



## TEXAS RACING COMMISSION

8505 Cross Park Drive, Suite 110  
Austin, TX 78754-4552

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### REQUEST FOR PROPOSAL

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#### ECONOMY, EFFECTIVENESS, AND EFFICIENCY INTERNAL AUDIT

RFP 476-18-131  
NIGP/Class 946-20

Electronic State Business Daily Posting Date	April 27, 2018
Questions Submission Deadline Date	May 15, 2018
<b>PROPOSAL RESPONSE DUE DATE</b>	<b>May 29, 2018</b>
<b>PROPOSAL RESPONSE DUE TIME</b>	<b>4 p.m. CST in Austin, TX</b>

#### **NOTES:**

This document is composed of two parts:

Part A: The RFP (including attachments and appendices, if any) and

Part B: General Instructions and Contract Terms (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.

## RESPONSE SUBMISSION CHECKLIST

**IMPORTANT: RESPONDENTS MUST ADDRESS ALL INQUIRIES AND COMMUNICATIONS CONCERNING THIS RFP TO THE INDIVIDUAL LISTED IN SECTION A.10.3 - POINT OF CONTACT. COMMUNICATIONS WITH ANYONE OTHER THAN THE POINT OF CONTACT MAY RESULT IN DISQUALIFICATION OF A PROPOSAL.**

**Please read all instructions, documentation, and requirements contained within this RFP.**

**Reference A.14 – Organization of the Proposal for Submission.**

**TxRC will disqualify any Proposal received without the following documentation:**

- EXECUTION OF PROPOSAL – ATTACHMENT A
- MANDATORY COST PROPOSAL- ATTACHMENT B
- REQUIRED HUB PLAN
- CONFLICT OF INTEREST DISCLOSURE - ATTACHMENT C

**TxRC may disqualify any Proposal received without the following documentation:**

- RESPONDENT INFORMATION – ATTACHMENT E
- AUDIT PLAN TIMELINE
- SUMMARY OF RESPONDENT'S EXPERIENCE IN PROVIDING SIMILAR SERVICES
- LIST OF RESPONDENT'S CLIENTS OVER PAST TWO YEARS
- THREE EXAMPLES OF RESPONDENT'S PRIOR AUDIT REPORTS
- IDENTIFICATION OF CLAIMED CONFIDENTIAL/PROPRIETARY INFORMATION AND ELECTRONIC DOCUMENT, if any (See 14.1)
- IDENTIFICATION OF ALL EXCEPTIONS AND ASSUMPTIONS to terms of this RFP or Contract, if any
- PERSONAL BACKGROUND DISCLOSURE AND RELEASE – ATTACHMENT F
- INSURANCE – Statement of Intent
- FINANCIAL RESOURCES AND ABILITY TO PERFORM

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## A.1 DEFINITIONS

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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.

<b>TERM</b>	<b>DEFINITION</b>
All Applicable Laws	Texas Racing Act (Tex. Rev. Civ. Stat. Art. 179e), Texas Racing Commission Rules (16 Tex. Admin. Code Ch. 301-323), Texas Penal Code, Texas Government Code, and other applicable laws, regulations and governmental requirements
Best and Final Offer (BAFO)	A formal request made to selected respondents for revisions to the originally submitted Proposal
Commission	The Texas Racing Commission, the state agency issuing this solicitation
Contract	The contract awarded as a result of this RFP and exhibits thereto. This RFP, any Addendum issued in conjunction with this RFP, the successful respondent's proposal, any BAFO, and subsequent submission by respondent, shall all be fully incorporated therein as exhibits.
Contractor	The Respondent awarded a Contract as a result of the RFP
ESBD	The Electronic State Business Daily, available online at <a href="http://www.txsmartbuy.com/sp">http://www.txsmartbuy.com/sp</a>
Party or Parties	Either TxRC or Respondent, separately or collectively
Proposal	A Proposal submitted to TxRC 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
TxRC	Texas Racing Commission

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## A.2 DESCRIPTION

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### TEXAS RACING COMMISSION REQUEST FOR PROPOSALS NO. 476-18-131 FOR AN ECONOMY, EFFECTIVENESS, AND EFFICIENCY INTERNAL AUDIT

#### Purpose of the RFP

Selected Contractor will:

- a) Perform an audit to evaluate the economy, effectiveness, and efficiency of the Commission. The audit will assess whether each of the named functions within the Commission are complying with All Applicable Laws and will identify any duplication of effort, overlap, or conflict with other state agency programs.
- b) Deliver a report that includes recommendations for improving program economy, effectiveness, and efficiency.

There is a more detailed scope and objectives in Section B.

#### Background

The Texas Racing Commission (TxRC) enforces the Texas Racing Act and the Rules of Racing to ensure the safety, integrity, and fairness of Texas pari-mutuel racing. The Commission employs a staff of 39 FTEs (full-time equivalents) who regulate live racing and simulcast wagering at seven active racetracks, and three inactive racetrack license holders. Field staff regulate and supervise all persons at active racetracks during live racing and training, and have final decision responsibilities for the operations of these racetracks.

Field staff include:

- **Stewards/judges** – have general authority and supervision over the conduct of each race and all licensees at a racetrack during a racing meet. Stewards and Judges Boards hold hearings, issue rulings, which supersede any orders of the association on racing matters that may change the conduct of a race or race meeting; and approve or deny temporary or permanent licenses as authorized by the Act or the Rules.
- **Investigators** – investigate and institute disciplinary action regarding any alleged violation of the Act, a rule or order of the Commission, or an order of a court relating to racing or pari-mutuel wagering.
- **Licensing technicians** – review all license applications for required completeness and accuracy, and issue licenses according to the established agency procedures, rules, and regulations.

- **Veterinarians** – ensure the health of race animals through oversight of association veterinarians practicing at a race track. Commission veterinarians advise the stewards or racing judges on all veterinary matters. Commission veterinarians conduct pre- and post-race examinations; attend and keep record of injured race animals at the race track; and supervise the operation of the test barn or test area and the collection of specimens for testing.
- **Test Barn Supervisors** – assist in the collection of urine specimens for testing, and are responsible for the maintenance of the test barn facilities to include supervision of association test barn technicians.
- **Auditors** – verify the wagering pool totals for each live and simulcast performance, and assist the executive director, the stewards or racing judges, and the Texas Comptroller in investigating alleged violations of the Act, the Rules, or the comptroller’s rules relating to the totalizator system and pari-mutuel operations.

Austin headquarters staff are responsible for the day-to-day scheduling, financial operations, state agency required reporting, records management, field-staff oversight, administrative support, database and information technology management, security, and support, administrative prosecution of violations and appeals, and occupational and racetrack licensing oversight.

- **Executive** – Consists of the executive director who supervises agency activities as a whole and manages the finance and information technology team. The executive director’s responsibilities include: oversight of the development of agency operating policies and procedures; ensuring that the agency’s regulatory responsibilities are fulfilled; representing the agency before the Legislature and other governmental agencies; and serving as a primary role in external relations with industry stakeholders, regulators in other states and a national regulatory association. With the assistance of the agency’s legal staff, oversees coordination of the evaluation of racetrack license applications, the race date allocation process, and assesses administrative penalties against racetrack licensees. The executive director’s office is also responsible for other administrative functions, including responding to public information and media requests.
- **Racing Oversight** – Consists of the deputy executive director, five division directors and their respective field teams of stewards, investigations, licensing, veterinary and test barn supervisors, and auditing areas. The Racing Division is focused on enforcement and oversight of day-to-day racetrack operations. In addition to their supervisory responsibilities, all division directors frequently work in the field at the tracks during live meets throughout the year.

- **Finance** – Consists of the chief financial officer, director of administration, purchaser, accounts payable accountant, payroll and human resource accountant and an accounting technician. Primary functions of the Finance Department are to forecast and monitor the budget and cash flow; prepare all state required reports; research, recommend and award contracts for goods and services in compliance with state purchasing guidelines; prepare vouchers for payment according to state payment policies; process payroll and leave records; ensure all transactions comply with state fiscal policies and procedures. The Finance Department is also responsible for creating agency financial policies and procedures, responding to audit findings and recommendations, auditing daily deposits, overseeing building maintenance, and managing asset records.
- **Information Technology** – Consists of the director of IT, a system support specialist, a programmer/analyst and an administrative assistant. Primary functions are managing, securing, and administering the agency’s local and wide area network, servers, personal computers, database and database applications, phone system, websites (both internal and public), email, and various peripherals and software applications.
- **Legal** - Consists of the general counsel and deputy general counsel. The general counsel is responsible for advising the Commission and agency staff on enforcement items and other matters, coordinating with the Office of the Attorney General on litigation, as well as open records requests and day-to-day legal matters. The deputy general counsel is also responsible for prosecuting violations of the Texas Racing Act before boards of stewards and the State Office of Administrative Hearings, and assisting with other agency legal matters as appropriate.

See Attachment G for a list of all staff positions and their duties.

The Commission is self-funded; it receives no funding from General Revenue. Revenue is derived primarily from fees assessed to the racetracks and occupational licensees. This funding method directly ties to the viability of the Commission and its ability to effectively regulate. The Commission has requested an audit to determine the economy, effectiveness, and efficiency of the Commission’s operations; and make recommendations for improving operational efficiency and effectiveness where appropriate.

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### **A.3 CONTRACT TERM**

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This is a fixed price project for services and the contract term shall be for a period beginning estimated June 2018 or the last signature date, whichever is later, and ending 90 days later.



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## **A.4 PRICING**

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The project's price may not exceed pricing terms agreed to by the TxRC and the contractor.

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## **A.5 PRICE ADJUSTMENTS**

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Proposed prices or discounts offered to the State shall be considered the Respondent's most favored Customer pricing. In the event that Contractor offers or provides a decrease in price or an increase in discount to its Customers for the same services, under the same terms and conditions, provided for the State of Texas pursuant to its Contract, Contractor must provide the same decrease in price or increase in discount for the State of Texas. TxRC recommends that Contractor provide any price decrease or discount increase voluntarily.

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## **A.6 INSURANCE**

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Contractor agrees to comply with all state and federal laws applicable to the liability and payment of Contractor and Contractor's employees, including laws regarding wages, taxes, insurance, and workers' compensation. Neither the TxRC nor the State of Texas shall be liable to the Contractor, its employees, agents, or others for the provision of unemployment insurance and/or worker's compensation or any benefit available to a state employee.

Minimum Insurance: Contractor shall, at its sole cost and expense, secure and maintain as a minimum, from the Effective Date and thereafter during the term of this Contract and any renewals or extensions thereof, for its own protection and the protection of the TxRC and the State of Texas:

- (a) commercial liability insurance, covering, at a minimum, the following categories of liability within the following limits: (i) bodily injury and property damage - \$1,000,000 limit per occurrence, \$2,000,000 aggregate, (ii) medical expense - \$5,000 limit per person, (iii) personal injury and advertising liability - \$1,000,000 limit, (iv) products/completed operations - \$2,000,000 aggregate, (v) damage to premises rented - \$50,000;
- (b) automobile liability coverage for vehicles driven by Contractor's employees (\$500,000 per occurrence); and
- (c) workers' compensation insurance in accordance with the statutory limits, as follows: (i) employer's liability - \$1,000,000 each incident, (ii) disease - \$1,000,000 each employee and \$1,000,000 policy limit.
- (d) professional liability insurance: \$1,000,000 limit per occurrence, \$2,000,000 aggregate.

The TxRC and the State of Texas shall be named an additional insured on the commercial liability and automobile policies.

Insurance coverage shall be from companies licensed by the State of Texas to provide insurance with a Financial Strength Rating of "A" or better from A.M. Best Company, Inc. authorized to provide the corresponding coverage.

All required insurance contracts must:

- (1) be written on a primary and non-contributory basis with any other insurance coverages Respondent currently has in place; and
- (2) include a Waiver of Subrogation Clause.

**CERTIFICATES OF INSURANCE:** Contractor shall furnish to the TxRC certificates of insurance and any applicable endorsements, signed by authorized representative of the surety or insurers, of all such bonds and insurance and confirming the amounts of such coverage within five (5) business days of the Effective Date of this Contract and upon request thereafter. Contractor shall provide the TxRC Contract Administrator with timely renewal certificates as the coverage renews. Failure to maintain such insurance coverage specified herein, or to provide such certificates or endorsements promptly, shall constitute a material breach of this Contract. Contractor shall provide thirty (30) days written notice of any notice for renewal, nonrenewal and/or cancellation of insurance.

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## **A.7 GENERAL REQUIREMENTS**

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### **A.7.1 Statement of Work**

In accordance with Texas Government Code, Section 321.020, the State Auditor's Office has delegated to the Texas Racing Commission the authority to employ a private auditor to provide internal audit services related to the economy, effectiveness, and efficiency of the TxRC's financial management and operations.

### **A.7.2 Requirements**

Each proposal must include:

1. Execution of Proposal – **Attachment A** (Certifies that the Respondent agrees to the RFP requirements and All Applicable Laws for conducting the independent Internal Audit for Economy, Effectiveness, and Efficiency and providing the required Deliverables.)
2. Mandatory Cost Proposal – **Attachment B** (Includes proposed hourly rates costs broken out by key personnel, function, and travel costs.)
3. HUB Plan (whether or not contractor or subcontractors are HUBs)
4. Conflict of Interest Disclosure – **Attachment C**
5. Respondent Information – **Attachment E**
6. Audit Plan Timeline (Considering risks and other assumptions, a **listing or chart** of the timelines estimated to complete the various components of the audit proposal and final report.)
7. Qualifications and ability to deliver the required services. (Respondent's list of qualifications, including Texas certified public accountant [CPA]/certified internal auditor [CIA] certifications for each CPA/CIA)
8. Summary of the respondent's experience in providing similar services, including a list of state or other government agencies for which the bidder has provided similar services.
9. List of respondent's clients over the last two years.

10. Three examples of prior audit reports completed by the respondent. (At least two must be reports from economy, effectiveness, and efficiency audits.)
11. Identification of claimed confidential or proprietary information, if any.
12. Identifications of all exceptions and assumptions to terms of this RFP or Contract, if any.
13. Personal Background Disclosure and Release Form - **Attachment F**, (includes Statement of Criminal History and Authorization for Examination and Release of Information.
14. Insurance – Statement of Intent
15. Financial Resources and Ability to Perform

Upon award of a contract, the selected Contractor will be required to submit signed Non-Disclosure Agreements for all employees assigned to the audit. See Attachment D.

Note: Do not send any Social Security Numbers via electronic document, Fax, or email. Social Security Numbers should only be submitted if/when required by this RFP and should only be submitted with Respondent’s hard copy documents. Please contact the Point of Contact if you have any questions.

### **A.7.3 Deliverables**

Considering the requirements of All Applicable Laws, the Contractor shall provide an audit and assessment of the Commission for economy, effectiveness, and efficiency. The Contractor will audit each function of the agency according to the specifications and format presented below. The Final Report is due 90 days after execution date of the contract.

### **Final Report Format (required):**

#### **1.0 Executive Summary**

##### **1.1 Economy:**

Budget: Underfunded/Appropriate/Overfunded

Salary: Structure and Classifications in alignment/out of alignment with State Classification per State Auditor’s Office and other Texas state agencies.

Operations: Resources are underutilized/meet requirements/maximized

##### **1.2 Effectiveness:**

Compliance with All Applicable Laws: Deficient/Meets/Exceeds

Staffing levels necessary to support the agency: Deficient/Meets/Exceeds

##### **1.3 Efficiency:**

Staffing: Organization appropriate/inappropriate to comply with All Applicable Laws

Operations: Resources are underutilized/meet requirements/maximized

#### **2.0 Detailed Assessment by Function (Is the department staffed and funded properly?)**

## **2.1 Finance & Administration**

- 2.1.1 Economy
- 2.1.2 Effectiveness
- 2.1.3 Efficiency

## **2.2 Legal**

- 2.2.1 Economy
- 2.2.2 Effectiveness
- 2.2.3 Efficiency

## **2.3 Information Technology**

- 2.3.1 Economy
- 2.3.2 Effectiveness
- 2.3.3 Efficiency

## **2.4 Stewards/Judges**

- 2.4.1 Economy
- 2.4.2 Effectiveness
- 2.4.3 Efficiency

## **2.5 Licensing**

- 2.5.1 Economy
- 2.5.2 Effectiveness
- 2.5.3 Efficiency

## **2.6 Auditing of Wagering**

- 2.6.1 Economy
- 2.6.2 Effectiveness
- 2.6.3 Efficiency

## **2.7 Investigations**

- 2.7.1 Economy
- 2.7.2 Effectiveness
- 2.7.3 Efficiency

## **2.8 Veterinary**

- 2.8.1 Economy
- 2.8.2 Effectiveness
- 2.8.3 Efficiency

## **3.0 Recommendations**

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### **A.8 PURCHASE ORDERS AND INVOICES**

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#### **A.8.1 Agency Purchase Order**

TxRC will issue an internal purchase order referencing the Contract number as referenced on the Notice of Award.

The Contractor will have 90 days to complete the contract after the Purchase Order is received by the Contractor.

## **A.8.2 Invoices and Expedited Payment Discounts**

Contractor must submit an itemized invoice to the Commission reflecting the TxRC Contract number and the TxRC Purchase Number. For more information, see Part B, Section V, Invoicing and Payment Requirements.

Payment terms for the State of Texas are typically 30 days.

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## **A.9 PROPOSAL INFORMATION**

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### **A.9.1 Schedule of Events**

Respondent must submit its Proposal to TxRC in accordance with the due date and time indicated in the schedule on the cover page. TxRC reserves the right to revise this schedule or any portion of this RFP by published Addendum on the ESBD.

### **A.9.2 Solicitation Amendments**

TxRC will post any amendment to this solicitation and answers to any submitted questions 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 awarded Contractor from the requirements of "addenda or additional information" nor will any resulting additional costs to meet the requirements be allowed after award(s).

**Respondent must acknowledge each RFP addendum by returning a signed copy of the addendum(s) with its Proposal.**

### **A.9.3 Questions**

Respondents are strongly encouraged to submit written questions during the RFP posting period regarding any term or condition of this RFP and whether TxRC may negotiate that provision under this particular RFP.

The TxRC will accept only **written** questions and requests for clarification by email sent to [bids@txrc.texas.gov](mailto:bids@txrc.texas.gov) by the due date indicated in the Schedule of Events on the cover page. Inquiries and comments must reference RFP No. 476-18-131. Failure to comply with this requirement may result in disqualification of a Proposal.

Respondents must reference the appropriate RFP page and section number in their questions, and must submit them in writing by the deadline set forth on the cover page. However, TxRC, in its sole discretion, may respond to questions received after the deadline. TxRC's responses to questions will be posted to the ESBD as they are received. TxRC reserves the right to amend answers prior to the Proposal submission deadline.

Respondents must notify TxRC 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 Commission 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 Commission'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.

Except as otherwise provided in this Section, upon issuance of this RFP, other TxRC employees and representatives, including Commissioners, will not answer questions or otherwise discuss the contents of the RFP with any potential respondent or its representatives. Failure to observe this restriction may result in disqualification of any subsequent response. This restriction does not preclude discussions unrelated to this RFP.

All inquiries will result in written responses with copies posted to the ESBD, available at <http://www.txsmartbuy.com/sp>

If respondent takes any exceptions to any provisions of this RFP, these exceptions must be specifically and clearly identified by Section in respondent's proposal in response to this RFP and respondent's proposed alternative must also be provided in the proposal. Respondents cannot take a 'blanket exception' to this entire RFP.

#### **A.9.4 Point of Contact**

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

TxRC Procurement Officer  
512-833-6699  
Email: [bids@txrc.texas.gov](mailto:bids@txrc.texas.gov)

Respondents may not contact any other TxRC personnel or representatives, including Commissioners, regarding this RFP.

Failure to comply with these requirements and communications with anyone other than the Point of Contact may result in disqualification of a Proposal.

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 TxRC's Procurement Officer.

#### **A.9.5 Documents and Attachments Included with this RFP**

The RFP package also includes the following Documents and Attachments.

<b>Documents and Attachments</b>
Part A: RFP (This Document)
Part B: General Instructions and Contract to Perform

Attachment A: Execution of Proposal
Attachment B: Mandatory Cost Proposal
Attachment C: Conflict of Interest Disclosure
Attachment D: Non-Disclosure Agreement
Attachment E: Respondent Information
Attachment F: Personal Background Disclosure Form
Addendum 1: Statement of Criminal History
Addendum 2: Authorization for Examination and Release of Information
Attachment G: Overview of Staff Duties
Attachment H: Delegated Authority for Internal Audit by the State Auditor's Office

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## **A.10 HUB CONTRACTING/SUBCONTRACTING PLAN**

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It is the policy of TxRC 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. State of Texas HUB applications are available at: <https://www.comptroller.texas.gov/purchasing/vendor/registration>.

Definitions for State of Texas HUB certifiable businesses can be found in 34 Texas Administrative Code Chapter 20, Subchapter D, available at: <http://www.sos.texas.gov/tac/>.

A HUB Plan Form must be filled out and returned with the Proposal to be considered responsive. If the Proposal does not include a completed HUB Plan, even if no HUBs are used, TxRC will reject the Proposal as a material failure to comply with advertised specifications.

Search the State of Texas HUB Database for HUB vendors by the NIGP class and item at: <https://mycpa.cpa.state.tx.us/tpasscmbsearch>.

Additional minority and women owned business association resources are available for subcontracting notices at: <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

Respondent can find additional information and training regarding how to complete a HUB Subcontracting Plan at: <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.

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## **A.11 EVALUATION OF PROPOSALS**

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To qualify for selection, the respondent must be a licensed CPA or CIA or a qualified auditing company with CPAs or CIAs licensed in Texas. TxRC reserves the right to award a Contract(s) without any negotiations and reserves the right to not make an award.

Respondent is strongly encouraged to provide its best price in its Proposal because the Commission makes no guarantee that there will be any opportunity to negotiate or provide

alternative pricing at any point during the RFP process. TxRC may seek additional information and solicit BAFOs from those respondents determined to be in the competitive range.

Proposals will be evaluated by a team approved by the Executive Director of the TxRC. The team will include TxRC employees and at least one employee from another state agency.

**A.11.1 Evaluation Criteria**

TxRC will consider best value for the State as directed by Texas Government Code §2156.007 when awarding a Contract to a Respondent.

Only Proposals that meet the minimum requirements as set forth in the RFP will be reviewed and scored according to the evaluation criteria set out below:

<b>Evaluation Criteria</b>	<b>Points</b>
Respondent’s approach to providing the required services	15
Respondent’s experience with governmental agencies and internal audit experience	40
Respondent’s qualifications and ability to perform the required services	35
Cost	10
<b>Total</b>	<b>100</b>

The Commission reserves the right to conduct studies and other investigations as necessary to evaluate any Proposal.

Submission of a Proposal confers no legal rights upon any Respondent. TxRC will determine whether negotiations or BAFOs are necessary and may invite selected Respondents to provide oral presentations of their Proposals.

The Commission, in its sole discretion, may amend or modify any provisions of this RFP, or withdraw this RFP at any time prior to award of a contract. TxRC reserves the right, in its sole discretion, to reject any or all Proposals to this RFP without discussion of proposals with the respective Respondents.

The decision of the Commission or its designee with regard to the above shall be administratively final. In its sole discretion, TxRC may waive administrative deficiencies and/or minor technicalities in proposals received.

TxRC will not disclose any information regarding sealed Proposals to the public prior to the award of the Contract.

After the awarding of the contract, the Respondents’ Requests for Proposal documentation and information are subject to state open records requirements.

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. More information is available in Part B Section III, Vendor Performance before and after Award.

Contractor performance information is located at:

<https://www.comptroller.texas.gov/purchasing/programs/vendor-performance-tracking>

The Commission may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System, TxRC 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, TxRC may initiate such examinations of vendor performance based upon media reports. Any such investigations shall be at the sole discretion of TxRC, and any negative findings, as determined by TxRC, may result in non-award to the Respondent.

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## **A.12 AWARD PROCESS**

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### **A.12.1 Award Notice**

If a contract is awarded under this RFP, TxRC will issue a notice of award to the successful Respondent. However, there is no guarantee that an award or any Contract will result from this solicitation. An award will be made to one Respondent based on all solicitation criteria.

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## **A.13 ORGANIZATION OF THE PROPOSAL FOR SUBMISSION**

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The Proposal shall include all information required in this RFP as noted in Section A.7.2 and shall be in the format described in this document. Each Respondent is solely responsible for thoroughly understanding the RFP and its attachments 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. Each Respondent is cautioned to pay particular attention to the clarity and completeness of its Proposal. Each Respondent is solely responsible for its Proposal and all documentation submitted.

**A Proposal constitutes a binding offer by the Respondent. TxRC will disqualify any Proposal that includes any type of disclaimer or other statement indicating that the Proposal 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.13.1 Public Information Act Disclosures**

TxRC is a governmental body subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552. The Proposal and other information submitted to the TxRC by the Respondent are subject to release as public information by the TxRC. The Proposal and other submitted information is presumed subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the legal basis for confidentiality. 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 PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified by the Respondent as proprietary or confidential will be deemed subject to disclosure pursuant to the PIA. Respondent will irrevocably be deemed to have waived, and Respondent agrees to fully indemnify the State of Texas and TxRC subject to the PIA from, any claim of infringement by TxRC regarding the intellectual property rights of Respondent or any third party for any materials appearing in the Proposal.

Respondent is required to make any information created or exchanged with a state governmental entity (as defined by Texas Government Code § 2252.907(d)) pursuant to this proposal, and not otherwise excepted from disclosure under the Texas Public Information Act, available in at least one of the following formats that is accessible by the public at no additional charge to the State of Texas or TxRC: portable document format (pdf) compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).

If Respondent's Proposal contains any information that Respondent claims is confidential and not subject to release under the PIA, Respondent must prepare and deliver to TxRC an electronically submitted document containing all of Respondent's submissions pursuant to this RFP with all information claimed as confidential excised, blacked out, or otherwise redacted. The electronic document must contain an Appendix which contains clear references to all redacted information including a general description of the redacted information. Respondent should name the electronic document "**For Public Release: Redacted Version [Respondent's Name] RFP 476-18-131**" and be included with submission of proposal.

### **A.13.2 Respondent Information**

Respondents must complete the Respondent Information form which includes references and detailed information on assigned audit personnel. See Attachment E.

### **A.13.3 Execution of Proposal**

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

#### **A.13.4 HUB Subcontracting Plan (HSP)**

The Respondent must complete the HSP, even if no HUB is used, and submit it with the Proposal to be considered responsive. **TxRC will reject Proposals received without the HSP as a material failure to comply with the requirements of this RFP. See Section A.11**

#### **A.13.5 Mandatory Cost Proposal**

Respondent must complete the Mandatory Cost Proposal and return with Proposal in the format requested. The Cost Proposal must include hourly rates, broken out by key personnel and function, and any proposed travel costs. **TxRC will reject Proposals received without the Mandatory Cost Proposal as a material failure to comply with the requirements of this RFP. See Attachment B.**

#### **A.13.6 Assumptions, Constraints and Exceptions**

Assumptions and Constraints

1. Contract Term - The Contract term is 90 days.
2. Contract Funding - The Contract may not exceed agreed upon pricing terms.
3. Commission Work Schedules - The majority of the Commission's management staff are located at 8505 Cross Park Drive, Suite 110, Austin, TX 78754 (HQ). The work schedule at HQ is Monday – Friday with staff start times ranging from 7 a.m. to 9:30 a.m. The majority of regulatory enforcement is done at the racetrack field offices (Field). The location and work schedules of the Field staff varies throughout the year but includes weekends. As an example, a Field office department work schedule may be Wednesday – Sunday from 10 a.m. to midnight. Each department may have different work hours and different work days. Both HQ and Field have some staff that telecommute.
4. Staff – A list of staff, their titles, and job descriptions will be provided.
5. Interview Scheduling - The Commission is a small agency with limited staff. Many positions and/or job duties have no secondary source of responsibility. At least 48 hours' notice is required for all initial staff interviews. Scheduling initial interview times with staff should be coordinated through the Project Manager or his designee.
6. Policies and Procedures – The Commission has policies and procedures that establish standards of conduct, responsibilities, and work guidelines for its employees. These will be provided to the Contractor personnel.

**EXCEPTIONS** - 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 TxRC. 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 should explicitly state in its Proposal that the Respondent takes no exception to any part of this RFP.**

The Respondent’s Proposal 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.**

TxRC, 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 TxRC to indemnify it. Such a term may result in the Proposal being deemed non-responsive.

**A.13.7 Conflicts of Interest**

**Actual and Perceived Conflicts**

By submitting a Proposal, Respondent represents and warrants that neither it nor its employees and subcontractors have any conflicts of interest that would prevent it from entering into a Contract with TxRC. Respondent also represents and warrants that entering into a Contract with TxRC will not create the appearance of impropriety. In its Proposal, Respondent must disclose any potential conflict of interest that it might have in contracting with TxRC. A 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 record keeping requirement (Sec. XI. 11.19). The TxRC will decide, in its sole discretion, whether an actual or perceived conflict should result in Proposal disqualification or Contract termination and reserves the right to request additional information about any potential conflict of interest.

Examples of potential conflicts of interest may include, but are not limited to:

- Audit contractors or CPAs/CIAs who work directly for industry breed organizations, horsemen’s representatives or for individuals, boards or companies who are regulated by the Texas Racing Act
- Audit contractors or CPAs/CIAs who have a significant financial interest in a company that is regulated by the Texas Racing Act.
- Audit contractors or CPAs/CIAs who, over the last two years, have held contracts with clients regulated by the Texas Racing Act.
- Audit contractors or CPAs/CIAs with a personal relationship with a client licensed or regulated by the Texas Racing Act.

### **Current and Former TxRC Employees**

In addition to the disclosures required above, Respondent must also disclose any of its personnel who are current or former officers or employees of the TxRC 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 the TxRC.

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 the agency on certain matters for two years after leaving the agency. 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 employee’s official responsibility. Respondent, by signing this solicitation, certifies that it has complied with all applicable laws and regulations regarding former state employees.

### **A.13.8 Background Investigations**

Each employee or contractor/subcontractor Respondent anticipates will work on the project must complete and sign a Personal Background Disclosure Form to be submitted with the Proposal. Any employee or subcontractor Contractor added to the project after submission of the Proposal must submit the Personal Background Disclosure Form and be approved by the Commission prior to beginning work on the project. See Attachment F.

### **A.13.9 Insurance**

In its Proposal, Respondent must provide a statement of its intent to obtain and maintain for the term of the Contract (and any renewal periods or additional extensions) the minimum insurance coverage specified in Section A.6. 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 and bond coverage may be provided in the form of current certificates of insurance.

### **A.13.10 Financial Resources and Ability to Perform**

Respondent shall provide evidence of financial capability. The preferred evidence of financial capability is an audited financial statement. For privately owned businesses where audited financials are not required, unaudited financial statements will be sufficient.

If incorporated in Texas, Respondent shall attach to the proposal a current franchise tax Certificate of Good Standing, issued by the Texas State Comptroller's office.

If incorporated in Texas, Respondent shall also provide to TxRC the corporation's charter number issued by the Texas Secretary of State's office.

Respondent shall provide its 9-digit Federal Employer's Identification Number (EIN) and its State of Texas Identification Number System (TINS) number.

Pursuant to Texas Family Code Section 231.006, Respondent shall include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25% of the business entity submitting the proposal. To protect the social security numbers, do not submit this information with the electronic submission. See Attachment A.

Note: Do not send any Social Security Numbers via electronic document, Fax, or email. Social Security Numbers should only be submitted if/when required by this RFP and should only be submitted with Respondent's hard copy documents. Please contact the Procurement Officer if you have any questions.

TxRC reserves the right to investigate and determine the financial integrity and responsibility of a Respondent and to reject a Proposal on the grounds of Respondent's lack of financial soundness, or if TxRC reasonably concludes, after reviewing the information submitted by Respondent as well as all other relevant information obtained by TxRC, that significant issues exist that could jeopardize Respondent's full and timely performance.

#### **A.13.11 Signed Addenda to RFP**

As stated in Part B, General Information and Contract Terms, the Respondent must submit signed copies of all RFP addenda, if any, with its Proposal.

#### **A.13.12 References Required**

Respondents must provide three references for contracts they have had in similar size and scope to this RFP. At a minimum, Respondent should provide the following for each reference: Entity Name, Type of Audit, Annual Amount of Contract, Dates of Contract, Contact Name, Phone Number, and Address.

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### **A.14 SUBMITTING THE PROPOSAL**

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Respondent must submit its Proposal to TxRC in accordance with the due date and time indicated in the schedule on the cover page. TxRC reserves the right to revise this schedule or any portion of this RFP by published Addendum on the ESBD.

The Proposal must clearly show the Proposal Due Date and Time identified and be titled: Proposal Submitted for **RFP 476-18-131, Economy, Effectiveness, and Efficiency Internal Audit**. An electronic copy and four hard copies must be submitted.

The Proposal submission must include an information sheet that states the name of the Respondent and the name, address, and telephone number of its Point of Contact. This information sheet must be the first page before the sealed proposal submission.

**Price information required by Section A14.5 Mandatory Cost Proposal (Attachment B) shall be included only in the electronic copy and the original hard copy. No pricing information shall be included in any other portion of the response.**

#### **A.14.1 Electronic and Hard Copy Submissions Required**

**ELECTRONIC SUBMISSION:** Submit your Proposal electronically to: [bids@txrc.texas.gov](mailto:bids@txrc.texas.gov)

IMPORTANT NOTE: TxRC recommends a limit on the attachments to 10MB each. This may result in the sending multiple emails to [bids@txrc.texas.gov](mailto:bids@txrc.texas.gov) for the submission of all documentation contained in a Proposal.

**ALL DOCUMENTS SHOULD BE SUBMITTED IN MICROSOFT OFFICE® FORMATS (WORD® AND EXCEL®), PDF, OR IN A FORMAT THAT MAY BE READ BY MICROSOFT OFFICE® SOFTWARE. ANY DOCUMENTS WITH SIGNATURES SHALL BE SUBMITTED AS AN ADOBE® PORTABLE DOCUMENT FORMAT (PDF) FILE. TxRC IS NOT RESPONSIBLE FOR DOCUMENTS THAT CANNOT BE READ OR CONVERTED. UNREADABLE PROPOSALS MAY BE, IN TxRC'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. TxRC's firewall virus protection runs at all times, so during times of new active virus alerts, incoming traffic may be delayed while virus software scans emails with attachments.

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

TxRC will send an email to confirm receipt of all electronic submissions. If Respondent does not get an email confirming receipt, contact the Procurement Officer at 512-833-6699 or send an email to [bids@txrc.texas.gov](mailto:bids@txrc.texas.gov).

Note: Do not send any part of the proposal containing a list of Names and Social Security Numbers via electronic document, Fax, or email. Names and Social Security Numbers should only be submitted if/when required by this RFP with Respondent's hard copy documents. Please contact the Point of Contact if you have any questions.

**HARD COPIES SUBMISSION REQUIRED** - In addition to the electronic submission, respondent must also submit **four** bound, hard copies, including one original signed hard copy at the same time.

The information sheet described above must be the first page before the sealed proposal submission. All parts of the proposal following the information sheet should be submitted in an envelope or other sealed container marked "**CONFIDENTIAL - Respondent's Name.**" Hard copy proposals must be postmarked by the due date or hand-delivered by 4 p.m. on the due date.

TxRC will document receipt of all Proposals with a date/time stamp.

Respondent must either hand deliver or send the hard copies to TxRC at the following address.

<b>Email</b>	<b>U.S. Postal Service or Overnight/Express Mail</b>	<b>Hand Delivery</b>
<a href="mailto:bids@txrc.texas.gov">bids@txrc.texas.gov</a>	Procurement Officer Ref: RFP 476-18-131 Texas Racing Commission 8505 Cross Park Drive, Suite 110 Austin, Texas 78754-4552	Same Address Hours – 8 am to 5 pm (C.D.T.). Excluding State Holidays

**Proposals sent by facsimile will not be accepted.**



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## PART B: GENERAL INFORMATION AND CONTRACT TERMS

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### I. Scope and Objectives

#### ***INDEPENDENT INTERNAL AUDIT***

In accordance with the national standards of internal auditing, the audit scope and objectives encompass the examination and evaluation of the economy, effectiveness, and efficiency of the Texas Racing Commission's financial management and operations in carrying out statutory responsibilities and state requirements.

#### **SCOPE**

Overall this audit will assess the Texas Racing Commission's service and operational measures on economy, effectiveness, and efficiency, in relation to state statutory requirements, within current Biennial FY2018-19 budget projections. The audit will include findings in these three areas followed by recommendations.

The scope of the audit will review human resources and internal and external operational system resources to see if they are of the right quality and quantity to fulfill the Commission's statutory functions at the most reasonable possible cost (*Economy*). The audit will also assess if the Commission regularly achieves its policy objectives, operational goals and other intended effects as required by the Texas Racing Act and other state or federal regulations (*Effectiveness*). In addition, the audit will assess if the Commission is achieving the best output of services and operations with the resources used to produce them (*Efficiency*).

#### **OBJECTIVES**

- **Reliability and Integrity of Financial and Operational Information** – Review the reliability and integrity of financial and operating information and the means used to identify, measure, classify, and report such information.
- **Compliance with Policies, Procedures, Laws, Regulations, and Contracts** – Review the systems established to ensure compliance with those policies, procedures, laws, regulations, and contracts, which could have a significant impact on operations and reports, and determine whether the organization is in compliance. Specifically, the Texas Racing Act, other applicable state administrative rules and the state penal code.
- **Effectiveness and Efficiency of Operations and Programs** – Appraise the effectiveness and efficiency with which the Commission's human and financial resources are employed.
- **Achievement of the Organization's Strategic Objectives** – Review operations and programs to ascertain whether results are consistent with established objectives and goals and whether the operations or programs are being carried out as planned and as required specifically with regard to the Texas Racing Act, other applicable state administrative rules and the state penal code.

Audit components to be reviewed for an Economy, Effectiveness, and Efficiency audit in accordance with the Texas Internal Auditing Act (Gov. Code, Title 3, Legislative Branch, Subtitle C. Legislative Agencies and Oversight Committees, Chapter 321, State Auditor):

**Sec. 321.0133. ECONOMY AND EFFICIENCY AUDIT.**

An economy and efficiency audit is an audit to determine:

- (1) whether the audited entity is managing or utilizing its resources, including state funds, personnel, property, equipment, and space, in an economical and efficient manner;
- (2) causes of inefficiencies or uneconomical practices, including inadequacies in management information systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing, policies, and equipment; and
- (3) whether financial, program, and statistical reports of the audited entity contain useful data and are fairly presented.

**Sec. 321.0134. EFFECTIVENESS AUDIT.**

(a) An effectiveness audit is an audit to determine, according to established or designated program objectives, responsibilities or duties, statutes and regulations, program performance criteria, or program evaluation standards:

- (1) whether the objectives and intended benefits are being achieved efficiently and effectively; and
- (2) whether the program duplicates, overlaps, or conflicts with another state program.

(b) An effectiveness audit may be scheduled only when the audited entity is not scheduled for review under the Texas Sunset Act (Chapter [325](#)).

Additional information as required by the State Auditor's Office:

1. Term of contract shall not exceed 90 days.
2. Provisions in the RFP relating to the State Auditor's Office for this Independent Internal Audit:
  - a. TxRC will provide the State Auditor a copy of the contract between the agency and the contractor.
  - b. TxRC will provide the State Auditor a copy of the contractor's final report.
  - c. State Auditor has access to working papers related to procured services.
  - d. State Auditor has access to all draft and final reports and memoranda of discussions with agency management.

## **II. Authority**

This Contract is entered into pursuant to Texas Government Code 2156.121.

### **III. Standards of Performance**

Contractor shall address all elements included in the required Final Report Format (ref A.7.3 Deliverables). Contractor shall assess each of the functions of the Commission and provide appropriate recommendations to improve the efficiency of the Commission. Contractor shall review TxRC's operations to determine if the Commission is properly staffed and funded to fulfill the requirements of All Applicable Laws and include all findings in the final report.

Contractor shall provide the services and the deliverables described herein in the manner required by all of the following documents:

1. The RFP and Addenda
2. Contractor's Proposal
3. Updated Respondent Information (if necessary)
4. Executed Purchase Order

**All of these documents constitute the Standards of Performance for this Contract.**

The Project Manager and a team of reviewers approved by the Executive Director will evaluate the Final Report to ensure compliance with the Standards of Performance noted above and make the decision on accepting and approving the Deliverables. If the Deliverables do not meet the Standards of Performance, the contract will be considered incomplete. The Contractor will be notified that the Deliverables have met or have not met the agreed upon specifications. If the Final Report is not accepted, the Contractor will be informed of the process to resubmit a corrected Deliverable. Payment will be withheld until the agency receives deliverables that meet the contract Standards of Performance.

#### **Vendor Performance Before and After the Award**

**In accordance with the provisions of Texas Government Code §§2155.074, 2155.075, 2156.007, and 2262.055, information obtained from the SPD's Vendor Performance Tracking System may be used in evaluating responses to this solicitation, including as a disqualifying factor.**

TxRC 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 § 20.115, TxRC 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, TxRC may initiate these examinations of Respondent's performance based upon media reports. Any investigations are at TxRC's sole discretion, and any negative findings, as determined by TxRC, may result in a non-award to Respondent. Information pertaining to VPTS is located at: <https://www.comptroller.texas.gov/purchasing/programs/vendor-performance-tracking>

Additionally, per Texas Government Code § 2155.089, TxRC will review successful Contractor's performance under a contract resulting from this solicitation after the Contract is completed or otherwise terminated. These reviews and any resulting classification grades will be posted on the Vendor Performance tracking System as noted in Texas Government Code § 2262.055.

#### **Order of Precedence**

In the event of any conflict or contradiction between or among these documents, the Purchase Order, as modified by any Contract Amendments, controls over the Updated Respondent Information. The Updated Respondent Information controls over the RFP, and the RFP, as modified by any Addenda, controls over the Proposal.

Contractor shall provide all of the above services and all reasonably related services in accordance with applicable professional standards of an Economy, Effectiveness, and Efficiency Internal Audit. The Contractor represents and warrants that it has the requisite qualifications, experience, personnel, and other resources to perform in the manner required by this Contract.

#### **IV. Personnel**

Contractor shall assign only qualified personnel to this Contract. Contractor may only substitute key personnel with Commission approval. Substituted key personnel are subject to the same certification and qualification requirements as the individuals they are being substituted for.

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Contractor. No subcontract under the Contract shall relieve Contractor of responsibility for ensuring the requested services are provided. If Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply:

- (a) Contractors planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.
- (b) Subcontracting shall be solely at Contractor's expense.
- (c) TxRC retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors.
- (d) Contractor shall be the sole contact for the Commission. Contractor shall list a designated point of contact for all TxRC inquiries.

#### **V. Invoicing and Payment Requirements**

Prior to authorizing payment to Contractor, TxRC shall evaluate Contractor's performance using the performance standards set forth in all documents constituting this Contract. Total payments shall not exceed the contracted amount. Payment shall be made upon completion of audit and delivery of report. Contractor shall provide an invoice to the TxRC upon delivery of the report to TxRC. No payment whatsoever shall be made under this contract without the prior submission of a detailed, correct invoice. Subject to the foregoing, TxRC must make all

payments in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251 (update). In order to receive payment under the Contract, Contractor must submit an original invoice to the TxRC, which will be designated in the purchase order as the "Bill To" address. 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 number authorizing the delivery of services.
5. A description of what the Contractor delivered, by month including, as applicable, the time period and total price of the services and travel expenses.

If an invoice does not meet this Section's requirements, TxRC 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.

### **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 TxRC Contractor will submit a corrected invoice that must be paid in accordance with Texas Government Code § 2251.021. The unpaid balance accrues interest if TxRC does not pay the corrected invoice by the appropriate date.

### **Time and Manner of Payment**

If the Contract deliverables are not disputed by TxRC, then pursuant to Texas Government Code Chapter 2251, payment by the TxRC is overdue on the 31st day after the later of: (1) the date the TxRC receives the goods under the Contract; (2) the date the performance of the service under the contract is completed; or (3) the date the TxRC receives the invoice for the goods or service.

### **Debts and Delinquencies**

TxRC is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, TxRC 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.

## **No Debt against the State**

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

## **Refunds**

If TxRC determines that it has overpaid the Contractor under the Contract, Contractor will refund that amount to the TxRC, depending on the entity that overpaid. TxRC 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 the TxRC may recoup the disallowed amount from funds payable under the Contract, to the extent the disallowed amount was incurred by the TxRC. If an audit identifies a disallowed amount after the expiration date of the Contract, TxRC 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.

## **Travel**

Contractor is responsible for any travel or per diem required to perform its obligations under the Contract. All travel and per diem that TxRC requests in addition to what the Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with State of Texas Travel Allowance Guide.

## **Direct Deposit**

TxRC encourages Contractors to receive payment by electronic means (e.g., direct deposit) as provided by the State of Texas.

## **Appropriations**

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency considerations, or any other disruptions of current appropriations, provisions of the Termination Article shall apply.

## **VI. Term and Termination**

This Contract shall become effective on the date signed by the appropriate official of TxRC and shall expire on (date) (per Amendment A) unless otherwise sooner terminated as provided in this Contract. Notwithstanding the termination or expiration of this Contract, the provisions of

this Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of this Contract. TxRC may, in its sole discretion, terminate this Contract upon thirty (30) days written notice to Contractor. Such notice may be provided by facsimile or certified mail, return receipt requested, and is effective upon Contractor's receipt.

## **VII. Confidentiality and Open Records**

Notwithstanding any provisions of this Contract to the contrary, Contractor understands that TxRC will comply with the Texas Public Information Act (PIA), Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. TxRC agrees to notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this contract. Contractor will cooperate with TxRC in the production of documents responsive to the request. TxRC will make a determination whether to submit a PIA opinion request to the Attorney General. Contractor will notify TxRC's General Counsel within twenty-four (24) hours of receipt of any third party requests for information that was provided by TxRC for use in performing the Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the PIA. Contractor agrees to maintain the confidentiality of information received from TxRC during the performance of this Contract, including information that discloses confidential personal information, particularly, but not limited to, social security numbers.

Contractor warrants that it will dispose of all information obtained from the Commission in a manner that ensures the security and confidentiality of the information. Contractor may not provide the audit report or any information from the audit report to any third party without the Commission's written consent.

Contractor further agrees that it may not use any information obtained during the course of conducting the audit for any other purpose, commercial or otherwise.

Contractor's personnel assigned to this project must sign a TxRC Non-Disclosure Agreement.

## **VIII. Insurance and Other Security**

Contractor represents and warrants that it will, within five (5) business days of executing this agreement, provide TxRC with current certificates of insurance or other proof acceptable to TxRC of insurance coverage as required in Section A.6 – Insurance of the RFP

## **IX. Indemnification**

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND THE TEXAS RACING COMMISSION, ITS OFFICERS, EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES,**

**INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY THE TEXAS RACING COMMISSION.**

**THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE TEXAS RACING COMMISSION FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE TEXAS RACING COMMISSION OR ITS EMPLOYEES.**

## **X. Dispute Resolution**

In resolving any and all disputes arising under the contract, the TxRC and Contractor shall utilize the dispute resolution process provided in Chapter 2260 of the Texas Government Code.

## **XI. Representations, Warranties, and General Provisions**

### **11.1. Family Code**

Under Section 231.006 of the Texas Family Code (relating to child support), Contractor represents and warrants that Contractor has no principal who is not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate.

### **11.2. Eligibility**

Under Government Code, Section 2155.004 (relating to certain taxes), Contractor represents and warrants that Contractor is eligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this representation and warranty is inaccurate. Contractor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas.

### **11.3. Liability for Taxes**

Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. TxRC shall not be liable for any taxes resulting from this Contract.



#### **11.4. Historically Underutilized Businesses (HUBs)**

Contractor represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Government Code, Chapter 2261.

#### **11.5. Amendments**

Except as provided in Section 11.12 of this Contract, this Contract may be amended only upon written agreement between TxRC and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.

#### **11.6. Applicable Law; Venue**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

#### **11.7. Strict Compliance**

Time is of the essence in the performance of this Contract. Contractor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

#### **11.8. Assignments**

Without the prior written consent of the Commission, the Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

#### **11.9. Partially Completed Work**

No later than the first calendar day after the termination of this Contract, or at the Commission's request, Contractor shall deliver all completed, or partially completed, work and any and all documentation or other products and results of these services to the TxRC. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of this Contract. Contractor shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the Commission.

#### **11.10. Federal, State, and Local Requirements**

Contractor shall 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-2's to common law employees. Contractor is responsible for both federal and state unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Contractor shall comply with all federal and state tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or federal or state withholding requirements. Contractor

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

#### **11.11. Severability Clause**

In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

#### **11.12. Applicable Law and Conforming Amendments**

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. TxRC reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TxRC or Contractor's compliance with all applicable state and federal laws and regulations.

#### **11.13. No Waiver**

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

#### **11.14. No Liability upon Termination**

If this Contract is terminated for any reason, TxRC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Government Code, Chapter 2260.

#### **11.15. Independent Contractor**

Respondent is not an employee, officer, or agent of TxRC for any purpose under this solicitation or Contract. Respondent is and remains an independent contractor in relationship to TxRC. TxRC shall not be responsible for withholding taxes from payments made under the Contract. Respondent may not claim vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind from TxRC.

### **11.16. Limitation on Authority; No Other Obligations**

Contractor shall have no authority to act for or on behalf of TxRC or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TxRC.

### **11.17. Patent, Trademark, Copyright and Other Infringement Claims**

Contractor shall indemnify, save and hold harmless the State of Texas from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's or Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify TxRC of such claim within five (5) business days of such notice. Contractor shall make no settlement of any such claim without TxRC's prior written approval. Contractor shall reimburse the State of Texas for any claims, damages, losses, costs, expenses, judgments, or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's counsel and shall also pay costs of multiple counsels, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents, and permits.

### **11.18. 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."

### **11.19. Supporting Documents, Retention; Right to Audit; Independent Audits**

Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable

periods, all documents and other information related to the "Work" as defined in paragraph 11.30 of this Contract. In accordance with 13 Tex. Admin. Code § 6.94(a)(9), contractors are Third Party Custodians of State Records. Contractors shall abide by the state's Electronic Records Retention laws in the management of state records and communications. Contractor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TxRC and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize the Texas Racing Commission and the State of Texas to immediately assess appropriate damages for such failure. The acceptance of funds by Contractor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Contractor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller, or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

#### **11.20. Deceptive Trade Practices; Unfair Business Practices**

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices 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.

#### **11.21. Antitrust**

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, nor anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. 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.

#### **11.22. No Conflicts**

Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Contractor's

provision of services under this Contract would not reasonably create an appearance of impropriety. See RFP, Section A.14.7 Conflicts of Interest

### **11.23. Felony Criminal Convictions**

Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised TxRC in writing as to the facts and circumstances surrounding the conviction. See RFP, Section A.14.8 Background Investigations.

### **11.24. Notices**

Except as provided in Section VI, any written notices required under this Contract will be by hand delivery or by U.S. Mail, certified, return receipt requested, to the affected party's designated notice address. The designated notice address for TxRC and the designated notice address for Contractor shall be those specified on Page 1, Paragraph 1 of the contract. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

### **11.25. 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 Proposal lists. By submission of a signed Proposal, the Respondent certifies the following.

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 TxRC's discretion.
2. Respondent waives any claim against and releases TxRC, 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.
3. Respondent will promptly notify TxRC 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 the TxRC 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 the TxRC prior to being awarded the Contract are material, true and correct.

## **11.26. Force Majeure**

Neither Contractor nor TxRC shall be liable to the other for any delay in, or failure of performance, of any requirement included in any Purchase Order resulting from this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

## **11.27. Debts or Delinquencies to State**

The Comptroller is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the state. Contractor agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under this Contract shall be applied 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.

## **11.28. Work Made for Hire**

For the purposes of this Contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of TxRC. All right, title and interest in and to said property shall vest in TxRC upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in TxRC, or that such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to TxRC.

The Commission shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give TxRC and/or the State of Texas, as well as any person designated by TxRC and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under the Contract.

### **11.29. Default**

If Contractor is found to be in default under any provision of the Contract, TxRC may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Contractor will be responsible for paying damages to TxRC including, but not limited to, re-procurement costs and any consequential damages to the State of Texas or TxRC resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

### **11.30. Prohibited Use of Appropriated or other Funds under Control of State Agency; Lobbying**

The Contractor represents and warrants that TxRC's payments to the Contractor and Contractor's receipt of appropriated or other funds under any of this or any resulting agreement are not prohibited by Government Code §556.005 or §556.008.

### **11.31. Buy Texas**

In accordance with Texas Government Code § 2155.4441, Contractor 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.

### **11.32. Other Commerce**

In accordance with § 2252.152 of the Texas Government Code, a state agency may not award a contract to a company engaged in business with Iran, Sudan, or a foreign terrorist Organization. The Bidder certifies it is not ineligible to receive a state contract under 2252.152. Bidder represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Bidder does not boycott Israel and will not boycott Israel during the term of any contract resulting from this RFP.

### **11.33. Merger**

This Contract contains the entire agreement between Contractor and TxRC and supersedes any prior understandings or oral or written agreements between TxRC and Contractor on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Contract and any attachments shall be valid unless in writing and executed by TxRC and Contractor.

### **11.34. Revolving Door**

Under Tex. Gov't Code §572.069, state officers and employees who participated in a procurement or contract negotiation are prevented from accepting employment with the vendor for two (2) years after the contract is signed or the procurement is terminated or withdrawn.

Pursuant to Government Code 2261.252 the TxRC may not enter into a contract for the purchase of goods or services with a private vendor if members of the Texas Racing Commission or certain positions within the agency including the Executive Director, the General Counsel or the Procurement Officer or their covered family members have a financial interest in the vendor. Any contract found to violate Government Code 2261.252 is void.



**ATTACHMENT A**  
**RFP No. 476-18-131 Economy, Effectiveness, and Efficiency Audit**

**EXECUTION OF PROPOSAL**

***NOTE: THIS DOCUMENT MUST BE SIGNED AND RETURNED WITH THE PROPOSAL. PROPOSALS THAT DO NOT INCLUDE THIS DOCUMENT WILL BE DISQUALIFIED. THE PROPOSAL SHALL BE VOID IF FALSE STATEMENTS ARE CONTAINED IN THIS DOCUMENT.***

**By signature hereon, Respondent certifies that:**

All statements and information prepared and submitted in the response to this RFP are current, complete, and accurate.

Respondent has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

Neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent 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 the contents of this Proposal either directly or indirectly to any competitor or any other person engaged in the same line of business during the procurement process for this RFP.

When a Texas business address shown hereon that address is, in fact, the legal business address of Respondent and Respondent qualifies as a Texas Resident Bidder under 1 TAC § 111.2.

Under Government Code § 2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent's Proposal. If Respondent is not eligible, then any contract resulting from this RFP shall be immediately terminated. Furthermore, "under Section 2155.004, Government Code, the vendor [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."

Under Family Code § 231.006, relating to child support obligations, Respondent and any other individual or business entity named in this solicitation are eligible to receive the specified payment and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate.

Any Proposal submitted under this RFP shall contain the names and social security numbers of person or entity holding at least a twenty-five percent (25%) ownership interest in the business entity submitting the Proposal.

Name:	Social Security Number:
Name:	Social Security Number:

**Note: Do not send Social Security Numbers via electronic document, FAX or email.**

**This information, Name and Social Security Number, should only be submitted with the Respondent's hard copy documents. Please contact the Point of Contact if you have questions regarding the submission of this required information.**

Under *Government Code* § 669.003, relating to contracting with an executive of a state agency, Respondent represents that no person who, in the past four years, served as an executive of the Texas Racing Commission or any other state agency, was involved with or has any interest in this Proposal or any contract resulting from this RFP. If Respondent employs or has used the services of a former executive head of the Texas Racing Commission or other state agency, then Respondent shall provide the following information: Name of former executive, name of state agency, date of separation from state agency, position with Respondent, and date of employment with Respondent.

Respondent agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

TxRC is federally mandated to adhere to the directions provided in the 2001 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, <http://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 that 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 EO 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.

Under Section 2155.006(b) of the Texas Government Code, 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 Section 2155 of the Texas Government Code, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.

Pursuant to Section 2262 of the Texas Government Code, the state auditor may conduct an audit or investigation of the vendor or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the Respondent or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Respondent or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Respondent will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the vendor and the requirement to cooperate is included in any subcontract it awards.

Name of Respondent: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT B**  
**RFP No. 476-18-131 Economy, Effectiveness, and Efficiency Audit**

**MANDATORY COST PROPOSAL**

**Using this format, each respondent must state its proposed hourly rates and costs, all fees, travel, and any other estimated expenses. All proposed hourly rates must be listed and broken out by key personnel and by function for this project. See example format on the next page.**

Date: \_\_\_\_\_

Staffing Fees: \$ \_\_\_\_\_

Travel Expenses: \$ \_\_\_\_\_

Estimated Other Expenses: \$ \_\_\_\_\_

**Total Cost Proposal:** \$ \_\_\_\_\_

Name of Respondent: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**No price information should be included in any other portion of the proposal. This attachment should be included in the electronic copy and the original hard copy only. Do not include Attachment B in the 3 hard copies.**

**Page 2 of ATTACHMENT B**

**Format Examples - Billable Hours, Fees, Expenses, and Travel Costs**

Position-Name	Hourly Rate	No of Hours	Total Fees	Travel Costs	Other Expenses	Total Cost
<b>Total</b>						

Travel Costs

Position-Name

Trip #	1	2	3	4	5	Total
Location						
Reason						
Travel						
Lodging						
Meals						
Incidentals						
<b>Total</b>						

**ATTACHMENT C**  
**RFP No. 476-18-131 Economy, Effectiveness, and Efficiency Audit**

**CONFLICT OF INTEREST DISCLOSURE**

No Respondent, Respondent's employees, family member or appointee to any corporate board shall be interested in, or in any manner connected with the licensing or operation of any person, corporation, investor or other entity regulated by the Texas Racing Act. Neither shall any Respondent, Respondent's employees, family member or appointee to any corporate board, receive from any person, firm, corporation, investor or other entity regulated by the Texas Racing Act, any rebate, gift, money or other thing of value whatever. Nor shall any Respondent, Respondent's employee, family member or appointee to any board receive any promise, obligation, or contract for future reward or compensation from any person, firm, corporation, investor or other entity regulated by the Texas Racing Act.

I certify that I have read and understand the above statement.

\_\_\_\_\_  
Respondent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

**ATTACHMENT D**  
**RFP No. 476-18-131 Economy, Effectiveness, and Efficiency Audit**

***This Non-Disclosure Agreement will be executed  
as part of the contract for audit services. It is included in the RFP for informational  
purposes only.***

**NON- DISCLOSURE AGREEMENT**

**THIS NON-DISCLOSURE AGREEMENT** (“Agreement”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the Texas Racing Commission (the “Commission”) and \_\_\_\_\_ (“Contractor”).

**RECITALS**

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) for Audit Services Contract RFP No. \_\_\_\_\_, dated \_\_\_\_\_, 2018 (the “RFP”); and

**WHEREAS**, in order for the Contractor to perform the work required under the Contract, it will be necessary for the Commission at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively the “Contractor’s Personnel”) with access to certain information the Commission deems confidential or proprietary information (the “Confidential Information”).

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the RFP and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Confidential Information means any and all information provided by or made available by the Commission to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such and any other material and information which may come into its possession or knowledge in connection with its work for the Commission. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the Commission agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the Commission in relation to the Contract. The Contractor does not acquire any rights, title, copyright or other proprietary rights, express or implied, to any systems or software disclosed to the Contractor. Furthermore, the Contractor may not disclose or duplicate any systems or software information shall not copy or duplicate any system information or software, work products or any portion thereof, in any form, or make any disclosure to any third party.
2. Contractor shall not, without the Commission’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the Commission except for the sole and exclusive

purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor's Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor's Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute a copy of this Agreement and thereby be subject to the terms and conditions of this Agreement to the same extent as the Contractor. Contractor shall update Exhibit A by adding additional names (whether Contractor's personnel or a subcontractor's personnel) as needed, from time to time, and as examples, during their performance under a Task Order Agreement or responding to a Task Order Request for Proposals

3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor's performance of the RFP or who will otherwise have a role in performing any aspect of the RFP, the Contractor shall first obtain the written consent of the Commission to any such dissemination. The Commission may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. Contractor shall promptly advise the Commission in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the Commission in seeking injunctive or other equitable relief against any such person(s).
6. Contractor shall, at its own expense, return to the Commission all copies of the Confidential Information in its care, custody, control or possession at the end of their work for the Commission, upon request of the Commission, or on termination of the Contract.
7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the Commission.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the Commission and that monetary damages may be inadequate to compensate the Commission for such breach. Accordingly, the Contractor agrees that the Commission may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Texas State Courts. The Commission's rights and remedies hereunder are cumulative and the



Commission expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the Commission suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the Commission from and against any such losses, damages, liabilities, expenses, and costs.

9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of this Agreement and the Contractor shall provide originals of such executed Agreements to the Commission.

10. The parties further agree that:

a. this Agreement shall be governed in all respects by the laws and statutes of the State of Texas; the jurisdiction for any action hereunder shall be the District Court for the State of Texas. The venue of any action hereunder shall be the District Court for Travis County, Texas.

b. the rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the Commission;

c. the Commission makes no representations or warranties as to the accuracy or completeness of any Confidential Information;

d. the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;

e. signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures; and

f. the Recitals are not merely prefatory but are an integral part hereof.

This Agreement, including all exhibits, constitutes the entire agreement of the parties.

Executed in Austin, Texas on \_\_\_\_\_, 2018.

FOR THE COMMISSION:

FOR CONTRACTOR:

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Chuck Trout  
Executive Director  
Texas Racing Commission  
8505 Cross Park Dr., #110  
Austin, Texas 78754-4594

TxRC Phone (512) 833-6699

---

{Name of Signatory Authority}  
{Title of Signatory Authority}  
{Company Name}  
{Company Address}  
{Company City/State/Zip}  
{Company Phone}  
{Company URL}

**ATTACHMENT E**

**RFP No. 476-18-131 Economy, Effectiveness, and Efficiency Audit**

**RESPONDENT INFORMATION**

**Respondents must complete all of the following blanks and include all required attachments in Respondent's Offer AT THE TIME OF THE INITIAL SUBMISSION OF THE OFFER TO Agency.**

**A. Respondent's Contact Person**

**Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Email Address** \_\_\_\_\_ **Telephone** \_\_\_\_\_

**Business Address** \_\_\_\_\_

**B. Texas Identification Number (TINS Vendor #)** \_\_\_\_\_  
**Federal Employees Identification Number:** \_\_\_\_\_

**C. References**

Provide the names of at least three references for which Respondent has had contracts in similar size and scope to this RFP during the past three years. If none, specify none. At a minimum, Respondent should provide the following for each reference: Entity Name, Type of Audit, Annual Amount of Contract, Dates of Contract, Contact Name, Phone Number, and Address.

This information will be used in evaluating Respondent's references, Respondent's prior performance and other indicators of Respondent's probable performance under any PO resulting from this RFP.

**Entity Name** \_\_\_\_\_ **Type of Audit** \_\_\_\_\_

**Dates of Contract** \_\_\_\_\_ **Annual Amount of Contract** \_\_\_\_\_

**Contact Name** \_\_\_\_\_ **Phone** \_\_\_\_\_

**Address** \_\_\_\_\_ **Email** \_\_\_\_\_

**Entity Name** \_\_\_\_\_ **Type of Audit** \_\_\_\_\_

**Dates of Contract** \_\_\_\_\_ **Annual Amount of Contract** \_\_\_\_\_

Contact Name \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_ Email \_\_\_\_\_

Entity Name \_\_\_\_\_ Type of Audit \_\_\_\_\_

Dates of Contract \_\_\_\_\_ Annual Amount of Contract \_\_\_\_\_

Contact Name \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_ Email \_\_\_\_\_

#### **D. Profile**

Respondent must include the following information that:

- a) describes the general nature of previous similar work performed by Respondent, particularly within the last three(3) years;
- b) describes the size and scope of all operations, including number of Respondent's employees and years in business;
- c) describes Respondent's prior contracting experience with state agencies and similar entities; and
- d) any other information Respondent believes is pertinent to this RFP.

#### **E. Personnel**

Respondent must provide in detail the qualifications, education, training, experience and certifications of all Respondent's employees who will or may provide services under any PO resulting from this RFP. If additional pages are required, use this format:

**Employee Name:**

**Qualifications:**

**Education:**

**Training:**

**Certifications:**

**Licenses:**

**ATTACHMENT F**

**RFP No. 476-18-131 Economy, Effectiveness, and Efficiency Audit**

**PERSONAL BACKGROUND DISCLOSURE FORM**

**TEXAS RACING COMMISSION**

(Rev. March 2018)

IN CONNECTION WITH THE TEXAS RACING COMMISSION'S EFFICIENCY, ECONOMY, AND EFFECTIVENESS AUDIT, PLEASE PROVIDE US WITH INFORMATION ABOUT YOURSELF BY COMPLETING THIS FORM. READ THE ENTIRE FORM BEFORE AND AFTER COMPLETION. THE FORM SHOULD BE COMPLETED IN ITS ENTIRETY, TYPED OR LEGIBLY PRINTED. IF ADDITIONAL SPACE IS NEEDED IN COMPLETING A CERTAIN SECTION, PLEASE ATTACH A SEPARATE PAGE AND REFER TO THE INFORMATION ITEM NUMBER AND/OR LETTER FOR CLARIFICATION. FOR NON-APPLICABLE SECTIONS USE THE ABBREVIATION "N/A" IN THE SPACE PROVIDED.

**A. IDENTIFICATION**

NAME: \_\_\_\_\_ U.S. CITIZEN? \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_ BIRTH PLACE: \_\_\_\_\_

PRESENT ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

TELEPHONE #: HOME: \_\_\_\_\_ WORK: \_\_\_\_\_

DRIVER'S LICENSE #: \_\_\_\_\_ STATE: \_\_\_\_\_

NICKNAME OR OTHER NAME(S) YOU ARE KNOWN BY:

\_\_\_\_\_

IF LESS THAN 5 YEARS AT ABOVE ADDRESS, LIST PREVIOUS ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

NAME OF SPOUSE: \_\_\_\_\_ MAIDEN NAME: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_ BIRTH PLACE: \_\_\_\_\_

**B. EMPLOYMENT**

*( LIST PRESENT AND PREVIOUS EMPLOYER )*

1. PRESENT EMPLOYER: \_\_\_\_\_

SUPERVISOR: \_\_\_\_\_ PHONE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

DATE EMPLOYED: \_\_\_\_\_ SALARY: \_\_\_\_\_

POSITION: \_\_\_\_\_

2. PREVIOUS EMPLOYER: \_\_\_\_\_

SUPERVISOR: \_\_\_\_\_ PHONE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

DATE EMPLOYED: \_\_\_\_\_ SALARY: \_\_\_\_\_

POSITION: \_\_\_\_\_

**C. OCCUPATIONAL LICENSES**

*( LIST OCCUPATIONAL CERTIFICATES/LICENSES YOU HOLD OR HAVE HELD IN THE PAST )*

CERTIFICATE OR LICENSE # \_\_\_\_\_ STATE \_\_\_\_\_ DATE VALID  
\_\_\_\_\_

CERTIFICATE OR LICENSE # \_\_\_\_\_ STATE \_\_\_\_\_ DATE VALID  
\_\_\_\_\_

CERTIFICATE OR LICENSE # \_\_\_\_\_ STATE \_\_\_\_\_ DATE VALID  
\_\_\_\_\_

CERTIFICATE OR LICENSE # \_\_\_\_\_ STATE \_\_\_\_\_ DATE VALID  
\_\_\_\_\_

**D. GENERAL INFORMATION**

1. HAVE YOU EVER ENGAGED IN ANY CONDUCT LISTED UNDER SECTION 13.01 OF THE TEXAS RACING ACT ( SEE BELOW )?

IF YES, ATTACH AN EXPLANATION.

Section 13.01. REGULATION BY COMMISSION. The commission shall adopt rules providing for the exclusion or ejection from an enclosure where greyhound races or horse races are conducted, or from specified portions of an enclosure, of a person:

- 1) who has engaged in bookmaking, touting, or illegal wagering;
- 2) whose income is from illegal activities or enterprises;
- 3) who has been convicted of a violation of this Act;
- 4) who has been convicted of theft;
- 5) who has been convicted under the penal law of another jurisdiction for committing an act that would have constituted a violation of any of the rules mentioned in this section;
- 6) who has committed a corrupt or fraudulent act in connection with greyhound racing or horse racing or pari-mutuel wagering or who has committed any act tending or intended to corrupt greyhound racing or horse racing or pari-mutuel wagering in this state or elsewhere;
- 7) who is under suspension or ruled off a racetrack by the commission or a steward in this state or by a corresponding authority in another state because of fraudulent or corrupt practices or other acts detrimental to racing;
- 8) who has submitted a forged pari-mutuel ticket or has altered or forged a pari-mutuel ticket for cashing or who has cashed or caused to be cashed an altered, raised, or forged pari-mutuel ticket;
- 9) who has been convicted of committing a lewd or lascivious act or other crime involving moral turpitude;
- 10) who is guilty of boisterous or disorderly conduct while inside a racing enclosure;
- 11) who is an agent or habitual associate of a person excludable under this section; or
- 12) who has been convicted of a felony.

2. HAVE YOU PERSONALLY EVER BEEN INVESTIGATED AND / OR LICENSED BY ANY STATE RACING COMMISSION AND GAMING COMMISSION?

IF YES, ATTACH EXPLANATION.

3. ARE YOU PERSONALLY RELATED, LINKED, ACQUAINTED, OR A BETTOR WITH ANY SPORTS BOOKMAKER IN TEXAS OR THE UNITED STATES?

IF YES, ATTACH EXPLANATION AND IDENTIFY THE BOOKMAKER.

4. ARE YOU AN OWNER, LESSOR, OR LESSEE OF ANY HORSE OR GREYHOUND INVOLVED IN THE PARI-MUTUEL INDUSTRY, IN THIS STATE OR ANY OTHER STATE?

IF SO, PLEASE LIST THEIR NAMES, BREED AND PARI-MUTUEL STATE INVOLVED ON AN ATTACHED LIST.

5. DO YOU PRESENTLY OWN OR CONTROL A FINANCIAL INTEREST IN A LICENSEE OF THE COMMISSION?

6. DO YOU PRESENTLY ACCEPT ANY REMUNERATION FROM A RACETRACK?
  
7. DO YOU PRESENTLY HAVE ARRANGEMENTS TO RECEIVE ANY PART OF THE PURSE OR TEXAS BRED INCENTIVE AWARD PAID ON ANY GREYHOUND OR HORSE WHICH RACES IN THE STATE OF TEXAS?

**E. RELATIVES**

1. ARE YOU RESIDENTIALLY DOMICILED WITH OR RELATED TO A PERSON WHO:
  - a) OWNS OR CONTROLS A FINANCIAL INTEREST IN A LICENSEE OF THE COMMISSION;
  - b) IS EMPLOYED BY OR SERVES AS A PAID CONSULTANT TO A LICENSEE OF THE COMMISSION, AN OFFICIAL BREED REGISTRY, OR A TEXAS TRADE ASSOCIATION, AS DEFINED BY SECTION 2.071(C) OF THE RACING ACT, IN THE FIELD OF HORSE OR GREYHOUND RACING OR BREEDING;
  - c) OWNS OR LEASES A RACE ANIMAL THAT PARTICIPATES IN PARI-MUTUEL RACING IN THIS STATE; OR
  - d) ACCEPTS OR IS ENTITLED TO ANY PART OF THE PURSE OR TEXAS-BRED INCENTIVE AWARD TO BE PAID ON A GREYHOUND OR A HORSE IN A RACE CONDUCTED IN THIS STATE.

(YES/NO) \_\_\_\_\_

IF YES, PLEASE EXPLAIN RELATIONSHIP AND RELATIVE'S INVOLVEMENT IN RACING:

2. DO YOU HAVE ANY RELATIVES RELATED IN THE SAME MANNER, AS REFERENCED ABOVE, WHO:
  - a) IS EMPLOYED BY THE TEXAS RACING COMMISSION?
  - b) IS EMPLOYED IN ANY CAPACITY AT A LICENSED PARI-MUTUEL FACILITY IN THE STATE OF TEXAS?
  - c) HAS BEEN CONVICTED OF ANY FELONY CRIME?

IF THE ANSWER IS YES TO ANY OF THE ABOVE, PLEASE EXPLAIN:

**CERTIFICATION**

**HAVE YOU SIGNED AND APPROVED THE ATTACHMENT F, ADDENDUM 1- STATEMENT OF CRIMINAL HISTORY AND ADDENDUM 2-AUTHORIZATION FOR EXAMINATION AND RELEASE OF INFORMATION? (BOTH MUST BE NOTARIZED AND SUBMITTED WITH CONTRACT.)**

I CERTIFY THAT THE ANSWERS GIVEN TO QUESTIONS IN THIS BACKGROUND DISCLOSURE FORM ARE TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE.

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

*(PLEASE REVIEW THE FORM FOR COMPLETENESS AND ACCURACY IN ALL SECTIONS.)*



**ATTACHMENT F**

**ADDENDUM 1**

**(PERSONAL BACKGROUND DISCLOSURE AND RELEASE)**

**STATEMENT OF CRIMINAL HISTORY**

**TEXAS RACING COMMISSION**

I, \_\_\_\_\_, do hereby attest to the following fact:

*Please check one:*

- I have never been convicted, in this state or another state, of a felony or misdemeanor.
- I have been convicted, in this state or another state, of a felony or misdemeanor. *(If this statement is checked, please state the date and offense and describe the circumstances of each conviction.)*

I understand that my failure to respond truthfully to the statements made herein could affect the Texas Racing Commission's decision regarding this project.

\_\_\_\_\_  
(Signature)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 20 \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

My commission expires: \_\_\_\_\_  
State: \_\_\_\_\_

**ATTACHMENT F**

**ADDENDUM 2**

**(PERSONAL BACKGROUND DISCLOSURE AND RELEASE)**

**AUTHORIZATION FOR EXAMINATION AND RELEASE OF INFORMATION**

**STATE OF TEXAS**  
**BEFORE THE TEXAS RACING COMMISSION**

I, \_\_\_\_\_, do hereby authorize a review, full disclosure and release of any and all records concerning myself to any duly authorized officer, agent, or employee of the Texas Department of Public Safety or the Texas Racing Commission, whether the records are of a public, private, or confidential nature with the following understandings:

1. The information reviewed, disclosed, and/or released may be used by the State of Texas for any lawful purpose.
2. I release the providers and users of the information collected pursuant to this authorization from any liability under state or federal privacy laws and further release the State of Texas, its officers, agents, and employees from any liability which may be incurred as a result of the collection and use of the information.
3. If this authorization is not sufficient to obtain access to certain records, it is understood that I may be requested to execute some other appropriate authorization or release and that any failure to do so may be taken into consideration by the Texas Racing Commission in its review of this project.
4. I understand that I may revoke this authorization in writing at any time and that the Texas Racing Commission may take any such revocation of this authorization into consideration in its review of this project.
5. This authorization will automatically expire one year from the date it is signed.
6. A photocopy of this authorization will have the same force and effect as the original.
7. If my employer is selected to perform this audit, I will provide my social security number to the Commission for a background check.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 20 \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

My commission expires: \_\_\_\_\_

State: \_\_\_\_\_

**ATTACHMENT G**  
**RFP No. 476-18-131 Economy, Effectiveness, and Efficiency Audit**

**OVERVIEW OF STAFF DUTIES**

Executive Director	Overall responsibility for ensuring that the agency's regulatory responsibilities are fulfilled.
Chief of Staff/Policy Development Officer	Plans & directs administrative & operational activities for the ED, Administrative Assistant to ED, develops program policies and procedures, Open Records Administrator, assists legal with Commission meetings, updates website, and prepares administrative reports, studies and specialized projects.
General Counsel	Responsible for coordinating all aspects of Commission meetings, serves as prosecutor in contested cases before racetrack officials and State Office of Administrative Hearing, provides general legal advice to commissioners and staff on all laws affecting the agency including the Racing Act, open government, contracts/procurement, applicable federal laws, and administrative procedures. Ensures agency compliance with all applicable laws by assisting staff in developing and reviewing office policies and procedures, agency structure and programs and legislative programs.
Public Information Officer	Serves as agency's liaison to media, ensures editing, accuracy, and completeness of correspondence and publications, prepares news releases, responsible for preparing Annual Report, Strategic Plan, and other special reports or studies, assists with open records requests, and maintains and updates Rules of Racing. In addition to PIO duties, serves as part-time licensing technician at field offices.
Director of Information Technology	Oversees all aspects of IT operations. Develops and oversees IT budget. Serves as Database/Network/Systems Administrator, Information Security Officer, Information Resource Manager, I.T. Purchaser, Accessibility Coordinator, Electronic Open Records, Website Administrator, Electronic Records Administrator, Programmer, Project Manager, and assists with responses to Help Desk
Administrative Assistant	Administrative Assistant to Director of IT, maintains file systems and database records, assists with and maintains physical inventory of agency hardware/software in agency database, manages electronic forms, assists with responses to Help Desk, updates website, assists with purchases and equipment pricing, and serves as back-up receptionist as needed.
System Support Specialist	Performs Help Desk function for Windows PC environment including all peripherals and software. Serves as Windows Server administrator, Network Monitor, Email Administrator, and Windows Patch Manager. Responsible for racetrack office IT setup and support.

Systems Analyst	Performs advanced Oracle database forms and reports programming. Modifies existing applications and develops new programs as required.
Chief Financial Officer	Oversees all aspects of agency's accounting and budgeting, responsible for legislative appropriations request, operating budget, annual financial report, and other mandated reports. Testifies before the Legislative Budget Board and the legislature in regards to the agency's budget and legislative appropriation request, and serves as liaison with Legislative Budget Board, Governor's Budget Office, State Auditor's Office and Comptroller's Office.
Director of Administration	Supervises the daily operations of several agency functions, including human resources, accounting and budgeting, purchasing, and material and property management. Assists with preparation of operating budget, legislative appropriations request, annual financial report, and other mandated reports. Prepares performance measure reports and oversees staff development plans and activities.
Human Resources Administrator	Assist with financial statements development, accounting transactions, payroll, human resource and leave records, and reports. Ensures compliance with applicable federal, state, and local regulations. Serves as benefits coordinator, prepares and reconciles insurance, retirement, and tax-flex reports, maintains workers' compensation and unemployment benefits reimbursement accounts, reconciles cash receipts with deposits, and prepares IRS quarterly and yearly reports. Provides back-up to Accounts Payables.
Accounts Payables	Prepares all purchase vouchers for payment, responds to vendors, agency staff, and other state agency inquiries on vendor accounts or deadlines and provide problem resolution, prepares payment for travel, hotels, CitiBank, rental cars, and ITV's, prepares deposit vouchers ,
Purchasing	Prepares, organizes and coordinates specifications for agency purchase; prepares procurement documents; oversees the maintenance of detailed records of items purchased, received, prepared and issued. Performs annual property inventory, HUB/recycled materials, and surplus property reporting requirements. Prepares Annual Procurement Plan.
Accounting Technician	Provides administrative and technical assistance to Chief Financial Officer and Director of Pari-Mutuels. Maintains record keeping and filing systems, analyzes and performs data entry into database or spreadsheets. Assists with the reconciling of occupational licensing deposits, reconciling travel expenditures by department, and assisting with the distribution of Accredited Texas Bred funds & annual fee collection. Assists with receptionist duties as needed.
Deputy Executive Director	Provides assistance to the Executive Director and manages the Racing Division's field regulatory teams and pari-mutuel auditing.

Administrative Assistant	Administrative Assistant to Deputy ED, supports five Directors, coordinates & oversees purse releases to THP and breed registries, posts rulings to website, and makes all travel arrangements.
Director of Licensing	Hire, train and supervise licensing technicians, coordinate and supervise their work assignments and travel. Fills in as licensing technician at tracks and fills in as Steward and/or Safety Steward as needed.
Licensing Technician (Austin)	Processes applications for occupational licensees; fingerprints applicants; collects license fees and fine payments; prepares daily receipt reports, balance receipts, and make deposits; and serves as back-up receptionist.
Licensing Technicians (field staff)	Processes applications for occupational licensees; fingerprints applicants; collects license fees and fine payments; prepares daily receipt reports, balance receipts, and make deposits; and provides administrative support for Stewards/Judges.
Receptionist	Receptionist, processes incoming mail and maintains agency mail log, processes license applications, performs variety of administrative work for senior staff, including routine correspondence, records management, shredding documents and filing.
Chief Steward/Judge	Hires, trains and supervises stewards and racing judges, coordinates and supervises their work assignments and travel, monitors racetrack operations, approves racetrack officials, and serves as steward or judge. Chief Steward/Judge works in the 'field' as needed.
State Steward/Judge (field staff - seasonal)	Interprets and enforces the Texas Racing Act and Commission rules and determines all questions, disputes, complaints, or objections relating to racing matters in accordance with applicable laws. Issue decisions relating to the conduct of a race or race meeting. Reviews applications for occupational licenses submitted at a racetrack and makes decisions regarding the issuance of certain licenses. Oversees the conduct of live races and decides the official order of finish, including determining whether an animal should be disqualified. Oversees entry process, scratches, and substitutions. (Director of Licensing works as Steward and Safety Steward as needed. One Steward fills in as Test Barn Supervisor as needed.)
Director of Investigations	Hires, trains and supervises investigators, coordinates and supervises their work assignments and travel, develops budget and monitors expenditures, serves as agency's Security Manager, responsible for providing continuing education for investigators, and participates in outside law enforcement training.
Investigators (field staff - seasonal)	Conducts investigations of alleged violations of laws, rules and regulations, interviews witnesses, and prepares written case reports on violations, including animal drug positives, criminal history records, testing, illegal wagering activity, and other violations. Presents cases to Board of Stewards/Judges and provide testimony. Conducts searches of racetrack facilities and occupational licensees for contraband.

<p>Veterinary Medical Director</p>	<p>Hires, trains and supervises veterinarians and test barn supervisors, coordinates and supervises their work assignments and travel. Administers and supervises all aspects of agency's program relating to race animal health, soundness, and drug testing. Establishes standard operating procedures for all veterinary and technical staff, responds to citizen inquiries and complaints, develops budget and monitors expenses, and serves as liaison with Texas Veterinary Medical Diagnostic Laboratory, American Association of Equine Practitioners, Texas Veterinary Medical Association, etc. (Works in the field as needed.)</p>
<p>Commission veterinarians (field staff)</p>	<p>Performs complex veterinary work involving specialized professional diagnostic and prognostic evaluation of conditions of racing animals. Before racing, makes soundness determinations for animals injured, ill, or lame. Enters data into database with recommendations for subsequent evaluations. When necessary makes recommendations for removal of animal from competition or humanely destroy. Acts as primary liaison between Commission, practicing veterinarians, and all direct horse/greyhound service personnel on matters relating to rules and policies governing animal health and welfare issues.</p>
<p>Test Barn Supervisors (field staff)</p>	<p>Under general oversight by the Veterinary Medical Director, maintains test barn facility, hires, trains, and oversees association staff involved in test barn activities including taking samples in accordance with drug testing procedures and policies. Audits drug testing invoices from TVMDL.</p>
<p>Director of Pari-Mutuels</p>	<p>Oversees the simulcast approval process, totalizator system testing, purse audit/reconciliations, and collections and reconciliations of deposits, Accredited Texas Bred incentive program and escrow purse distributions, and conducts administrative and pari-mutuel inspections at the racetracks. Audits fees received for the state from the racetrack ATMs and breed registries' monthly bank account information. Liaison between the agency and Comptroller's office, breed registries, racetrack mutuels and simulcast departments, tote companies, and various vendors.</p>
<p>Auditor (field staff)</p>	<p>Audits racetracks' daily deposits to state treasury, enters pari-mutuel data into agency database, audits racetracks' daily handle and purse information, verifies state's share of wagering pools, audits simulcast requests and contracts, assists public with inquiries or complaints, liaison between the agency and racetracks' mutuels and accounting departments. Assists with totalisator testing.</p>



February 9, 2018

2018 FEB 12 PM 2:42

Mr. Gerald Dube, Director of Administration  
Racing Commission  
8505 Cross Park Drive, Suite 110  
Austin, TX 78754

RECEIVED  
TEXAS  
COMMISSION



Re: Audit Delegation Request 476-2018-002

Dear Mr. Dube:

In accordance with Texas Government Code, Section 321.020, the State Auditor's Office delegates to the Racing Commission (Commission) the authority to employ a private auditor to provide internal audit services related to the economy, effectiveness, and efficiency of the Commission's financial management and operations, as described in your online request submitted February 5, 2018.

This delegation of authority is subject to the following:

1. The services provided should be performed in accordance with the Texas Internal Auditing Act (Texas Government Code, Chapter 2102).
2. This delegation of authority is effective for a period of one year from the date of this letter (End Date). Any contract entered into under this delegation of authority with a term that extends beyond the End Date, or any option to renew the contract beyond the End Date, should be subject to the renewal of this delegation of authority by the State Auditor.
3. The Commission will notify the State Auditor's Office if an amendment to the contract significantly alters any contract terms, including, but not limited to, the scope of work to be performed and the term of the contract.
4. The Commission will comply with applicable law, policies and procedures in the procurement of audit services, the expenditure of funds under the contract, and all other aspects of forming and administering the contract with the private auditor.
5. The Commission will ensure that the State Auditor's Office promptly receives a copy of any report resulting from a peer review of the private auditor that is received by the private auditor after entering into the contract with the Commission.

Robert E. Johnson Building  
1501 N. Congress Avenue  
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P.O. Box 12067  
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(512) 936-9500

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Mr. Gerald Dube, Director of Administration  
Racing Commission  
February 9, 2018  
Page 2

6. Any contracts entered into under this delegation of authority should include the following language: The Contractor understands that acceptance of state funds under this contract acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. The Contractor will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to cooperate fully with the State Auditor's Office is included in any subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of the Contractor relating to this contract.
7. If the terms of the agreement with the private auditor are set forth only in an engagement letter, the engagement letter will include the language quoted in #6 above.
8. A signed copy of the contract or contract amendment should be provided to the State Auditor's Office within two weeks of execution. You may send it electronically to [auditdelegation@sao.texas.gov](mailto:auditdelegation@sao.texas.gov) or send a hard copy to the attention of Audit Delegation. Additionally, a copy of final audit reports should be provided to the State Auditor's Office upon completion. Texas Government Code, Section 2102.0091, requires that internal audit reports be filed with the State Auditor's Office, the Sunset Advisory Commission, the budget division of the Governor's Office, and the Legislative Budget Board not later than the 30th day after the date the report is submitted to the state agency's governing board or the administrator of the state agency if the state agency does not have a governing board. Internal audit reports may be sent to the State Auditor's Office electronically to [iacoordinator@sao.texas.gov](mailto:iacoordinator@sao.texas.gov) or a hard copy may be sent to the attention of Internal Audit Coordinator. Please include the audit delegation request number 476-2018-002 with all submissions and related correspondence.

If you have any questions, please contact Michael Clayton, Audit Manager, or me at (512) 936-9500.

Sincerely,



Verma L. Elliott, CPA, CIA, CGAP, MBA  
Assistant State Auditor