for reduction and/or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured. The Contractor will, within five business days of a Notice of Award, provide the Agency with current certificates of insurance or other proof acceptable to the Agency. Contractor will maintain the required insurance during the initial term and any renewal period exercised.

E. Architect/Engineer Professional Liability (Errors & Omissions) The Architect/Engineer shall maintain Professional Liability covering wrongful acts, errors and/or omissions, including design errors of the Architect/Engineer for damages sustained by reason of or in the course of performance of this Agreement for three (3) years after the Project is substantially complete. The Professional Liability insurance shall be in an amount based on the value in the Contract, in this case: Limits \$1,000,000 each claim/ \$2,000,000 aggregate.

F. Equipment Installation Floater

For projects with equipment, materials, or fixtures to be installed, in-transit, or stored off-site contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, a installation floater for coverage of contractor's labor, materials and equipment to be used for completion of work performed under this contract. The minimum amount of coverage to be carried shall be equal to the full amount of the contractor's labor, equipment, materials, or fixtures to be installed, in-transit, or stored off-site during the performance of this contract. The policy shall include as loss payee the Texas A&M AgriLife Research, the contractor and its sub-contractors as their interest may appear.

Contractor will deliver to Texas A&M AgriLife Research:

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

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and the Agency. No policy will be canceled without unconditional written notice to the Agency at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to the Agency ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required. Any deductible or self-insured retention must be declared to and approved by the Agency prior to the performance of any services by the Agency under this Agreement. The Agency is responsible

to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following Agency contact:

Dee Ann Schneider
Director of Purchasing & HUB
Texas A&M AgriLife Purchasing Services
2147 TAMUS
College Station, TX 77843-2147
979-845-4771 phone
979-458-1217 fax

The insurance coverage required by this Agreement will be kept in force until all service have been fully performed and accepted by the Agency in writing.

A.6 Bonding

A.6.1 BID BOND No Bid Bond is required for this project.

A.6.2 PERFORMANCE and PAYMENT BONDS- Forms C-07, C-06 attached.

Performance and Payment Bonds are not required on contracts of \$25,000 or less. Chapter 2253, Texas Government Code, T.C.S., requires that **if the Contract Sum exceeds \$25,000, the Contractor shall provide an executed Payment Bond and if the Contract Sum exceeds \$100,000, the Contractor shall also provide an executed Performance Bond. Bonds are not required until after award of the project.**

1. Each bond shall be executed and contain an embossed seal by a Surety(ies) on forms approved by the Attorney General of Texas. If any Surety upon any bond furnished in connection with the Contract becomes insolvent, or otherwise not authorized to do business in the State, the Contractor shall promptly furnish equivalent security to protect the interests of the State and of persons supplying labor, materials and/or equipment in the performance of the Work.
2. Each bond shall have attached a valid Power-of-Attorney issued by the Surety, signed and sealed with the corporate embossed seal, authorizing the agent who signs the bond to commit the Surety to the terms of the bond, and stating the limit on the face of the Power-of-Attorney, if any, in the total amount for which the agent is empowered to issue a single bond.
3. The Owner may consider Performance and Payment Bonds only from a Surety authorized to do business in Texas.

The cost of any such bonding must be included in the proposed cost. No additional charges will be allowed for bonding. **Bonds must be executed on standard TAMUS forms attached. Forms C-06, C-07 attached.**

A.7 SERVICES SCOPE OF WORK

A.7.1 PROPOSED SERVICES/GENERAL

Base Bid - Furnish all labor, materials, fabrication and equipment necessary to:

- Design, furnish and install a line of peanut shelling equipment capable of processing approximately one (1) ton per hour.

- The intent is for a complete and fully functional system(s), therefore furnish and install any items not specifically called out but necessary to that end. Freight/shipping f.o.b. jobsite shall be included.
- **Automate new equipment line and furnish wiring diagram.**
- Provide power requirements (volts, amps) for each of the equipment items and total load with proposal. I
- In general, list proposed electrical disconnects, starters, etc. and function in the processing sequence.

Alternate 1 - Furnish labor, materials and equipment necessary to:

- Extend power from existing panel and connect new equipment line.

SCOPE OF WORK

Furnish all labor, materials, fabrication and equipment necessary to design, furnish and install a line of peanut shelling equipment capable of processing approximately one (1) ton per hour.

PROJECT SITE AND CONTACTS

The project site is located Texas Foundation Seed Service, 11914 US 70 South, Vernon, Texas. (south, near Lockett). Equipment shall be installed in the west end of the back/north metal building.

Site Visit is scheduled for Feb. 12, 2020 10 am central time. Contact **David Jones 940-552-9941 (ext. 236)** and email DeeAnn Schneider da-schneider confirming attendance - per Section A.11.2
 Engineer – Jimmy Dunn, 979-845-2180, jd-dunn@tamu.edu

EXAMINATION OF SITE

No information noted in the specifications shall relieve the Contractor of the responsibility of visiting the site and making such investigations as he/she may require.

A site investigation shall be mandatory. Each Contractor is required to visit the site and examine the condition of the site. Those who might have visited previously are not required to revisit. The Contractor shall sign in with the Owner’s Representative and provide the following information in writing:

Company Name	Phone Number/fax
Address	Person’s Name
City, State	E-mail address

Failure to comply with this section will be grounds for rejection of bid.

No information noted in the specifications shall relieve the Contractor of the responsibility of visiting the site and making such investigations as he/she may require.

PROPOSALS

This is NOT a hard bid, rather a REQUEST FOR SEALED PROPOSAL. Therefore, in addition to the signed Execution of Offer. submit drawings, sketches, photos, manufacturer specifications, brochures, written descriptions and other information relative to presenting as complete and detailed description of the proposed equipment and installation as reasonably possible.

GENERAL REQUIREMENTS -

Contractors responsibilities include:

Preparing constructing all site requirements for fully operational system, providing all equipment, packing, transporting (Fob destination freight include, unloading, receiving, moving and material handling and unpacking and installing and providing any all necessary parts, software, & materials, calibrating and testing of the system and any site work or construction that is specified.

Training on the system – describe training and how it is be provided

Disposal of packing materials. Agency will not provide dumpsters.

Freight Claims- All equipment will be fob destination installed. All freight claims for damages will be handled by the contractor.

WORK AREA AND ACCESS

All work, materials storage, staging, and parking shall be confined with the area(s) designated by the Owner's Representative.

Access to the building(s) shall be coordinated directly with the Owner's Representative. No construction traffic will be allowed over field/pasture roads or other non-designated areas.

The Contractor shall have on project site enough barricades to assure a minimum of inconvenience to traffic around the work area.

USE OF FACILITIES

The building will be in use. Contractor shall insure that Owner's personnel and equipment will not be endangered during construction and will be allowed continued operations within the buildings and grounds.

RULES AND REGULATIONS

The Owner will be responsible for any air permitting as may be required by Texas Commission on Environmental Quality (TCEQ). Contractor shall furnish any data and cooperate as necessary.

Work shall be performed in accordance with rules and regulations of the state of Texas, the latest edition of the International Building Code, National Electrical Code, International Plumbing Code, National Fire Protection Association Fuel Gas Code (NFPA54), Minimum Safety Standards for Natural Gas, Texas Accessibility Standard/ADA, Texas Dept. of State Health Services, Texas Commission on Environmental Quality, OSHA and others as may be applicable.

Give precedence to drawings and specifications when they require higher standards than those required by rules, regulations, and/or codes. Otherwise rules, regulations, and codes govern. There are no drawings available of the used equipment.

This project is not subject to local/municipal codes and/or permitting as it is being constructed on property belonging to the state of Texas.

SANITARY FACILITIES

Sanitary facilities are available on site for use.

CONSTRUCTION UTILITIES

Water Service: The Owner will furnish water for construction purposes free of charge.

Electrical Service: The Owner will furnish power for construction purposes free of charge.

Points of connection and use shall be coordinated with Owner's Representative. The Contractor must furnish all tanks, pipes, hoses, fittings, extension cords, adaptors, devices, and accessories required for his/her operations.

TOOLS, EQUIPMENT, AND VEHICLES

The contractor shall furnish all tools (hand, power, pneumatic, etc.), equipment, and vehicles for the construction of this project. Use of all Texas AgriLife Research facilities, tractors, welders, forklifts, etc. is prohibited.

STORAGE AND PROTECTION

The Contractor shall properly store materials and equipment at the jobsite within an area designated by the Owner's Representative. Protect same from the elements when in open storage. The Contractor shall be responsible for keeping the assigned area free from fire hazards relating from improper storage procedures.

The Owner accepts no responsibility for the security of the stored materials.

Properly protect equipment, insulation, and other materials during construction. Handle equipment, materials, and devices carefully to prevent damage.

Material or equipment improperly handled or damaged from rough usage or improper storage shall be removed and replaced with new units when so directed by the Engineer.

DELIVERIES

The Contractor shall have personnel at the site necessary to accept delivery and accomplish unloading / handling of materials and equipment. The Owner will not be responsible for accepting and/or unloading of materials and equipment associated with this job.

CLARIFICATION

In case of doubt, do not proceed with work without first obtaining from the Engineer additional information or detail drawings as may be necessary for proper execution of work. Report discrepancies found in drawings and specifications without delay.

CUTTING AND PATCHING

Required cutting and patching shall be done by the Contractor and/or responsibility Subcontractor as necessary to accomplish the work described. Ensure that all related penetrations, both old and new, are accomplished in a workmanlike manner and sealed as necessary for weather tight conditions upon completion of work.

DAMAGES

Care shall be exercised to prevent damages to existing facilities, trees, lawns, site improvements, site utilities, equipment, etc. Any such damages occurring shall be promptly corrected as directed by the Engineer. No claims for corrected work due to damages resulting from the Contractor or his Subcontractor shall be considered for payment.

WASTE DISPOSAL AND CLEANING

All materials removed/replaced shall become property of the Contractor unless otherwise agreed with the Owner's Representative.

Debris shall be contained in a container, truck, or restricted refuse area as coordinated with the Engineer and Owner's Representative.

The Contractor shall be responsible for keeping the jobsite picked up clean and uncluttered during construction. This includes timely removal and proper legal disposal off-site of all waste and debris associated with his/her job.

The Contractor shall provide safe and reliable transportation of debris, so that no material can fall onto public property or any other property other than the destination to which the removed materials are being transported.

Prior to final inspection and acceptance, perform final cleaning and removal of all waste, debris, and/or surplus materials resulting from this work.

SUBMITTALS

Submittals for approval will be required for all shop drawings any proposed substitutions of materials. Three copies required for Engineer's use.

Materials submittals shall include copies of manufacturer's catalog descriptions, performance characteristics, data sheets and/or other information relative to a complete description of the items.

RECORD DRAWINGS

The contractor is to maintain on site a copy of drawings to record information concurrently with construction progress. This record set shall be stored in the Contractor's field office apart from the construction set. Record drawings shall be available for the Owner and shall contain the following information:

1. Location of utilities and appurtenances concealed in construction
2. Location of internal utilities and appurtenances concealed in construction.
3. Indicate all field changes approved by the Engineer and all approved change or

A.7.2 COMPANY OVERVIEW AND EXPERIENCE, QUALIFICATIONS, COMPANY BACKGROUND

Describe general company overview and describe services your organization has provided in the past 5 years that demonstrates your organization's capability to carry out the proposed services. Include the nature of the services provided, scope of activities, and the organization for which the service was provided. Also, provide any experience in providing similar services to public entities. Include resumes for all personnel who will be responsible for the management and day-to-day operations of the products/services solicited in this RFP.

Provide the number of years your company has been in business, type of business structure (proprietorship, partnership, corporation, or other), number of employees within the company and annual sales volume company wide.

Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), circumstances, and prospects for resolution.

Will you provide a copy of your company's audited financial statements for the past two (2) years, if requested by the agency?

Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.

Provide details of any open, current, or pending litigation or claims filed against your company and indicate how this may impact your company's performance under an agreement with Texas A&M AgriLife Research.

A.7.3 REFERENCES

Include a minimum of three (3) references from clients for whom similar services were performed or products were provided. Include project description, company name, contact names, position, telephone number and email address for each reference listed. Complete Attachment E.

A.8 REQUIREMENTS AND SPECIFICATIONS

A.8.1 SUBSTITUTION OF MATERIALS

Where **any** article or thing is specified by proprietary name, trade name, name of manufacturer or catalog number with or without the addition of such expressions as "or equal" or "approved equal," it is to be understood that **the article named or the equal thereof is intended, subject to the approval of the Engineer as to the equality thereof**, and it is distinctly understood (1) that the Engineer shall use his judgement in determining whether or not any article or thing proposed to be substituted is the equal of any article or thing as specified; (2) that the decision of the Engineer on such questions of equality shall be final; and (3) that in the event of any adverse decision by the Engineer, no claim of any sort shall be made or allowed against the Owner. The owner reserves the right to accept or reject any or all alternates or to accept any combination of alternates considered advantageous.

If offering alternate products, please include the following:

1. List the following:
 - a. Manufacturer Name
 - b. Brand Name or Trade Name
2. Detailed technical specifications
3. Product literature
4. Provide the agency with list of locations of product where similar quantities are installed
5. Length of Time the product has been installed
6. Contact information for owner of the installation

The Agency may request a site visit to review the products if necessary and or discuss product/services provided.

It is the Agency's sole discretion as to whether a product is considered an equivalent. The Agency's decision shall be final.

A.8.2 CONTRACTOR REQUIREMENTS

The Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. The Contractor is solely responsible for all installation methods, techniques, safety, sequences, coordination and procedures. *The Contractor is responsible for having visited the Site and having ascertained all pertinent local conditions such as existing subsurface concealed conditions, location, accessibility and general character of the Site or building, the character and extent of existing work, the character and extent of existing work within adjacent sites, and any other work being*

performed thereon at the time Contractor's proposal is submitted.

The Contractor shall provide project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate efforts with the Agency project coordinator:

Contractor to provide contact information of project coordinator:

Name:	
Phone:	
Email:	
Mobile:	

A.8.3 SPECIFICATIONS – ATTACHMENT F

Detailed Specifications for products and services as well as desired system production/performance are in Attachment F. All proposed and delivered products are must be new, unused, of current production, and in first class condition, including containers suitable for shipment and storage, unless otherwise specified in the solicitation. **AgriLife is looking for solutions for system performance and the vendors are encouraged to offer solutions.**

A.8.4 WARRANTY REQUIREMENTS

Respondents must enter the warranty information in the appropriate column on the Mandatory Price Sheet.

A.8.4.1 GUARANTEE/WARRANTY

The Contractor shall guarantee that the work performed under this contract is free from faulty materials and workmanship and will remain so **for a period of one year** from the date of substantial completion or acceptance by the Owner. Final payment on the contract by the Owner shall not relieve the Contractor of this responsibility.

Specific requirements for additional warranties and guarantee to include parts, labor, and other costs may be noted in various sections of the technical specifications. Extended warranties / guarantees are required for, but not limited to, the following:

- Motors and bearings 2 years
- Electronics, printed circuit boards 3 years

Upon completion and prior to final payment, the Contractor shall furnish **two** complete copies of the following, all in clear vinyl jackets and assembled within 3-ring binder type covers:

- Written certification, signed by the Contractor, attesting to the fact that the completed facility complies with the requirements of the drawings and specifications and is warranted for a period of one year as outlined above.
- Copies of manufacturers' warranties for all equipment and fixtures.
- Manufacturers' operating manuals, instructions and information for all equipment.
- Contractor and Subcontractor contact information for service.

Until receipt of these guarantees, final inspection will not be conducted, nor final payment released.

The Contractor will provide warranty service free of any charge, including all necessary repairs, any shipping necessary to return the equipment or ship it to a repair site and removing or reinstalling the equipment when necessary. The Contractor will repair any materials and parts that are defective in materials or workmanship. In the event repair is not possible, the Contractor will either replace the equipment with new equipment of similar composition and price or refund the full purchase price of the equipment, whichever the Agency prefers.

A.8.4.2 WARRANTY SERVICE

Respondents are required to complete the Authorized Warranty Service Provider contact information below:

After the Agency contacts the Contractor’s authorized warranty service provider, the service representative will remotely service or will come to the Agency specified location and take any necessary action to correct problems covered by the warranty.

A.9 DELIVERY

A.9.1 DELIVERY REQUIREMENTS/HOURS OF DELIVERY

Contractor must deliver made during the hours of 8:00 am to 5:00 pm based on the central time zone. Prior approval by the Agency is required for after-hours delivery. In the event of any approval by the Agency for after-hours delivery, Respondent may not invoice any additional charges for that delivery.

The Contractor shall have personnel at the site necessary to accept delivery and accomplish unloading/handling of materials and equipment. The Owner will not be responsible for accepting and/or unloading of materials and equipment associated with this project.

A.9.2 DELIVERY DELAYS

If delay is foreseen, Contractor must give written notice to the Agency and must keep the Agency advised always of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the Agency to purchase goods and services on this RFP elsewhere and charge any increased costs for the goods and services, including the cost of re-soliciting, to the Contractor.

A.9.3 DELIVERY MAY BE A FACTOR IN AWARD

It is desired that the Project shall be satisfactorily completed with in 120 calendar days after receipt of Purchase Order. However, proposals shall include a timeline for completion.

A.9.4 COMPLIANT PRODUCTS

Providing products or materials which do not meet all specification requirements does not constitute delivery. Delivery does not occur until the Contractor delivers products or materials in full

compliance with the specifications to the Agency's F.O.B. destination/installed.

A.10 PURCHASE ORDERS AND INVOICES

The Agency will issue a purchase order. Contractor's contract will not be used for this purchase. A response to an RFP is an offer to Contract with the Agency based on the terms, conditions and specifications contained in the RFP. Responses do not become contracts unless and until they are accepted through an authorized agent by issuance of a purchase order.

Texas A&M AgriLife Research reserves the right to substitute the word "Purchase Order" for "Contract" in the documents whenever it feels that a signed Purchase Order will expedite the Project.

This procurement will be conducted in accordance with The Texas A&M University System Policy 25.07.03, and 51.335 of the Texas Education Code. Any Contract resulting from this procurement shall consist of one (1) document. This document will contain all the rights and duties of the parties extracted from the relevant terms and conditions of the RFP (including its attachments, exhibits, supplements, and addenda), the successful Contractor's Proposal, any Agency request for a Best and Final Offer, and any successful Contractor's Best and Final Offer.

Any purchase order resulting from this solicitation is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature. The purchase order for this procurement shall be governed, construed and interpreted under the laws of the State of Texas.

The purchase order is void if sold or assigned to another company without written approval of the Agency. Written notification of changes to company name, address, telephone number, etc., shall be provided to the Agency as soon as possible, but not later than thirty (30) days from the date of change.

Information, documentation, and other material in connection with this solicitation or any resulting Contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").

A.10.1 RETAINAGE/ INSPECTIONS/PAYMENTS

A.10.1.1 RETAINAGE

Invoices for materials on site and labor to date may be submitted at monthly intervals. Retainage shall be withheld from progress payments at the rate of 10% until after the last draw.

A.10.1.2 INSPECTIONS

The Engineer shall be given at least 72-hour notice prior to each inspection milestone noted below:

Pre-final Inspection - When all work is complete, a general inspection will be conducted. A written punch-list of all deficiencies found to date will then be issued to the Contractor for correction.

The Engineer shall be given at least 10 days notice prior to:

Final Inspection - Upon verification by the Owner's Representative that all known deficiencies have been corrected, a final inspection will be conducted within 10 days.

A.10.1.3 FINAL ACCEPTANCE AND PAYMENT

Notification: When the work is completed, the Contractor shall notify the engineer that the work will be ready for pre-final inspection on a definite date. Upon verification by the engineer that the deficiencies found during pre-final inspection have been corrected and the Work is ready for final inspection and acceptance, the engineer will within 10 days make a final inspection, and when the work is found acceptable under the Contract documents, without exceptions, and the contract is fully preformed, the Owner will make final payment to the Contractor.

Schedule of Values: Prior to Notice to Proceed, Contractor shall submit a Schedule of Values detailing a breakdown of labor and material values for each division of work.

Progress Payments: Invoices/draws may be submitted at monthly intervals for progress payment of labor and materials on site to date. Retainage of 10% may be withheld till final.

Final Payment Documentation: neither the final payment nor the remaining retained percentages shall become due until the Contractor submits to the Engineer (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the owner or its property might in any way be responsible, have been paid or will be paid or otherwise satisfied within thirty days after receipt of final payment from the Owner, or within the period of time required by Article 601f, T.C.S., (2) consent of surety, if any, to final payment and (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, release and waivers of claims arising out of the Contract, to the extent and in such form as may be designated by the Owner.

Final Payment: The making of final payment shall constitute a waiver of all claims by the Owner except those arising from: (1) faulty or defective work appearing after Beneficial Occupancy; (2) failure of the work to comply with the requirement of the contract documents; (3) terms of any special warranties required by the contract documents. Acceptance of Final Payment shall constitute a waiver of all claims by the contractor except those specifically enumerated at the time of final payment.

Reference Part B, General Instructions and Contract Terms and Conditions, Section B.5.3 Invoicing and Payment Requirements.

A.11 PROPOSAL INFORMATION

A.11.1 CALENDAR OF EVENTS

Respondent must submit its Proposal to the Agency in time for verification and confirmation that each Proposal is received and documented in accordance with the due date and time indicated in the schedule below.

The Agency reserves the right to revise this schedule or any portion of this RFP by published

Event	Date
ESBD Posting Date	2/4/2020
PREPROPOSAL MEETING –HSP REVIEW	2/11/2020 10:00 am central time
PREPROPOSAL – SITE REVIEW	2/12/2020 10:00 am central time
Deadline for Submitting Questions	2/17/2020 5:00 pm central time
Official Response to Questions	2/21/2020 or as soon thereafter as practical
PROPOSAL/RESPONSE DUE DATE/TIME	3/4/2020 3:00 pm central time

Answers to questions will be provided through an Addendum, posted on the ESBD and notification sent via e-mail.

The Agency will post any amendment to this solicitation as an addendum on the ESBD. Interested parties are responsible for periodically checking the ESBD for updates to the RFP prior to submitting a Proposal. Respondent’s failure to check the ESBD will in no way release the selected Contractor(s) from the requirements of “addenda or additional information” nor will any resulting additional costs to meet the requirements be allowed after award(s).

A.11.2 PRE-PROPOSAL HUB WEBINAR CONFERENCE

The Pre-Proposal Webinar Conference is scheduled for the date and time listed above in the Calendar of Events section. Attend via web meeting: For Questions contact Jaime Vykukal, Jaime.vykukal@ag.tamu.edu, 979-458-5988.

February 11, 2020 @ 10 am central time.

<https://agrilife-tamu.webex.com/mw3300/mywebex/default.do?siteurl=agrilife-tamu>
session # 922 557 770

Conference materials regarding Hub Subcontracting Plans may be found at the following link:
<http://agrilifeas.tamu.edu/documents/conference-resource.pdf>

The pre-proposal conference allows Respondents opportunities to ask Texas A&M AgriLife questions, review HSP requirements or clarify provisions of this RFP.

A.11.3 PRE-PROPOSAL SITE VISIT

A pre-proposal site visit is scheduled February 12, 2020 @10 am central time, for Respondents are requested to visit the jobsite to see the agency owned equipment and facility where the system is to be installed. Please RSVP to Dee Ann Schneider Da-schneider@tamu.edu by February 10,2020, 5 pm central time.

A.11.4 QUESTIONS

Respondents must send all questions regarding this RFP to the Agency Point-of-Contact identified in Section A.11.5. Respondents must reference the appropriate RFP page and section number in its questions and must submit them by the deadline set forth in Section A.11.1. However, the Agency, in its sole discretion, may respond to questions received after the deadline. The Agency’s responses to questions will be posted to the ESBD. The Agency reserves the right to amend answers prior to the Proposal submission deadline.

Respondents must notify the Agency of any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error in the RFP in the manner required and by the deadline for submitting questions. If a Respondent fails to notify the Agency of such issues, Respondent submits its Proposal at its own risk, and if awarded a Contract: (1) waives any claim of error or ambiguity in the RFP or resulting Contract, (2) will not contest the Agency’s interpretation of such provision(s), and (3) is not entitled to additional compensation, relief, or time by reason of ambiguity, error, or later correction.

A.11.5 POINT-OF-CONTACT

Respondents must direct all inquiries and communications concerning this RFP to the Point-of-Contact listed below.

Respondents may communicate solely with the Agency Point-of-Contact except as expressly approved in advance by the Agency Point-of-Contact.

Failure to comply with these requirements and communications with anyone other than the Point-of-Contact without express prior approval may result in disqualification of a response.

Respondents may not use this e-mail address for submission of a response. Follow the instructions outlined in Sections A.15 and A.16 for proper submission.

Point-of- Contact

Dee Ann Schneider, CTPM
 Director of Purchasing & HUB
Da-schneider@tamu.edu
 979-845-4771
 2147 TAMUS
 College Station, TX. 77843

After award of any Contract resulting from this RFP, all requests for Contract changes and all communications relating to the Contract will be processed through the Purchasing Office as requested and routed by the Engineer.

A.11.6 DOCUMENTS AND ATTACHMENTS INCLUDED WITH THIS RFP

The RFP package also includes the following Documents and Attachments.

Documents and Attachments	
1.	Part A: Special Instructions (This Document)
2.	Part B: General Instructions and Contract Terms and Conditions
3.	Execution of Proposal Attachment A
4.	Respondent Information Form Attachment B
5.	Pricing Sheet Attachment C
6.	Conflict of Interest Disclosure/Non-Collusion Attachment D
7.	References Attachment E
8.	Specifications Attachment F
9.	HUB Subcontracting Plan (HSP)
10.	Bonding Forms- C-06, C-07 Attached

A.12 HUB SUBCONTRACTING PLAN – REFERENCE PART B; SECTION B.2.4

HISTORICALLY UNDERUTILIZED BUSINESSES

It is the policy of the State of Texas and The Texas A&M University System and Texas A&M AgriLife Research (AgriLife) to encourage the use of Historically Underutilized Businesses (HUBs) in our prime contracts, subcontractors, and purchasing transactions. The goal of the HUB Program is to promote equal access and equal opportunity in AgriLife's contracting and purchasing. **Please refer to the Texas A&M University System Policy 25.06.01- Historically Underutilized Business Program**
<http://policies.tamus.edu/25-06-01.pdf>

Subcontracting opportunities are anticipated for this Request for Proposal and therefore a **HUB Subcontracting Plan (HSP) is required**. Failure to submit a comprehensive, acceptable HSP will be considered a material failure to comply with the requirements of the Request for Proposal and will result in rejection of the submittal. Prepare the HUB Subcontracting Plan in accordance with the HUB Subcontracting Plan requirements. The HUB Subcontracting Plan shall be submitted within the RFP response and appropriately tabbed for easy reference.

For proposals totaling \$100,000 or more, a completed HUB Subcontracting Plan (HSP) must be submitted with the proposal. This means at the same time. For proposals totaling less than \$100,000 an HSP is not required.

HSP instructions and documents are included. Be aware, at least (7) working days must be allowed for HUBs to respond to notice prior to you submitting a proposal.

For questions and/or assistance regarding the HSP, proposers are encouraged to contact Jaime Vykukal, HUB Coordinator, Jaime.vykukal@ag.tamu.edu, 979-458-5988 for assistance. Proposers should not assume they know what constitutes an acceptable HUB Subcontracting Plan. Be advised to make this contact sooner rather than later to discuss the required elements and allow time for HUB notice and response.

NIGP Commodity codes identified for possible HUB Subcontracting include but are not limited to the following:

020-74	Processing machinery and equipment, agricultural
975-24	Construction equipment rentals
914-38	Construction Services, Trades, New Construction, Electrical
928-38	Equipment Maintenance and Repair – Electrical

This list is neither mandatory nor exhaustive. Other areas of subcontracting may be more appropriate given the Respondent's business structure and internal resources. Please see the attached HUB Subcontracting Plan for further instructions that require vendors to identify the specific areas intended for subcontracting.

HUB Coordinator

Jaime Vykukal

Jaime.vykukal@ag.tamu.edu

979-458-5988

2147 TAMUS

College Station, TX. 77843

<https://mycpa.cpa.state.tx.us/tpassemblsearch/index.jsp>

Search for HUBs on CMBL for each class/item.

A.13 EVALUATION OF PROPOSALS

The Agency reserves the right to award Contract(s) without any negotiations and reserves the right to request best and final offers and not make an award.

The Respondent is strongly encouraged to provide its best price in its Proposal because the Agency makes absolutely no guarantee that there will be any opportunity to negotiate or provide alternative pricing at any point during the RFP process. The Agency may limit the number of proposals in the competitive range to consist of the greatest number of proposals that will permit an efficient competition among the Respondents based in accordance with the proposed pricing and the required criteria specified in the RFP. The Agency may seek additional information and solicit BAFOs only from those Respondents determined to be in the competitive range.

A.13.1 EVALUATION

The Agency will utilize a proposal evaluation team for the evaluation of this RFP. The award will be based on the proposal judged to be in the best interest of the Agency, and the judgment in this regard shall be considered final. Any Contract resulting from this request shall be awarded to the proposer providing the “best value” to the Agency.

Proposer’s Acceptance of Evaluation Methodology

Submission of a proposal indicates proposer’s acceptance of the evaluation technique and proposer’s recognition that some subjective judgments must be made by the Agency during the assigning of points.

Evaluation Criteria and Weights

Each proposal shall be evaluated on the ability to meet the Agency’s requirements and to provide the best value to the Agency. Proposal shall be evaluated by assigning points to each of the items below.

The evaluation will be based on the following system:

Evaluation Criteria:

1	Price	45 percent
2	Design/Materials/Construction Proposed products & solutions, compliance performance specifications, quality, reliability, characteristics to meet stated or implied needs quality, availability and adaptability of supplies, system or equipment features materials, equipment or services.....	35 percent
3	Indicators of probable performance under Contract, Experience & Qualifications to include: Overall company organization, Managerial & Staff Capabilities, Financial Stability, References, Guarantee	10 percent
4	Delivery/Completion	10 percent
	Total	100 percent

Consideration of Additional Information

Consideration may also be given to any additional written information and comments that may serve to clarify the proposal information to the Agency.

The Agency may conduct reference checks with other entities regarding past performance. The Agency may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-

renewals of Contracts. Such sources of vendor performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, the Agency may initiate such examinations of Contractor performance based upon media reports. Any such investigations shall be at the sole discretion of the Agency, and any negative findings, as determined by the Agency, may result in non-award to the Respondent.

A.14 BEST VALUE AND AWARD PROCESS

A.14.1 BEST VALUE

Under section 51.9335 of the Texas Education Code in determining what is the best value to an institution of higher education, the Agency shall consider the purchase price, the reputation of the proposer and of the proposer's goods or services, the quality of the proposer's goods or services, the extent to which the goods or services meet the Agency's needs, the proposer's past relationship with The Agency, the impact on the ability of the Agency to comply with laws and rules relating to historically underutilized businesses and to the procurement of goods and services from persons with disabilities, the total long-term cost to the Agency of acquiring the proposer's goods or services, and any other relevant factor that a private business entity would consider in selecting a vendor.

However, there is no guarantee that an award or any Contract will result from this solicitation.

The Agency intends to make an award to one Respondent, based on pricing, that provides the best value to the Agency. It is the intent of the Agency to award a contract within sixty (60) days after receipt of proposals.

A.15 ORGANIZATION OF THE PROPOSAL FOR SUBMISSION

The Proposal shall include all information required in this RFP and shall be in the format described in this document. The Respondent is solely responsible for thoroughly understanding the RFP and its attachments, exhibits, and forms. Any questions concerning this RFP should be directed to the Point of Contact by the Deadline for Submitting Questions identified in Part A. The Respondent is cautioned to pay attention to the clarity and completeness of its Proposal. The Respondent is solely responsible for its Proposal and all documentation submitted.

A Proposal constitutes a binding offer by the Respondent. **The Agency will disqualify any response to this RFP that includes any type of disclaimer or other statement indicating that the response does not constitute a binding offer.**

Respondent must be as precise, accurate, and succinct as possible. Respondent must provide detailed descriptions of how they will fulfill each requirement. Evaluators may consider the clarity and completeness of a Proposal.

A.15.1 CONFIDENTIAL/PROPRIETARY INFORMATION

If any material in the Proposal is considered by Respondent to be confidential or proprietary information, Respondent **must** clearly mark the applicable pages of Respondent's submission to indicate each claim of confidentiality. Additionally, Respondent must include a statement on company letterhead identifying all Proposal section(s) and page(s) that have been marked as confidential. Merely making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable and will make the entire Proposal subject to release under the Texas Public Information Act. See Section

B.2.6, Part B: General Instructions and Contract Terms and Conditions.

By submitting a Proposal, each Respondent agrees to reproduction by the State of Texas, Texas A&M AgriLife Research, and other State agencies, without cost or liability, of any copyrighted portions of Respondent's proposal or other information submitted by Respondent to comply with any Legislative Budget Board reporting requirements or other reporting requirements mandated by law.

A.15.2 COMPANY OVERVIEW WITH CAPABILITIES STATEMENT – SEE A.7.2

A.15.3 RESPONDENT INFORMATION FORM – ATTACHMENT B

Respondent must provide all requested information on this form and submit the form with Respondent's Proposal.

A.15.4 EXECUTION OF PROPOSAL – ATTACHMENT A

Respondent is required to complete, sign and submit the Execution of Proposal – Attachment A. Failure to complete, sign, and submit this form with Respondent's Proposal may disqualify the Proposal.

A.15.5 CONFLICT OF INTEREST DISCLOSURE/NON-COLLUSION -ATTACHMENT D

By signing the Attachment D, Respondent affirms that the execution of an agreement between Respondent and the Agency will not create a conflict of interest or cause an appearance of a conflict of interest. In its Proposal, Respondent must disclose any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to Respondent's (and its proposed subcontractors') submission of a Proposal and possible selection as Contractor or its performance of the Contract. A description of some conflicts of interest may be found in Part B, General Instructions and Contract Terms and Conditions, Section B.1.2, but this list should not be considered exhaustive or limiting.

If the circumstances certified by Respondent change or additional information is obtained subsequent to submission of Proposals, by submitting a response Respondent agrees that it is under a continuing duty to supplement its response under this provision, and Respondent shall submit updated information as soon as reasonably possible upon learning of any change to Respondent's affirmation.

A.15.6 PROPOSED SOLUTION/DRAWINGS/SYSTEM DETAILS

A.15.7 MANDATORY PRICING SHEET OR COMPENSATION/FEE SCHEDULE - ATTACHMENT C

Respondent must complete the Mandatory Pricing Sheet Attachment C Schedule and return with response in the format requested.

A.15.8 REFERENCES - ATTACHMENT E

A.15.9 WARRANTY DETAILS AND AUTHORIZED WARRANTY SERVICE PROVIDER – SEE SECTION A.8.4

Provide details on Warranty if different than specs and complete the requested information.

A.15.10 HUB SUBCONTRACTING PLAN - REFERENCE SECTION A.12

The Respondent must fill out the HUB Subcontracting Plan (HSP) and submit it with the Proposal to be considered responsive. The Agency will reject responses received without the HSP as a material failure to comply with the requirements of this RFP.

A.15.11 ASSUMPTIONS AND EXCEPTIONS

No assumptions should be included in a Proposal. All issues or questions that might be advanced or addressed by way of assumption should be submitted to the Agency pursuant to Section A.11.4. **The inclusion of assumptions in a Proposal may result in a Respondent not being awarded a contract.**

Respondents are encouraged, in lieu of including exceptions in their Proposals, to address all issues that might be advanced by way of exception by submitting such issues to the Agency pursuant to Section A.11.4. Any exception included in a Proposal may result in a Respondent not being awarded a Contract. However, if a Respondent includes exceptions in its Proposal, the Respondent shall clearly identify each exception it takes, noting the specific RFP section number, section title, detailed description of exception taken, and Respondent’s proposed language advanced in lieu of the language to which exception is taken. If there are no exceptions, the Respondent shall explicitly state that the Respondent takes no exception to any part of this RFP.

Texas A&M AgriLife Research, as a state agency, is prevented by the Texas Constitution from indemnifying vendors. The Respondent is discouraged from including a term in its Proposal that requires the Agency to indemnify it. Such a term may result in the Proposal being deemed non- responsive.

On company letterhead or in a Microsoft Excel® spreadsheet submitted with Respondent’s Proposal, the Respondent must identify exceptions using the following format:

Section	Section Title	Exception	Proposed Language

Any exception that does not provide all information required (e.g., the specific RFP section number, section title, detailed description of exception taken, and Respondent’s proposed language advanced in lieu of the language to which exception is taken) in the format set forth above will be rejected without consideration.

A.15.12 SIGNED ADDENDA TO RFP

Respondent must acknowledge addenda, if any, with its proposal by indication on Attachment A Execution of Proposal .

A.16 SUBMITTING THE PROPOSAL TO TEXAS A&M AGRILIFE RESEARCH

The Proposal must clearly state the Proposal Due Date and Time identified in [Section A.11.1](#) Calendar of Events and be titled: Proposal Submitted for RFP 556-20-1A Peanut Shelling Equipment Line.

RESPONDENT MUST SUBMIT THE PRICE SHEET ELECTRONICALLY IN ITS ORIGINAL FORMAT EVEN IF RESPONDENT SUBMITS A HARD COPY OF ITS PROPOSAL.

A.16.1 ELECTRONIC SUBMISSION

Please read all instructions carefully for submitting electronically:

Use the following e-mail address to submit your response electronically. **It is recommended that each Respondent begin the process well in advance of 3:00 pm on the due date:**

bids@ag.tamu.edu

The e-mail subject line should contain the RFP number and title as indicated on the cover page. The Respondent is solely responsible for ensuring that Respondent's complete electronic Proposal is sent to, and received by, the Agency in a timely manner and at the proper destination server.

IMPORTANT NOTE: The Agency recommends a limit on the attachments to 10MB each. This may result in the sending multiple e-mails to bids@ag.tamu.edu for the submission of all documentation contained in a response.

ALL DOCUMENTS SHOULD BE SUBMITTED IN MICROSOFT OFFICE® FORMATS (WORD® AND EXCEL®) OR IN A FORM THAT MAY BE READ BY MICROSOFT OFFICE® SOFTWARE. ANY DOCUMENTS WITH SIGNATURES SHALL BE SUBMITTED AS AN ADOBE® PORTABLE DOCUMENT FORMAT (PDF) FILE. THE AGENCY IS NOT RESPONSIBLE FOR DOCUMENTS THAT CANNOT BE READ OR CONVERTED. UNREADABLE PROPOSALS MAY BE, IN THE AGENCY'S DISCRETION, REJECTED AS NONRESPONSIVE.

Please be aware that your Internet Service Provider may limit file sizes on your outgoing emails, so try to avoid graphics, pictures, letterheads, etc., which consume a lot of space. These typically include *.tif/*.tiff, *.gif, & *.bmp file extensions, but may include others, as well. The Agency's firewall virus protection always runs, so during times of new active virus alerts, incoming traffic may be delayed while virus software scans emails with attachments.

The Agency takes no responsibility for electronic Proposals that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any Agency anti-virus or other security software.

In addition to a completed request for quote form, pricing sheet, proposers are to submit drawings, sketches, photos, manufacturer specifications, brochures, written descriptions and other information relative to presenting a complete and detailed description of the proposed equipment as reasonably possible.

To confirm receipt of all electronic submissions, contact 979-847-5801 or request a confirmation by e-mail to da-schneider@tamu.edu.

A.16.2 HARD COPY SUBMISSION/FLASH DRIVE

In lieu of electronic submission, the Agency currently still accepts hard copy Proposal. Respondent must submit one original signed paper copy. **Respondents are requested to send a flash drive with Proposal submitted to the delivery address shown below to facilitate review.**

Respondent may send Proposal to Texas A&M AgriLife Research at the following addresses:

United States Postal Service:

Texas A&M AgriLife
Purchasing Services
2147 TAMUS
College Station, TX 77843-2147

Hand Delivery or Express Mail Service:

Texas A&M AgriLife Purchasing Services
Administrative Services Building
578 Kimbrough Blvd, Rm 419
College Station, TX 77843-2147

Facsimile Responses are not allowed without prior written approval from Texas A&M AgriLife Purchasing.

Proposals should be placed in a separate envelope or package and correctly identified with the RFP number and submittal deadline/RFP opening date and time. It is Respondent 's responsibility to appropriately mark and deliver the Proposal to Texas A&M AgriLife Purchasing by the specified date. A U.S. Postal Service (USPS) postmark or round validation stamp; a mail receipt with the date of mailing, stamped by the USPS; a dated shipping label, invoice, or receipt from a commercial carrier; or any other documentation in lieu of the on-site time stamp WILL NOT be accepted.

In addition to a completed request for quote form, pricing sheet, proposers are to submit drawings, sketches, photos, manufacturer specifications, brochures, written descriptions and other information relative to presenting a complete and detailed description of the proposed equipment as reasonably possible.

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B.1 INTRODUCTION

B.1.1 DEFINITIONS

The definitions used in Part A of this RFP apply to this Part B as well. Unless the context clearly indicates otherwise, all terms and conditions of this Contract that refer to “Respondent” apply with equal force to Contractor.

B.1.2 CONFLICTS OF INTEREST

B.1.2.1 Actual and Perceived Conflicts

By submitting a Proposal, Respondent represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in entering a Contract with Texas A&M AgriLife Research. Respondent also represents and warrants that entering a Contract with Texas A&M AgriLife Research will not create the appearance of impropriety. In its Proposal, Respondent must disclose any existing or potential conflict of interest that it might have in contracting with Texas A&M AgriLife Research. The requirement to disclose any actual or potential conflict of interest will continue during the term of the contract, and will survive until the end of the recordkeeping requirement in B.7.4. Texas A&M AgriLife Research will decide, in its sole discretion, whether an actual or perceived conflict should result in Proposal disqualification or Contract termination.

The Respondent and each person signing on behalf of the respondent certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of the Texas A&M system or the A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or part by the A&M System, has direct or indirect financial interest in the award in the potential or pending award, or agreement or potential, thereof.

B.1.2.2 Current and Former Texas A&M Agrilife Research Employees

Per Texas Government Code, Section 2252.901, in addition to the disclosures required above, Respondent must also disclose any of its personnel who are current or former officers or employees of Texas A&M AgriLife Research or who are related, within the third degree by consanguinity (as defined by Texas Government Code § 573.023) or within the second degree by affinity (as defined by Texas Government Code § 573.025), to any current or former officers or employees of Texas A&M AgriLife Research.

Respondents must comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees (see e.g., Texas Government Code Chapters 572 and 573). Such “revolving door” provisions generally restrict former agency heads from communicating with or appearing before Texas A&M AgriLife Research on certain matters for two years after leaving Texas A&M AgriLife Research. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employees’ official responsibility. Respondent, by signing this solicitation, certifies that it has complied with all applicable laws and regulations regarding former state employees.

Respondent acknowledges and understands that Section 2252.901, Texas Government Code, prohibits Texas A&M AgriLife from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the Member within the past twelve (12) months. If Respondent is an individual, by submitting this proposal, Respondent certifies that Section 2252.901, Texas Government Code, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

Respondent must identify each employee who works for more than one staffing company at any facility and ensure that the employee’s cumulative weekly hours worked at all state facilities through any one staffing company does not exceed 40 hours per week.

See also B.7.8.3, Certification Concerning Restricted Employment for Former State Officers or Employees under Texas Government Code § 572.069.

B.1.3 CONSTRUCTION OF THIS RFP AND THE CONTRACT

B.1.3.1 Global Drafting Conventions

The terms “include,” “includes,” and “including” are terms of inclusion and enlargement. When used in this Contract these terms should be read as if followed by the phrase “without limitation.”

Unless explicitly stated otherwise, any references to “Sections,” “Articles,” “Exhibits,” or “Attachments” are deemed to be references to the Sections, Articles, Exhibits, and Attachments to this RFP and the Contract.

B.1.3.2 Headings

The Article and Section headings in this RFP and the Contract are for reference and convenience only and may not be considered in the interpretation of this RFP or the Contract.

B.2 THE RFP PROCESS

B.2.1 SUBMITTING QUESTIONS ABOUT THE RFP

Respondent will have until the Deadline for Submitting Questions, identified in Part A, to submit in writing all questions regarding this RFP. Respondent may only send questions to the Point of Contact. All questions must precisely and specifically cite the RFP section to which the question refers. Texas A&M AgriLife Research will, at its discretion, answer the questions in a Question and Answer Document posted on the ESBD.

Only answers that Texas A&M AgriLife Research provides in writing are official. Information in any form other than the materials constituting this RFP, the Question and Answer Document, and any RFP addendum is not binding on Texas A&M AgriLife Research.

All questions submitted Texas A&M AgriLife Research must include the identity of the sender, the sender’s title, company name, mailing address, telephone number, and facsimile number or e-mail address, as applicable.

Minor questions for which the answer will not affect the interpretation of the RFP or change the contents of a Proposal (for example, a question regarding delivery of the sealed Proposal) may be answered orally or by e-mail by Texas A&M AgriLife Research.

B.2.2 ADDENDA TO THE RFP

Should an addition or correction to this RFP become necessary, Texas A&M AgriLife Research will post an addendum relating the necessary information on the ESBD. Respondent is responsible for periodically checking the ESBD for addenda or additional information relating to this RFP. Respondent is required to acknowledge each addendum by returning a signed copy of the addendum with its Proposal.

B.2.3 ACCURACY OF THE PROPOSAL

Respondent’s Proposal must be true and correct and must contain no cause for claim of omission or error. Proposals may be withdrawn in writing at any time prior to the submittal deadline.

B.2.4 HUB SUBCONTRACTING PLAN REQUIREMENTS—NOTE TIME SENSITIVE – MINIMUM 7 WORKING DAYS NOTICE OF SUBCONTRACTING OPPORTUNITIES REQUIRED

It is the policy of Texas A&M AgriLife Research to promote and encourage contracting and subcontracting opportunities for State of Texas certified Historically Underutilized Businesses (HUBs) in all contracts in compliance with Texas Government Code Chapter 2161. Eligible Respondents are encouraged to become HUB certified. Respondents must complete the Texas A&M AgriLife HUB Subcontracting Plan(HSP) attached find State of Texas HUB applications at:

A HUB preproposal conference will be held via webinar to assist with the HSP: February 11, 2020 10 am CT

<https://agrilife-tamu.webex.com/mw3300/mywebex/default.do?siteurl=agrilife-tamu>

session # 922 557 770

Definitions for State of Texas HUB certifiable businesses can be found in 34 Texas Administrative Code Chapter 20, Subchapter B, which is available at:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=B&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=B&rl=Y)

A HUB Subcontracting Plan Form must be filled out and returned with the Proposal to be considered responsive. If the Proposal does not include a HUB Subcontracting Plan, Texas A&M AgriLife Research will the Proposal as a material failure to comply with advertised specifications.

Texas A&M AgriLife Research identified probable subcontracting opportunities in Part A. This list should not be considered a mandatory or an exhaustive list. Other areas of subcontracting may be more appropriate given the Respondent's business structure and internal resources. Please see the attached HUB Subcontracting Plan for further instructions that require vendors to identify the specific areas intended for subcontracting.

Search the State of Texas HUB Database for HUB vendors by the NIGP class and item at: <http://www2.cpa.state.tx.us/cmbl/hubonly.html>.

Additional minority and women owned business association resources are available for subcontracting notices at: <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>.

B.2.5 COST OF SUBMITTING THE PROPOSAL

Texas A&M AgriLife Research will not reimburse the Respondent for any cost related to its Proposal. Respondent is responsible for any expense related to the preparation and submission of its Proposal.

B.2.6 PUBLIC INFORMATION ACT

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

B.2.7 AGENCY POSTING OF CONTRACTS

Without prior written notice to Respondent, the redacted Proposal submitted under Subsection 2 of Section B.2.6, Public Information Act Disclosures, may be posted on Texas A&M AgriLife Research's website as part of the Contract per Texas Government Code § 2261.253(a).

B.2.8 IRREVOCABILITY OF THE PROPOSAL

The Proposal is irrevocable for 120 calendar days following the Proposal Opening Date and Time identified in Part A. Texas A&M AgriLife Research may extend this period with Respondent's written agreement.

B.3 CONTRACT INFORMATION

B.3.1 AMENDING THE CONTRACT

All alterations, additions, or deletions of the Contract must be in writing and mutually agreed upon by both Parties and

put into effect with a Contract Amendment issued by Texas A&M AgriLife Research. Respondent will not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

B.3.2 ORDER OF PRECEDENCE

In the event of any conflict or contradiction between or among these documents, the Notice of Award, as modified by any Contract Amendments, controls over the RFP and the Proposal. The RFP, as modified by any Addenda, controls over the Proposal.

B.3.3 TERMINATING THE CONTRACT

B.3.3.1 Convenience of the State of Texas

Texas A&M AgriLife Research reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if Texas A&M AgriLife Research determines that such termination is in the best interest of the state. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Texas A&M AgriLife Research will be liable for payments for any goods or services ordered from Contractor before the termination date.

B.3.3.2 Cause/Default

If Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, Texas A&M AgriLife Research may, upon written notice of default to Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

Texas A&M AgriLife Research may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless Texas A&M AgriLife Research notifies Contractor in writing prior to the exercise of such remedy. Contractor will remain liable for all covenants and indemnities under the Contract. Contractor will be liable for all costs and expenses, including court costs, incurred by Texas A&M AgriLife Research with respect to the enforcement of any of the remedies listed in this Contract.

B.3.3.3 Change in Federal or State Requirements

If federal or state laws, regulations, or requirements are amended or judicially interpreted so that either Texas A&M AgriLife Research or Respondent cannot reasonably fulfill the Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties will be discharged from any further obligations under the Contract.

B.3.3.4 Rights upon Termination or Expiration of Contract

In the event that the Contract is terminated for any reason, or upon its expiration, Texas A&M AgriLife Research retains ownership of all associated work products and documentation obtained from Contractor under the Contract.

B.3.3.5 Survival of Terms

Termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

B.3.4 CONTRACT DOCUMENTATION

The Contract will consist of the Notice of Award, Listing of Awarded Items, and any Contract Amendments to these documents issued by Texas A&M AgriLife Research; this RFP, together with any modifications made through

Addenda; and the successful Proposal, together with any clarifications that are submitted at the request of Texas A&M AgriLife Research.

B.4 PROJECT MANAGEMENT

B.4.1 PROJECT MANAGERS

B.4.1.1 The Texas A&M AgriLife Research Project Manager

The Texas A&M AgriLife Research Project Manager has the authority to:

- sign correspondence;
- serve as the day-to-day point-of-contact;
- coordinate quality control reviews/ project inspection;
- approve invoices;
- coordinate meetings with Respondent;
- investigate and resolve compliance issues;
- receive requests for substitutions or changes in goods or services awarded under the Contract;
- initiate contract amendments thru purchasing; and
- discuss pricing changes for submission thru purchasing for po change notice.
- NOTE: Actual PO changes will be officially processed by the purchasing department.

B.4.1.2 The Respondent's Contract Manager

Respondent must identify its Contract Manager to Texas A&M AgriLife Research in writing within 10 days of the issuance of the Purchase Order. Respondent should document all subsequent changes of Respondents Contract Manager through written correspondence. Respondent's Contract Manager must be someone with the authority to:

- make decisions regarding the deliverables required by the Contract;
- sign written correspondence;
- serve as the day-to-day point-of-contact;
- coordinate quality control reviews/inspections;
- coordinate meetings with Texas A&M AgriLife Research; and
- investigate/ resolve compliance issues.

B.4.2 NOTICES AND LIAISONS

B.4.2.1 Delivery of Written Notices

Both Parties must deliver any required notice in writing to the other Party and to the addresses specified in this Section or the Respondent Information Form. The Parties deem the notice to have been given immediately if delivered in person to the receiving Party's address. The Parties deem notice to have been given on the date of certified receipt, if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving Party at its specified address.

B.4.2.2 Notice to Respondent

Within 10 days of the issuance of the Notice of Award, Respondent must send Texas A&M AgriLife Research written notice of the address and contact person for legal notice and contract management purposes. If there is any change to this information during the term of the contract, Respondent must notify Texas A&M AgriLife Research.

B.4.2.3 Notice to Texas A&M AgriLife Research's address for all purposes under this Contract is as follows:

Mailing Address	Physical Address
-----------------	------------------

Texas A&M AgriLife Purchasing Services 2147 TAMUS College Station, TX 77843-2147	Texas A&M AgriLife Purchasing Services Administrative Services Building 578 Kimbrough Blvd, Rm 419 College Station, TX 77843-2147
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B.4.3 SUBCONTRACTING APPROVAL

Respondent must perform the Contract with its own resources and those subcontractors identified in Respondent's HUB Subcontracting Plan. In the event that Respondent determines that it is necessary or expedient to execute additional or alternative subcontracts for any of the performances under the Contract, Respondent must submit a revised HUB Subcontracting Plan for prior approval before executing any subcontracts. Respondent must also transmit to Texas A&M AgriLife Research for review and prior Texas A&M AgriLife Research approval a true copy of the subcontract it proposes to execute with a subcontractor.

Respondent, in subcontracting for any performances specified in the RFP or resulting Contract, expressly understands and acknowledges that in entering into such subcontract(s), Texas A&M AgriLife Research is in no manner liable to any subcontractor(s) of the Respondent. In no event will this provision relieve Respondent of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this RFP and Contract. Respondent must manage all quality and performance, project management, and schedules for subcontractors. Respondent is solely responsible and accountable for the completion of all work for which Respondent has subcontracted.

B.4.4 NO IMPLIED AUTHORITY

Any authority delegated to the Respondent by Texas A&M AgriLife Research is limited to the terms of the Contract. Respondent may not rely upon implied authority and specifically is not delegated authority under the Contract to: (1) make public policy; (2) promulgate, amend, or disregard Texas A&M AgriLife Research program policy; or (3) unilaterally communicate or negotiate, on behalf of Texas A&M AgriLife Research, with any member of the U.S. Congress or any member of their staff, any member of the Texas Legislature or any member of their staff, or any federal or state agency.

B.4.5 COOPERATION WITH TEXAS A&M AGRILIFE RESEARCH

Respondent must ensure that it cooperates with Texas A&M AgriLife Research and other state or federal administrative agencies, at no charge to Texas A&M AgriLife Research, for purposes relating to the administration of the Contract. Respondent agrees to reasonably cooperate with and work with Texas A&M AgriLife Research's contractors, subcontractors, and third party representatives as requested by Texas A&M AgriLife Research.

B.4.6 DISPUTE RESOLUTION

B.4.6.1 Informal Meetings. Texas A&M AgriLife Research and Contractor will meet as needed to implement the terms of this Contract and will make a good faith attempt to resolve any disputes informally.

B.4.6.2 Alternative Dispute Resolution The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used as further described herein, by Texas A&M AgriLife Research, and the bidder to attempt to resolve any claim for breach of contract made by vendor:

- Bidder's claim for breach of this contract, that the parties cannot resolve in the ordinary course of business, shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Texas Government Code. To initiate the process, bidder shall submit written notice, as required by Subchapter B, to: Dr. David K Lunt, Associate Director, Texas A&M AgriLife Research.

- Said notice shall also be given to all other representatives of Texas A&M AgriLife Research and bidder otherwise entitled to notice under the parties' contract. Compliance by bidder with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Texas Government Code.

- The contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is the bidder's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by Texas A&M AgriLife Research if the parties are unable to resolve their disputes under subparagraph (a.) of this paragraph.

B.4.6.3 Company's Continued Performance. Notwithstanding any other provision of this Contract to the contrary, unless otherwise requested or approved in writing by Texas A&M AgriLife Research, Contractor must continue performance and will not be excused from performance during the period any breach of contract claim, dispute or mediation is pending under either of the above processes.

However, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Texas Government Code § 2251.051 and such suspension of performance is expressly applicable and authorized under that law.

B.4.7 FRAUD, WASTE AND ABUSE

By Submitting a Proposal to the RFP, Respondent represents and warrants that it has read and understood and will comply with Texas A&M AgriLife Research's Anti-Fraud Policy, found at: <https://secure.ethicspoint.com/domain/media/en/gui/20503/index.html>, as such Policy currently reads and as it is amended throughout the term of the Contract.

B.4.8 NAME CHANGES AND ORGANIZATIONAL CHANGES

Respondent must provide Texas A&M AgriLife Research written notice of all name changes and organizational changes relating to Respondent including any merger, acquisition, or sale no later than ten business days of such change. Respondent, in its notice, must describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform the Contract. If the change entails personnel changes for personnel performing the responsibilities of the Contract for Respondent, Respondent must identify the new personnel and provide résumés to Texas A&M AgriLife Research, if résumés were originally required by the RFP. Texas A&M AgriLife Research may request other information about the change and its impact on the Contract and Respondent must supply the requested information within five working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Respondent or successor entity, as applicable, to maintain its status as a party to this Contract.

Texas A&M AgriLife Research may terminate the Contract due to any change to Respondent that materially alters the Respondent's ability to perform under the Contract. Texas A&M AgriLife Research has the sole discretion to determine if termination is appropriate. See also Section B.7.10 (No Assignment by Contractor).

B.4.9 NEWS RELEASES

Texas A&M AgriLife Research does not endorse any vendor, commodity, or service. News releases pertaining to this transaction and/or advertisements, publications, declarations and any other pronouncements by the Respondent using any means or media mentioning the State of Texas or Texas A&M AgriLife Research must be approved in writing by the State of Texas, Texas A&M AgriLife Research as applicable, prior to public dissemination. Respondent may not send out unsolicited electronic mail or facsimile transmissions to Texas A&M AgriLife Research without prior written approval of Texas A&M AgriLife Research Contract Manager, regardless of whether the proposed communication specifically references the awarded contract.

B.5 FINANCIAL INFORMATION

B.5.1 APPROPRIATIONS

All obligations of Texas A&M AgriLife Research are subject to the availability of legislative appropriations and, to expending federal funds, to the availability of the federal funds applicable to the Contract. Respondent acknowledges that the ability of Texas A&M AgriLife Research to make payments under the Contract is contingent upon

the continued availability of funds. Respondent further acknowledges that funds may not be specifically appropriated for the Contract and Texas A&M AgriLife Research's continual ability to make payments under the Contract is contingent upon the funding levels appropriated for each particular appropriation period. Texas A&M AgriLife Research will use all reasonable efforts to ensure that such funds are available. Respondent agrees that if future levels of funding for Texas A&M AgriLife Research are not sufficient to continue operations without any operational reductions, Texas A&M AgriLife Research, in its discretion, may terminate the Contract, either in whole or in part, in its discretion, may terminate a pending order under the Contract, either in whole or in part. In the event of such termination, Texas A&M AgriLife Research will not be considered to be in default or breach under the Contract, nor will either be liable for any further payments ordinarily due under the Contract, nor will either be liable for any damages or any other amounts which are caused by or associated with such termination. Texas A&M AgriLife Research will make best efforts to provide reasonable written advance notice to the Respondent of any such Contract or order termination. In the event of such a termination, Respondent must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on that particular order if an order is being terminated, or the Contract, if the Contract is being terminated. Texas A&M AgriLife Research will be liable for payments limited only to the portion of work Texas A&M AgriLife Research authorized in writing and which the Respondent has completed, delivered to Texas A&M AgriLife Research, and which has been accepted by Texas A&M AgriLife Research. All such work must be completed, per the Contract requirements, prior to the effective date of termination.

B.5.2 AUDIT REQUIREMENTS

Pursuant to Texas Government Code § 2262.154, the State Auditor's Office, or successor agency, may conduct an audit or investigation of Respondent or any other entity or person receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds by Respondent or any other entity or person directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. The Contract may be amended unilaterally by Texas A&M AgriLife Research to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement Section 51.9335(c), Texas Education Code. Respondent must ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Respondent and the requirement to cooperate is included in any subcontract it awards.

B.5.3 INVOICING AND PAYMENT REQUIREMENTS

In order to receive payment under the Contract, Contractor must electronically submit an invoice to Texas A&M AgriLife Research, via AggieBuy.

Texas A&M AgriLife Research Disbursements

Do Not Mail Invoices

Email invoices to apinvoices@ag.tamu.edu

2147 TAMU

College Station, TX 77843-2147

To be a proper invoice that may be accepted and paid, the invoice must include the following information and/or attachments:

- (1) Name and address of the Contractor.
- (2) Contractor's Texas Identification Number (TIN).
- (3) Contractor's invoice remittance address.
- (4) The purchase order or contract number authorizing the delivery of products or services. AB#
- (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of Contractor's information.

If an invoice does not meet this Section's requirements, Texas A&M AgriLife Research will send Contractor written notice with the improper invoice within 21 calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice.

B.5.4 DISPUTED INVOICES

As stated above, Contractor will receive notice of an error in an invoice submitted for payment by not later than the 21st day after the date the invoice was received by the state. If an invoice dispute is resolved in favor of the Contractor, the Contractor is entitled to receive interest on the unpaid balance of the invoice, beginning on the date the invoice became overdue, pursuant to Texas Government Code § 2251.021. If a dispute is resolved in favor of Texas A&M AgriLife Research, Contractor will submit a corrected invoice that must be paid in accordance with Texas Government Code § 2251.021. The unpaid balance accrues interest if Texas A&M AgriLife Research does not pay the corrected invoice by the appropriate date.

B.5.5 TIME AND MANNER OF PAYMENT

Pursuant to Texas Government Code Chapter 2251, Payment by Texas A&M AgriLife Research is overdue on the 31st day after the later of: (1) the date Texas A&M AgriLife Research receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date Texas A&M AgriLife Research receives the invoice for the goods or service.

Retainage: Invoices for materials on site and labor to date may be submitted at monthly intervals. **Retainage shall be withheld from progress payments at the rate of 10%** until after the last draw.

B.5.6 ANTITRUST AND ASSIGNMENT OF CLAIMS

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

Contractor assigns to the State of Texas all of Contractor's rights, title, and interest in and to all claims and causes of action Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with the Contract.

B.5.7 DEBTS AND DELINQUENCIES

Texas A&M AgriLife Research is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Pursuant to Section 2252.903, Texas Government Code, Contractor agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, Texas A&M AgriLife Research will apply any payments or other amounts Contractor is otherwise owed under this Contract toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

B.5.8 LIABILITY FOR AND PAYMENT OF TAXES

Texas A&M AgriLife Research is exempt from State Sales tax and Federal Excise tax. Texas A&M AgriLife Research will furnish Tax Exemption Certificate(s) to the Respondent upon request. The Respondent must pay all taxes resulting from the RFP and Contract including any federal, state, or local income, sales, excise, franchise, or property taxes. Texas A&M AgriLife Research is not liable to reimburse the Respondent for the payment of taxes incurred by Respondent in acquiring any goods or services as a part of any work called for in this RFP and Respondent's invoice may not include any amount for such taxes, as long as Texas A&M AgriLife Research has provided the requested Tax Exemption Certificates.

B.5.9 METHOD OF PURCHASE AND VESTING OWNERSHIP

Texas A&M AgriLife Research will purchase all goods or services through this Contract using an outright purchase. Upon installation, acceptance, and payment, Texas A&M AgriLife Research will receive title to any personal property purchased and delivered to it, except as otherwise agreed to in the Contract.

B.5.10 NO DEBT AGAINST THE STATE

The Contract does not create any debt by or on behalf of the State of Texas.

B.5.11 REFUNDS

If Texas A&M AgriLife Research determines that it has overpaid the Contractor under the Contract, Contractor will refund that amount to Texas A&M AgriLife Research, depending on the entity that overpaid. Texas A&M AgriLife Research may offset and deduct the amount of the overpayment from any amount owing, as a reimbursement, but unpaid to the Contractor. Contractor will refund any overpayment within 30 calendar days of receipt of the notice of the overpayment.

If any reimbursement, or a portion of a reimbursement, is disallowed as a result of an audit finding that the Contractor failed to follow the requirements for the Contract, then the Contractor agrees that Texas A&M AgriLife Research may recoup the disallowed amount from funds payable under the Contract, to the extent the disallowed amount was incurred by Texas A&M AgriLife Research. If an audit identifies a disallowed amount after the expiration date of the Contract, Texas A&M AgriLife Research will send the Contractor notice of the audit results and specifically identify the amount that must be refunded by the Contractor. Contractor will refund the disallowed amount within 30 calendar days of receipt of the notice.

B.5.12 TRAVEL

Respondent is responsible for any travel or per diem required to perform its obligations under the Contract. All travel and per diem that the state requests in addition to what the Contract requires the Respondent to provide at the Respondent's expense will be paid in accordance with [Texas Government Code, Chapter 660](#).

B.5.14 PREVIOUS EMPLOYMENT

Respondent acknowledges and understands that Section 2252.901, Texas Government Code, prohibits Texas A&M AgriLife from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the Member within the past twelve (12) months. If Respondent is an individual, by submitting a proposal, Respondent certifies that Section 2252.901, Texas Government Code, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

B.5.14 DIRECT DEPOSIT

Texas A&M AgriLife Research encourages Contractors to receive payment by electronic means (e.g., direct deposit).

Direct deposit information may be found:

All domestic vendors will be paid via direct deposit. Please sign up for direct deposit using the Substitute W-9 & Direct Deposit form available at the following website <https://fmo.tamu.edu/accounts-payable/vendor-setup/forms/>.

B.6 CONFIDENTIALITY AND SECURITY

Contractor must maintain and protect any information it receives, compiles, or creates as a result of the Contract in

accordance with any federal, state, or local laws and regulations that apply. Contractor must establish a method to secure the confidentiality of records and other information relating to TEXAS A&M AGRILIFE RESEARCH in accordance with applicable federal and state laws, rules, and regulations.

The obligations of Contractor under this Confidentiality and Security section will survive this Contract and must be included in all subcontracts.

B.7 TERMS AND CONDITIONS

B.7.1 AFFIRMATIONS

Submitting a Proposal with a false statement is a material breach of contract and the Proposal or the Contract will be void. Respondent will be removed from all bid lists. By submission of a signed Proposal, the Respondent certifies the following.

- B.7.1.1 Respondent has not given, offered to give, and does not 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 the submitted response. Violation of this requirement may result in the termination of the Contract at Texas A&M AgriLife Research's discretion.
- B.7.1.2 Respondent waives any claim against and releases Texas A&M AgriLife Research, its officers, employees, agents, and attorneys from liability with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Respondent and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.
- B.7.1.3 Respondent will promptly notify Texas A&M AgriLife Research in the event that any representations and warranties provided in this Contract are no longer true and correct. Respondent acknowledges that all of its representations and warranties contained in any part of its Proposal and this Contract are material and have been relied upon by Texas A&M AgriLife Research in selecting the Respondent for the award of the Contract. Further, the Respondent warrants and represents that all of its statements and representations made to Texas A&M AgriLife Research prior to being awarded the Contract, and those made during the negotiation of this Contract, are material, true and correct.
- B.7.1.4 Certification Regarding Business with Certain Countries and Organizations:
Pursuant to Subchapter F, Chapter 2252, Texas Government Code, the Respondent certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. The Respondent acknowledges any resulting agreement may be terminated if this certification is inaccurate.
- B.7.1.5 Prohibition on Contracts with Companies Boycotting Israel:
To the extent that Texas Government Code, Chapter 2270 applies to this solicitation, Respondent certifies that (a) it does not currently boycott Israel: and (b) it will not boycott Israel during the term of any resultant agreement. Respondent acknowledges any resultant agreement may be terminated and payment withheld if this certification is inaccurate.

B.7.2 CIVIL RIGHTS

The Respondent agrees that no person will, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. Respondent will comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

B.7.3 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

Texas A&M AgriLife Research is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

B.7.4 RECORDS RETENTION

Respondent must retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. Respondent must retain these records for a period of seven years after the expiration of the Contract, or until Texas A&M AgriLife Research or the State Auditor's Office (SAO) is satisfied that all audit and litigation matters are resolved, whichever period is longer. Respondent will grant access to all books, records, and documents pertinent to the Contract to Texas A&M AgriLife Research, SAO, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

The requirements of Subchapter J, Chapter 552, *Texas Government Code*, may apply to this bid and resultant agreement and the Respondent agrees that the resultant agreement can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter. <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.552.htm>

B.7.5 ENVIRONMENTAL PROTECTION

Respondent must comply with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1251 *et seq.*).

B.7.6 PROHIBITION ON LOBBYING

Respondent must comply with the provisions of a federal law known generally as the Lobbying Disclosure Act, 2 U.S.C. §1601 *et seq.* By submitting a Proposal, Respondent certifies that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. It also certifies that Respondent will disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

B.7.7 COPYRIGHTS AND PUBLICATIONS

Respondent understands and agrees that, where activities supported by the Contract produce original books, manuals, films, or other original material (referred to in this Contract as "the works"), Respondent may copyright the works subject to the reservation by Texas A&M AgriLife Research of a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state or political subdivision purposes:

- the copyright in the works developed under the Contract, and
- any rights of copyright to which Respondent purchases ownership with funding from the Contract.

Respondent may publish, at its expense, the results of Contract performance with prior Texas A&M AgriLife Research review and approval of that publication. Any publication (written, visual, or sound) must include acknowledgment of the support received from Texas A&M AgriLife Research. Respondent must provide one copy of any such publication to Texas A&M AgriLife Research. Texas A&M AgriLife Research reserves the right to require additional copies before or after the initial review. Respondent must provide all copies free of charge to Texas A&M AgriLife Research.

B.7.8 CERTIFICATIONS

B.7.8.1 Child Support Obligations

Under Texas Family Code § 231.006, (relating to child support) Respondent, by submitting its Proposal, certifies that it is not ineligible to receive a payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

B.7.8.2 Franchise Tax Certification

Respondent, by submitting its Proposal, certifies if Respondent is a taxable entity subject to Texas Franchise Tax that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. If Respondent is a qualifying business entity type per Texas Comptroller of Public Accounts guidelines and is not set up in the Texas Franchise Tax system, Respondent must do so prior to contracting with the State of Texas.

B.7.8.3 Certification Concerning Dealings with Public Servants

Respondent, by submitting its Proposal, certifies that it has not given and does not 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 this transaction.

B.7.8.4 Certification Concerning Financial Participation

Under Texas Government Code § 2155.004, Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

B.7.8.5 Certification Concerning Hurricane Relief

A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

Under Texas Government Code Section 2261.053 Respondent certifies that the individual or business entity named in this proposal or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Under Texas Government Code Section 2155.006 Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

B.7.8.6 Certification Concerning Restricted Employment for Former State Officers or Employees under Texas Government Code § 572.069

Respondent certifies that it has not employed and will not employ a former Texas A&M AgriLife Research or state officer who participated in a procurement or contract negotiation for Texas A&M AgriLife Research involving Respondent within two years after the state officer or employee left state agency employment or service.

This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

B.7.9 INDEPENDENT CONTRACTOR

Respondent is an independent contractor, and neither Respondent nor any employee of Respondent shall be deemed to be an agent or employee of Texas A&M AgriLife. Texas A&M AgriLife will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Respondent shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of Texas A&M AgriLife relative to conduct on its premises.

No Assignment by Contractor

Respondent may not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from Texas A&M AgriLife Research.

B.7.10 NO ASSIGNMENT BY CONTRACTOR

Respondent may not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from Texas A&M AgriLife Research.

B.7.11 INDEMNIFICATION AND LIABILITY ACTS OR OMISSIONS

Contractor shall indemnify and hold harmless the State of Texas, The Texas A&M University System, Texas A&M AgriLife Research, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Contractor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract.

Infringements

Contractor shall indemnify and hold harmless the State of Texas, Texas A&M AgriLife Research, and/or their employees, agents, representatives, contractors, assignees, and/or designees from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performances or actions of contractor pursuant to this contract. Contractor and Texas A&M AgriLife Research agree to furnish timely written notice to each other of any such claim. Contractor shall be liable to pay all costs of defense including attorneys' fees. The defense shall be coordinated by the contractor with office of the Attorney General when Texas State Agencies are named as defendants in any lawsuit and contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney.

a) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by the Contractor pursuant to Texas A&M AgriLife Research's specific instructions, (iv) any intellectual property right owned by or licensed to Texas A&M AgriLife Research, or (v) any use of the product or service by Texas A&M AgriLife Research that is not in conformity with the terms of any applicable license agreement.

If Contractor becomes aware of an actual or potential claim, provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against Texas A&M AgriLife Research, shall), at Contractor's sole option and expense; (i) procure for Texas A&M AgriLife Research the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Texas A&M AgriLife Research 's use is non-infringing.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS, TEXAS A&M AGRILIFE RESEARCH SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, TEXAS A&M AGRILIFE RESEARCH, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND TEXAS A&M AGRILIFE RESEARCH AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

B.7.12 RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY

Respondent is liable for all damages to government-owned, leased, or occupied property and equipment caused by Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. Respondent must notify Texas A&M AgriLife Research Contract Manager in writing of any such damage within one calendar day.

B.7.13 FORCE MAJEURE

Texas A&M AgriLife Research and Respondent will not be required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

B.7.14 BUY TEXAS

In accordance with Texas Government Code § 2155.4441, Respondent must, in performing any services under the Contract, purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside Texas.

B.7.15 MISCELLANEOUS TERMS AND CONDITIONS

B.7.15.1 Permits. Respondent will be responsible, at the Respondent's expense, for obtaining all permits or licenses required by city, county, state, or federal rules, regulations, law, or codes that pertain to the Contract.

B.7.15.2 Electrical Items. All electrical items provided by Respondent to Texas A&M AgriLife Research under the Contract must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA, or other applicable regulating body.

B.7.15.3 Executive Head. Pursuant to Texas Government Code § 669.003, Texas A&M AgriLife Research may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have

passed since that person was the executive head of the state agency. By submitting a Proposal, Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years.

B.7.15.4 Terminated Contracts. By submitting a Proposal, Respondent certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five years nor is it currently prohibited from contracting with a governmental agency. If the Respondent does have such a terminated contract, Respondent must identify each and provide an explanation for the termination.

B.7.16 NON-WAIVER OF RIGHTS

Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract operates to limit, impair, preclude, cancel, waive, or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

B.7.17 NO WAIVER

The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by Texas A&M AgriLife Research or the State of Texas of any immunities from suit or from liability that Texas A&M AgriLife Research or the State of Texas may have by operation of law.

Nothing in this Contract should be construed as a waiver of the sovereign immunity of the State of Texas, Texas A&M AgriLife Research. This Contract does not constitute or should not be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, Texas A&M AgriLife Research. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas, Texas A&M AgriLife Research, under this Contract or under applicable law does not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Texas A&M AgriLife Research does not waive any privileges, rights, defenses, or immunities available to Texas A&M AgriLife Research by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

B.7.18 SEVERABILITY

If any provisions of the resulting Contract Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

B.7.19 APPLICABLE LAW AND VENUE

Respondent agrees that the resulting Contract in all respects will be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. Respondent also agrees that the exclusive venue and jurisdiction of any legal action or suit concerning Texas A&M AgriLife Research under this Contract is, and that any such legal action or suit will be brought, in a court of competent jurisdiction in BRAZOS County, Texas.

B.7.20 COMPLIANCE WITH LAWS; DEALING WITH PUBLIC SERVANTS

The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) Texas Penal Code § 36.02, which prohibits bribery; (ii) Texas Penal Code § 36.09, which prohibits the offering or conferring of benefits to public servants; (iii) Texas Government Code § 2155.003, which prohibits the chief clerk or any other employee of Texas A&M AgriLife Research from having an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state or accept from

any person to whom a contract has been awarded anything of value or a promise, obligation, or contract for future reward or compensation.

Respondent must give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract. Except where otherwise expressly required by applicable laws and regulations, Texas A&M AgriLife Research is not responsible for monitoring Respondent's compliance with any laws or regulations. If Respondent performs any work knowing or having reason to know that it is contrary to laws or regulations, Respondent bears all claims, costs, losses and damages caused by, arising out of or resulting.

B.7.21 INSURANCE AND OTHER SECURITY

Respondent represents and warrants that it will obtain and maintain for the term of the Contract all insurance coverage required specifically by Part A of this RFP and generally to ensure proper fulfillment of the Contract and its liabilities thereunder. Respondent will insure any of its motor vehicles used to fulfill its duties under the Contract and ensure that its subcontractors do the same. Such insurance must comply with Texas statutory requirements and also cover any cargo being delivered to Texas A&M AgriLife Research.

B.7.22 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES

Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice violations under Texas Business and Commerce Code Chapter 17 or allegations of any unfair business practice in any administrative hearing or court suit. Respondent represents and warrants that it has not been found to be liable for such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

B.7.23 PROHIBITION ON CONTRACTS RELATED TO PERSONS INVOLVED IN HUMAN TRAFFICKING

Under Section 2155.0061, Government Code, the Respondent certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld

B.7.24 KEY PERSONNEL CHANGE MANAGEMENT

Respondent agrees that the key personnel assigned to the Contract will remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by Respondent or unless Texas A&M AgriLife Research agrees to a change in the key personnel.

B.7.25 FEDERAL, STATE, AND LOCAL LAWS, REGULATIONS, AND REQUIREMENTS

Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. Texas A&M AgriLife Research reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for Texas A&M AgriLife Research or Contractor's compliance with all applicable federal, state, and local laws and regulations.

Contractor will indemnify the State of Texas and will pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

B.7.26 TAXES

B.7.26.1 State and Federal Tax Law. Respondent must comply with all federal and state tax laws and withholding requirements.

B.7.26.2 Federal Tax Reform Act. Contractor must demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2s to common law employees.

B.7.27 WORKER'S COMPENSATION

Respondent is responsible for both federal and state unemployment insurance coverage and standard Worker's Compensation insurance coverage. The State of Texas is not liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage or any federal or state withholding requirements.

B.7.28 NO LIABILITY UPON TERMINATION

If this Contract is terminated for any reason, the State of Texas and Texas A&M AgriLife Research are not liable to Respondent for any damages, claims, losses, or any other amounts arising from or related to termination. However, Respondent may be entitled to the remedies provided in Texas Government Code Chapter 2260.

B.7.29 FELONY CRIMINAL CONVICTIONS

Respondent represents and warrants that Respondent has not and Respondent's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised Texas A&M AgriLife Research as to the facts and circumstances surrounding the conviction. If awarded the contract, Respondent has a continuing duty to amend, supplement, or correct this representation and warranty not later than ten days after discovering additional information relating to felony criminal convictions of Respondent or any of its employees. Respondent will not allow any employee convicted of a felony criminal offense to perform tasks related to the contract without such disclosure and express permission from Texas A&M AgriLife Research.

B.7.30 DRUG-FREE WORKPLACE

Respondent must comply with the applicable provisions of the Drug-Free Work Place Act of 1988.

B.7.31 VENDOR PERFORMANCE BEFORE AND AFTER AWARD

In accordance with Texas Government Code §§ 2155.074 and 2262.055, vendor performance may be used as a disqualification factor in the award of any contract resulting from this solicitation.

Texas A&M AgriLife Research may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (VPTS) as authorized by 34 Texas Administrative Code § 20.108, Texas A&M AgriLife Research may examine other sources of Respondent performance including notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. These sources of Respondent performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the federal government. Further, Texas A&M AgriLife Research may initiate these examinations of Respondent's performance based upon media reports. Any investigations are at Texas A&M AgriLife Research's sole discretion, and any negative findings, as determined by Texas A&M AgriLife Research, may result in a non-award to Respondent. Information pertaining to VPTS is located on CPA's website at: http://www.window.texas.gov/procurement/prog/vendor_performance/.

B.7.32 STATE OF TEXAS DEBARMENT

In the event that Respondent has repeated unfavorable VPTS performance reviews, repeated unfavorable VPTS grading classifications, or has more than two contract terminations within the preceding three years for unsatisfactory performance, the Texas Comptroller of Public Accounts may bar a vendor from participating in state contracts for a period commensurate with the seriousness of Respondent's action and the damage to the state's interests.

B.7.33 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY 1 TEXAS ADMINISTRATIVE CODE CHAPTER 213 (APPLICABLE TO STATE AGENCY AND INSTITUTIONS OF HIGHER EDUCATION PURCHASES ONLY)

(1) Effective September 1, 2006, state agencies and institutions of higher education must procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Texas Admin. Code Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

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