

## Texas Department of Banking Purchase Order

<b>INVOICE TO:</b>  <p style="text-align: center;">Texas Department of Banking 2601 North Lamar Austin, Texas 78705-4294</p>	<b>Purchase Order # 451-15-059</b>  <b>Date: August 28, 2014</b>  <i>Correct Purchase Order and Stock Number Must appear on all packages, invoices, shipping papers, and correspondence. Packing slips Must accompany all shipments.</i>
<b>VENDOR</b>  <p style="text-align: center;">Donald N. Walker 3510 Pinnacle Road Austin, Texas 78746</p> <p style="text-align: center;">VID#</p>	<b>SHIP TO:</b>  <p style="text-align: center;">Texas Department of Banking 2601 N. Lamar Blvd. Austin, Texas 78705-4294</p>
<b>PCC: Q (Purchase of Services)</b>	

Item#	Quantity	U.O.M.	Class	Description	Unit Price	Extension
1	1.00	Lot	961-49	Legal Services, Attorneys Hearings Officer Services to be provided per RFP # 451-14-001 and attached contract. This is a blanket purchase order not to exceed \$100,000. The Texas Department of Banking does not guarantee to purchase any minimum quantities.  For the period 09/1/14 - 8/31/15 with 3 one year renewable terms.	100,000.00	\$100,000.00

<b>Total</b>	<b>\$100,000.00</b>
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FOB	Delivery Date	Terms of Sale
Destination	09/01/2014	Net 30

I certify that the above awarded bid is the lowest and/or best of vendors contacted and that the bid is exactly as stated. I further attest that this transaction has not been split to avoid regulation. All vendors contacted are normal suppliers of the bid item, and the goods and services hereon are required. All items and conditions set forth in our bid invitation become a part of this order.

C. Vance Ivie      512-475-1364      Date

**FOR DEPARTMENT OF BANKING USE ONLY**

Item#	MSR#	PCA#	Encumbrance Amount	Additional Information
1	911	49011	100,000.00	

# REQUEST FOR PROPOSALS TO PERFORM HEARINGS OFFICER SERVICES

## SECTION I GENERAL

**1.1 SCOPE.** The Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (**individually, “Agency,” and collectively, “the Agencies”**), seek sealed proposals from qualified, independent individuals or firms (**“Respondents”**) to establish a contract for hearings officer services for the Agencies and for the Finance Commission of Texas, which oversees the Agencies, in accordance with the specifications contained in this Request for Proposals (**“RFP”**). The Agencies reserve the right to award one or more contracts for hearings officer services pursuant to this Request for Proposals for services to all the Agencies or for services to one or more of the three Agencies, as determined by the Agencies, in their sole discretion. Therefore any reference to a Contract awarded by the Agencies shall include reference to one or more Contracts that could be awarded by one or more of the Agencies. Similarly, any reference to the Agencies shall include reference to one or more of the Agencies and any reference to Contractor shall include reference to one or more Contractors.

**1.2 BACKGROUND.** The Finance Commission is an 11-member governing body that supervises the three Agencies. Texas Finance Code, § 11.202 allows the Texas Department of Banking to employ a hearings officer to serve the Agencies to preside over matters related to contested cases before an Agency or the Finance Commission. Each Agency is self-directed and semi-independent under Finance Code, Chapter 16, and may enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of the affairs and for the attainment of the purposes of the Agency under Finance Code, § 16.006. The Department of Banking has the authority to issue this RFP, on behalf of itself and the other Agencies, pursuant to delegated procurement authority from the Texas Comptroller of Public Accounts to procure services under Texas Government Code, §§ 2155.131-2155.132 and 2156.121 -.125, and 34 Texas Administrative Code (**“T.A.C.”**) § 20.41.

The major functions and responsibilities of the Agencies are:

**(a) Texas Department of Banking (“DOB”)**

Chartering, licensing or registering, regulation, supervision, and examination of:

- State-chartered commercial banks
- State-chartered trust companies
- Bank holding companies
- Interstate branches of state banks
- Foreign bank offices
- Perpetual care cemetery trust funds
- Prepaid funeral contract sellers
- Money services businesses
- Private child support enforcement agencies
- Cemetery brokers

For fiscal year 2014, beginning September 1, 2013 and ending August 31, 2014, the Department of Banking’s total budget is \$25,047,690 and the Full Time Equivalent (“FTE”) estimate for its staff is 200.

**(b) Texas Department of Savings and Mortgage Lending (“SML”)**

Chartering, licensing or registering, regulation, supervision and examination of:

- State-chartered savings banks
- State-chartered savings and loan associations
- Mortgage loan originators
- Mortgage loan servicers
- Mortgage Entities

For fiscal year 2014, the Texas Department of Savings and Mortgage Lending's total budget is \$5,718,199 and the FTE estimate for its staff is 64.

**(c) Office of the Consumer Credit Commissioner ("OCCC")**

Licensing or registering, regulation, supervision and examination of:

- Consumer finance lenders
- Second lien mortgage lenders
- Pawnshops
- Pawnshop employees
- Motor vehicle retail sellers and sales finance companies
- Home equity lenders
- Property tax lenders
- Mortgage loan originators
- Debt management service providers
- Refund anticipation loan facilitators
- Creditors financing goods and services on retail installment contracts
- Credit access businesses (payday and title loan companies)

For fiscal year 2014, the Office of Consumer Credit Commissioner's total budget is \$8,113,123 and the FTE estimate for its staff is 89.

**(d) Further Information about the Finance Commission and Agencies**

Further information regarding the history and operations of the Finance Commission and the Agencies may be found at the entities' individual websites. The Finance Commission's website address is [www.fc.texas.gov](http://www.fc.texas.gov). The site provides a direct link to the Agencies' websites.

**1.3 CONTRACT TERM.**

**(a) Original Term:** The Contract or Contracts to be awarded pursuant to this RFP shall become effective September 1, 2014 or after execution by all parties and as of the last date signed by the appropriate officials of the Agencies, whichever date is later, and shall expire on August 31, 2015, unless terminated earlier as provided in this Contract.

**(b) Option to Renew Contract:** The Agencies reserve the right to renew any Contract resulting from this RFP, at the sole discretion of the Agencies, for up to three (3) one (1) year renewal terms, at the Contract rate, or rates, as modified during the term of the Contract, to be evidenced in writing prior to the expiration date of the initial term.

**(c) Total Payments:** Total fees and expenses payable to a Hearings Officer during the term of a Contract may not exceed \$100,000.

**1.4 NO GUARANTEE OF VOLUME OR USAGE/ HEARINGS INFORMATION.** The number of contested case hearings held and Proposals for Decisions ("**PFDs**") issued varies year to year at each of the three agencies. Therefore, the Agencies make no guarantee of minimum or maximum number of contested case hearings for which the Agencies will require hearings officer services under any Contract awarded pursuant to this RFP. The current Hearings Officer for the Department of Banking: set 4 hearings, presided over 1 hearing, and issued 1 PFD in contested cases during the 2011 calendar year; set 6 hearings, presided over 2 hearings, and issued 2 PFDs in the 2012 calendar year; and set 4 hearings, presided over 1 hearing, and issued 1 PFD in the 2013 calendar year. For information about the number of hearings held and PFDs issued recently by the Hearings Officer for the Office of Consumer Credit Commissioner and the Texas Department of Savings & Mortgage Lending, Respondents may review the OCCC Legal Department Report and the SML Enforcement Activity Report in the agencies' Meeting Materials and Packets for the two most recent Finance Commission meetings on the Finance Commission web site, [www.fc.texas.gov](http://www.fc.texas.gov).

## 1.5 **COMPENSATION.**

(a) Each Agency will pay separately for services performed by the Contractor relating to the Agency's contested hearings and accepted by the Agency during the effective term and within the scope of the Contract. However, the Agencies will be relieved of any obligation to accept performance or to pay for work performed after the effective date of any termination or for work performed outside the scope of the Contract. Contractor shall submit separate, monthly written invoices to each Agency for services performed under the Contract based on the amount of time devoted to each Agency's business. Contractor shall submit an invoice to an Agency by the 10th day of the month following the month in which services have been performed. The Contract will provide that each Agency will be billed separately for work performed.

(b) All taxes due shall be the responsibility of the Contractor. Payments will be made in compliance with the provisions of Government Code, Chapter 2251.

## 1.6 **DEFINITIONS.** For purposes of this RFP, the following definitions apply:

(a) **Addendum** – A modification of the specifications issued by the Department of Banking, acting on behalf of the Agencies, and posted on the Electronic State Business Daily, at <http://esbd.cpa.state.tx.us/>, prior to the opening of proposals;

(b) **Best and Final Offer (“BAFO”)** – A revision of the originally submitted Proposal by a Respondent following a formal request for revisions of Proposals made to selected Respondents by the Agencies;

(c) **Contract** – Where used herein, “Contract” refers to the Contract or Contracts awarded as a result of this RFP, and all exhibits thereto. The Contract, or if more than one Contract is awarded under this RFP, each Contract, will incorporate the contents of this RFP, any Addendum issued in conjunction with this RFP, the purchase order or orders issued by the contracting Agency or Agencies, the successful Respondent's Proposal, including all exhibits, any BAFO, and any subsequent submission by Respondent, except as specifically provided to the contrary in the Contract and any amendments to the Contract;

(d) **Code** – Where used herein, “Code” refers to Texas statutory codes, such as the Texas Finance Code, Texas Government Code, Texas Business & Commerce Code, Texas Civil Practice & Remedies Code, Texas Family Code, Texas Utilities Code and other Texas statutory codes, unless explicitly stated otherwise;

(e) **Commission Hearings Procedures** – The Finance Commission's Rules of Procedure for Contested Hearings, Appeals and Rulemakings, Texas Administrative Code, Title 7, Chapter 9;

(f) **Contractor** – Respondent whose Proposal results in a Contract with one or more of the Agencies. This term shall include each Contractor, if more than one Contractor is awarded a Contract under this RFP;

(g) **Electronic State Business Daily (ESBD)** — The Electronic State Business Daily, which is available on-line at <http://esbd.cpa.state.tx.us/>.

(h) **Hearings Officer** – A Contractor, whether an individual or firm, selected to provide hearings officer services for one or more of the Agencies pursuant to this RFP. This term shall include each Hearings Officer, if more than one Contractor is awarded a Contract under this RFP;

(i) **Proposal** – Proposal to provide hearings officer services to the Agencies submitted by a Respondent to this RFP;

(j) **Proposal for Decision or PFD** – Proposal for decision issued by a hearings officer in a contested case that includes findings of fact and conclusions of law;

(k) **Respondent** – Individual or entity responding to this RFP;

(l) **RFP** – This Request for Proposal for Hearings Officer Services issued by the Agencies, acting by and through the Texas Department of Banking, including the RFP's Terms and Conditions set forth in the form of the Contract attached as Exhibit A, the Execution of Proposal form attached as Exhibit B, and all other Exhibits attached to this RFP; and

(m) **Texas Administrative Procedure Act or APA** – Texas Government Code, Chapter 2001.

## SECTION II STATEMENT OF WORK

**2.1 SERVICE REQUIREMENTS.** Services shall include, but are not limited to, the requirements contained in this section and in this RFP. **Services set forth that contain the words "must" or "shall" are mandatory and must be provided as specified with no alteration, modification, or exception.** Services set forth that contain the words "may" or "can" allow Respondents to offer alternatives to the manner in which the services are provided.

The Agencies are seeking one or more competent, qualified individuals or firms to provide hearings officer services who will enable the Agencies to each employ a hearings officer to preside over matters related to contested cases before an Agency or the Finance Commission as permitted by Texas Finance Code, § 11.202 and by Finance Code, § 16.006.

**(a) Hearings Officer Services:** The Respondent or Respondents selected as the Hearings Officer for an Agency or Agencies shall provide all hearings officer services for matters related to contested cases before the Finance Commission and each of the Agencies for which Respondent has been awarded a Contract, including but not limited to the following:

- presiding over hearings and prehearing conferences;
- preserving order in hearings and commanding respect of the attorneys, *pro se* litigants, and witnesses who appear in contested cases;
- ruling on motions and offers of evidence;
- reviewing hearing briefs and motions;
- researching pertinent legal issues;
- preparing a clearly written proposal for decision ("**PFD**") in each contested case containing separately stated findings of fact and conclusions of law;
- preparing PFDs timely;
- circulating each PFD to the parties for exceptions;
- ruling on the exceptions, if any;
- transmitting each PFD and the related case file to Commissioner of the Agency with jurisdiction over the particular case for approval;
- taking further action such as reopening the evidence or reconsidering portions of the PFD if directed to do so by the Agency Commissioner following the Commissioner's review of the PFD and the related case file;
- providing all hearings officer services as necessary or requested for any appeals of Agency Commissioner Orders to the Finance Commission;
- providing all administrative and support services for hearings and other matters related to contested cases of the Texas Department of Banking;
- providing all administrative and support services other than docket clerk services for hearings and other matters related to contested cases of the Texas Department of Savings & Mortgage Lending, and the Officer of Consumer Credit Commissioner;
- drafting or commenting on proposed new or updated hearing rules, upon request by the Agencies or Finance Commission;
- drafting or commenting on any proposed new or updated hearings brochure for the Agencies, upon request by the Agencies or Finance Commission; and
- reviewing quarterly reports prepared by any Agency for which it has been awarded a Contract for presentation to the Finance Commission and testifying to the Finance Commission, upon request by such Agency or the Finance Commission.

**(b) Code of Conduct:** The Hearings Officer will conform his or her conduct, and if a firm is selected to provide hearings Officer services, the firm will require each of its members who are to preside over contested hearings to conform his or her conduct, to the Model Code of Judicial Conduct for State Administrative Law Judges of the National of the National Association of Administrative Law Judges, online at <http://www.naalj.org>, (“**Model Code of Judicial Conduct**”)in carrying out all assigned duties and responsibilities.

**(c) Administrative Duties and Resources; Hearings Transcription:**

**(1)** Hearings will be electronically recorded by the Agencies or transcribed by a court reporter and transcripts may be ordered as needed and agreed to by the Agencies for preparation of PFDs. Each Agency will be responsible for the costs of any transcripts agreed to be ordered by such Agency.

**(2)** The Hearings Officer must have access to necessary legal research tools and services and have adequate office resources necessary to provide all hearing officer services and duties required under this RFP and in the Work Plan provided in Respondent’s Proposal.

**(3)** The Hearings Officer must have adequate administrative and support resources for performance of hearings officer duties and services. The Texas Department of Savings and Mortgage Lending and the Office of Consumer Credit Commissioner will provide the support of a docket clerk to the Hearings Officer for their contested cases to be the Hearings Officer’s liaison to parties in a contested case, assign case numbers, accept pleadings from the parties for filing, maintain the hearing file and hearing docket, and distribute the Hearings Officer’s Proposal for Decision and other orders to the parties (collectively, the “**Docket Clerk Administrative Support**”). The Hearings Officer will be responsible for providing such Docket Clerk Administrative Support for hearings and other contested case matters of the Texas Department of Banking and administrative and support services, other than Docket Clerk Administrative Support, necessary for hearings and other contested case matters for all the Agencies (“**Other Administrative Support**”).

**(d) Hearings Officer’s Work Schedule and Accessibility:** The Hearing Officer’s work schedule must allow for regularly scheduled hearings in Austin and resolution of the contested hearings within a reasonable time period. The Hearings Officer must respond promptly to telephone calls, and mail, email, facsimile or other scheduling and administrative notices or requests from the Agencies, the Finance Commission and parties in any contested case.

**(e) General Requirements:** The Hearings Officer and services provided by the Hearings Officer must meet the requirements of the Texas Finance Code, the Commission’s Hearings Procedures, the Texas Administrative Procedure Act, and any other applicable statutes and rules, and all the requirements of this RFP. Contractor shall be required to make any information created or exchanged with Agency or the State pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to Agency or the state. Contractor shall consult with the Agencies on how to make such information available in an accessible format within the first month [after execution of the Contract.

**(f) Responsibilities Limited to Contested Case Matters:** The Hearings Officer shall have no responsibilities except to preside over matters related to contested cases before the Finance Commission or the Agency or Agencies for which it has been awarded a Contract and to provide those services arising from or related to such duty as set forth in this RFP and in the Contract.

**(g) No Conflicting Engagements:** The Hearings Officer will not accept as a private law client, nor provide legal advice to a party licensed, chartered or registered by the Agency or Agencies for which it has been awarded a Contract under this RFP during the term of the Contract and for one year after its termination. Further, the Hearings Officer will not advise or represent a private law client in matters regulated by the Agencies on any issue included in any hearing over which the Hearings Officer had presided, for one year after the termination of the Hearings Officer’s Contract for any of the Agencies. These obligations are in addition to those ethical and other obligations applicable to such Hearings Officer under the Model Code of Judicial Conduct and under the Texas Rules of Professional Conduct as a member of the State Bar of Texas.

**2.2 PROFESSIONAL AND DEVELOPMENT REQUIREMENTS.** Professional certification and development requirements for selection to be the Hearings Officer are as follows:

- (a) A Respondent who is a sole proprietor must be an attorney licensed by, and in good standing with, the State Bar of Texas, who has a minimum of three (3) years of administrative law experience and three (3) years of experience presiding over administrative hearings or presiding over hearings as a judge or master of a court.
- (b) If Respondent is a firm, the members of the firm who are to preside over contested hearings must include one member possessing all the qualifications listed in subparagraph (a). Other members of the firm who will provide hearings officer services for this engagement must have, as a group, at least an average of three (3) years of administrative law experience, and three (3) years of experience presiding over hearings, as specified in subparagraph (a), and must each be an attorney licensed by, and in good standing with, the State Bar of Texas.
- (c) While not required, it would be preferable for a Respondent, or members of a Respondent's firm who are to provide hearings officer services for the Agencies, to have experience with and knowledge of the Texas Finance Code chapters applicable to the industries and entities chartered, licensed, and regulated by one or more of the Agencies and with state and federal financial regulatory agencies and other applicable statutes.
- (d) Respondent must obtain, if an individual, or provide funding for its members, if a firm, to annually obtain continuing legal education in administrative law, administrative law adjudication, or other areas that will help maintain skills and knowledge necessary to perform as a hearings officer.

**2.3 FINANCIAL SOLVENCY AND INSURANCE REQUIREMENTS.**

- (a) The Agencies reserve the right to request and obtain consumer or business credit history information on the Respondent(s), including any members of a Respondent firm who are to preside over contested hearings or otherwise provide hearings officer services.
- (b) The Agencies also reserve the right to require the selected Respondent to secure and maintain for the term of its Contract with the Agencies legal or judicial professional liability insurance with a minimum limit of \$1,000,000 per claim covering the selected Respondent and all personnel who will provide services under the Contract for rendering or the failure to render professional services. If the Agencies require the selected Respondent to obtain such insurance coverage, the selected Respondent will, within five (5) business days of executing the Contract:
  - (1) Provide the Agencies with a current certificate of insurance or other proof acceptable to the Agencies of such coverage; and
  - (2) Represent and warrant that the above coverage will be obtained from a company that is licensed in the state of Texas, has an "A" rating from A.M. Best, and is authorized to provide the coverage.

**2.4 SUBCONTRACTORS.**

- (a) Any planned or proposed use of a subcontractor by Respondent must be clearly documented in the Proposal. The Contractor shall perform the Contract with its own resources and those subcontractors identified in its Proposal. If the Contractor plans, after Contract award, to subcontract all or a portion of the work to be performed to subcontractors not identified in its Proposal, Contractor must obtain the prior approval of the Commissioner of the Agency for which Contractor is proposing the use of the services of such subcontractors. The Contractor shall also transmit to the Commissioner of such Agency for review and prior approval a true copy of the subcontract it proposes to execute with a subcontractor.
- (b) The Respondent, in subcontracting for any performances specified in this RFP or Contract, expressly understands and acknowledges that the Agencies will not be liable, in any manner, to any subcontractors of Respondent, and any subcontractors providing services under the Contract must meet the same requirements and level of experience as required of Respondent. Neither this provision

nor any subcontract under the Contract shall relieve Respondent of its responsibility for ensuring the requested services are provided in full compliance with all terms of this RFP and Contract.

**2.5 HISTORICALLY UNDERUTILIZED BUSINESSES.**

**(a)** State agencies are required to make a good-faith effort to assist historically underutilized businesses in receiving contract awards issued by the State. The term "historically underutilized business" ("**HUB**") is defined in Government Code, § 2161.001(2). See generally, Government Code, Chapter 2161, and 34 T.A.C. §§ 20.10 – 20.28. Respondent's Proposal should note if Respondent's business is currently certified as historically underutilized by the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts. If Respondent is not a certified HUB, then its Proposal should answer the following questions: (1) Is Respondent's business minority or woman owned and operated? (2) Is Respondent's business owned and operated by a disabled veteran meeting the requirements of Government Code § 2161.001(3)(A)(vi) ("**Disabled Veteran**")? If so, which? If minority, what category? (3) What percentage of ownership of Respondent's business is minority or woman owned or owned by a Disabled Veteran?

**(b)** Contractor will be required to report to the Agencies, on a monthly basis, the identity of each HUB to which Contractor awarded a subcontract, following prior notice to and approval by the Agencies of such subcontract, for the purchase of goods or services, and the dollar amount of HUB subcontracting participation in the Contract as provided in Government Code, § 2161.122(b) and 34 T.A.C. § 20.16.

**SECTION III  
PROPOSAL INFORMATION**

**3.1 SCHEDULE OF EVENTS.** The solicitation process for this RFP will proceed according to the following schedule:

EVENT	DATE
Issue RFP	April 29, 2014
Deadline for Submission of Questions	May 13, 2014
Deadline for Submission of Proposals/RFP Proposals Opening	5:00 p.m. on May 29, 2014
Evaluation Period	May 29, 2014 to July 14, 2014
Oral Presentations (if requested)	June-July 2014
Contract Negotiation Period/Request for BAFOs( if requested) from selected Respondents	June-July 2014
Expected Award of Contract	August, 2014
Expected Contract Start Date	September 1, 2014

**3.2 REVISIONS TO SCHEDULE.** The Agencies, acting through the Texas Department of Banking, reserve the right to change the dates in the above schedule of events upon written notification to prospective Respondents through a posting of an Addendum to the RFP on the Electronic State Business Daily ("**ESBD**"). It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal. Respondent's failure to check the ESBD periodically will in no way release the

Respondent awarded a Contract from having to meet the requirements of the addenda including the payment of any additional costs to meet the requirements of such addenda after Contract award.

### 3.3 PROPOSAL REQUIREMENTS.

**(a) Submissions:** Respondents shall submit one (1) original of Exhibit B, Execution of Proposal, along with one (1) original and three (3) copies of the Proposal. The Proposal should include all the documents requested in the Section V of this RFP, the Submission Checklist. **Failure to meet this condition may result in disqualification of the Proposal, and, if disqualified, the Respondent will receive no further consideration.** Respondent should prepare a Proposal that clearly and concisely represents Respondent's qualifications, experience, and capabilities and cost of providing the services under this RFP. Respondent should focus on the instructions and requirements of the RFP. Receipt of all addenda to this RFP should be acknowledged by returning a signed copy of each addendum with the Proposal. Proposal pages should be numbered and contain an organized, paginated table of contents corresponding to the section, paragraph and pages of the Proposal.

**(b) Costs:** The Agencies will not reimburse any Respondent for any cost related to its Proposal. The Respondents to this RFP are responsible for all expenses related to the preparation and submission of its Proposal.

**(c) Public Information Act; Confidentiality: The Agencies will not consider any Proposal that bears a copyright.** Proposals will be subject to the Texas Public Information Act ("PIA"), Government Code, Chapter 552, and may be disclosed to the public upon request. The Proposal and other submitted information shall be presumed to be 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 specific exception to disclosure in the PIA. **Making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable, and may cause the disqualification of the Proposal by the Agencies.** If such Proposal is accepted, such blanket claim may subject the entire Proposal to release under the PIA. In order to initiate 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 below. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the PIA. Proprietary or other confidential information, submitted as part of a Proposal, must be clearly marked on each page in which such information appears. Such marking should be in boldface type of at least **14 point font.**

**(d) Contents:** Listed below is a summary of all information to be included in a Proposal submitted in response to this RFP. The Proposal must include this information and all other information requested or required under this RFP. The Agencies reserve the right, in the Agencies' sole discretion, to waive minor technicalities and errors in the best interest of the state.

- (1) Respondent Information:** Include the following information regarding the Respondent or responding business entity:
- a. formal name and all assumed names used by the Respondent or Respondent business entity;
  - b. structure of business entity (i.e. sole proprietorship, partnership, corporation, etc.);
  - c. state in which business entity was formed or incorporated;
  - d. physical address and mailing address;
  - e. principal place of business;
  - f. whether, and to what extent, Respondent has established a physical presence in the State of Texas including relevant timeframes;
  - g. whether Respondent is a Historically Underutilized Business under Government Code, Chapter 2161, and the answers to the questions in Paragraph 2.5;
  - h. Respondent's Texas Identification Number or other taxpayer number assigned and used by the Texas Comptroller of Public Accounts

- i. the name, title, address, telephone number, facsimile number, and e-mail address of Respondent's primary contact; and
- j. the name and social security number of the individual or sole proprietor submitting the proposal, as well as the name and social security number of any partner, shareholder or owner or other individual with at least 25% ownership of the business entity submitting the Proposal, as required by Texas Family Code, § 231.006.

**(2) Compensation and Fees Proposal:** Provide information requested below regarding Respondent's proposed hourly rate(s) or other fees to be charged by Respondent, if an individual, or by particular Respondent firm members, by job title(s) or expertise level(s), for the hearings officer services and for any related or different services.

- a. Fees should be inclusive of all costs of doing business under any Contract resulting from this RFP (including the Renewal Terms), except where certain costs are broken out into separate fees as part of an alternative fee proposal. In preparing the Compensation and Fees Proposal, Respondents should consider both direct and indirect costs, for example, travel, salaries, overhead, any equipment or supplies, and any required insurance. **The Agencies will not pay for any charges or other items not included in the Compensation and Fees Proposal.**
- b. The fee schedule must include at least one hourly rate or fee that Respondent will charge for providing all requested hearings officer services under this RFP including all the anticipated costs of Respondent to provide such services, including:
  - i. Docket Clerk Administrative Support for the Texas Department of Banking hearings and other contested case matters; and
  - ii. Other Administrative Support for its hearings officer services for all three of the Agencies.
- c. The fee schedule must also include the fee Respondent would charge for hearings officer services when a party does not appear for a scheduled hearing.
- d. Respondent may also provide, as an alternative, different hourly rate(s) or other fees for specific types of hearings officer services, including, for example, separate fee(s) for:
  - i. Presiding at hearings;
  - ii. Conducting legal research;
  - iii. Providing Docket Clerk Administrative Support for DOB hearings and other contested case matters; and
  - iv. Providing Other Administrative Support for its hearings officer services for all three Agencies.
- e. For a Respondent that is a firm, it may propose different hourly rate(s) or other fees for work to be provided by different members of the firm, depending on their years of experience and different levels of expertise.
- f. The Agencies are willing to consider other rate or fee proposals not based on hours of work in Respondent Proposals.

**(3) Proposed Services:** The Proposal must provide evidence that the Respondent and Respondent's proposed services will meet the requirements for hearings officer services under Paragraph 2.1 and all other requirements of the RFP, and of the Texas Finance Code, the Commission's Hearings Procedures, the Texas Administrative Procedure Act, and any other applicable statutes and rules. Without limitation, the Proposal must include the following information:

- a. **Qualifications/Competencies:** Describe Respondent's qualifications and ability to deliver the services required, including evidence of compliance with all the minimum requirements set out in Paragraph 2.2. Respondent should include the following information:
  - i. **List of Key Personnel/Licenses:** The name, title, license, and other qualifications and experience of Respondent and each of Respondent's firm members proposed to provide hearings officer services under this RFP. Provide proof of licenses, good standing with the State Bar of Texas, certifications, and qualifications required for each individual and resumes with information detailing expertise and years of experience.

- ii. **Prior proposals:** Provide two examples of prior proposals for decisions prepared by Respondent or the most experienced member of Respondent's firm being proposed to provide hearings officer services for the Agencies.

**b. Experience and References:**

- i. Describe Respondent's experience providing similar services within the past three years, with emphasis on state government and regulatory requirements, including the nature of the services provided, scope of services or activities, the organization for which the service was provided, and contact names, positions, and telephone numbers for each such organization and for the person at each such organization most knowledgeable about Respondent's performance of services.
- ii. Provide a list of other clients for which the Respondent has provided similar services, including the nature of the services provided, scope of services or activities, and the organization for which the service was provided, and contact names, positions, and telephone numbers for each client and for the client contact most knowledgeable about Respondent's performance of services.
- iii. Include a minimum of three (3) references from clients for whom similar services were performed. Include project description, contact names, position, company name, and telephone number for each reference listed.

**c. Work Plan:**

- i. Demonstrate how Respondent will schedule, prepare and conduct hearings, and produce final decisions on contested matters, specifically addressing the services identified in Paragraph 2.1(a), and, if Respondent is a firm, its plans for staffing and support of the members of the firm who are proposed to preside over contested hearings by other members of Respondent's firm.
- ii. Demonstrate Respondent's access to necessary legal research tools and services and how Respondent will provide administrative and support resources for performance of hearings officer duties and services, including Docket Clerk Administrative Support for Texas Department of Banking hearings and other contested case matters, and Other Administrative Support for hearings officer services for all three of the Agencies, as discussed in Paragraph 2.1(c)(3).
- iii. Disclose any other contracts or commitments to provide hearings officer services for other state agencies or other similar client commitments, and an explanation of how such contracts or commitments would affect Respondent's availability to preside over contested hearings for the Agencies.

**(4) Conflict of Interest Disclosure:** The Respondent shall identify any and all relationships that might be a conflict of interest or cause an appearance of a conflict of interest. See Paragraph 11.7 of Exhibit A to this RFP, containing the Terms and Conditions applicable to this RFP, for a description of conflicts of interest.

**(5) Exhibit B — Execution of Proposal:** The Execution of Proposal must be signed by a person authorized to bind the Respondent to a contract, and be submitted with Respondent's Proposal. **Failure to sign and return the Execution of Proposal with the submitted Proposal will result in rejection of the Proposal.**

**(e) Other Proposal Requirements:**

- (1)** Respondents must comply with all rules, regulations, and statutes regarding purchasing by the State of Texas in addition to the requirements of this RFP; and
- (2)** Respondent must initial any alterations or amendments made to its Proposal prior to submittal to the Agencies. No Proposal may be withdrawn after opening time without the Agencies' approval of an acceptable written reason.

### 3.4 INQUIRIES AND EXCEPTIONS.

(a) All inquiries to the Agencies shall be submitted in writing prior to the deadline for submission of questions, May 13, 2014 to Vance Ivie, Purchaser, Texas Department of Banking, at facsimile 512-475-1313 or by e-mail to [Vance.Ivie@dob.texas.gov](mailto:Vance.Ivie@dob.texas.gov).

(b) Inquiries resulting in written responses may be posted to the Electronic State Business Daily, available at <http://esbd.cpa.state.tx.us>. If a Respondent does not have Internet access, a copy of all posted written responses may be obtained through the point of contact listed above.

(c) Except as otherwise provided in this Paragraph, upon issuance of this RFP, other employees and representatives of the Agencies will not answer questions or otherwise discuss the contents of the RFP with any potential Respondent or its representatives. **Respondent's failure to observe this restriction may result in disqualification of any subsequent Proposal.** This restriction does not preclude discussions unrelated to this RFP.

(d) **Exceptions:** If Respondent takes any exceptions to any provisions of this RFP, including the RFP Terms and Conditions stated in the form of Contract attached hereto as Exhibit A, those exceptions must be specifically and clearly identified by section and paragraph 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 or to the Terms and Conditions in Exhibit A. **If any Respondent takes a 'blanket exception' to this entire RFP or to such Terms and Conditions, or does not provide proposed alternative language, the Respondent's Proposal may be disqualified from further consideration. The Respondent should realize, however, that failure to accept the terms and conditions of the RFP or in Exhibit A may result in the Contract not being awarded to the Respondent.** Respondents are strongly encouraged to submit written questions during the official question and answer period regarding any term or condition of this RFP.

(e) Any oral statement or representation will not bind the State or the Agencies contrary to the written specifications of this RFP, as amended by any Addenda, or the written provisions of any Contract entered into pursuant to this RFP.

### 3.5 PROPOSAL SUBMISSION.

(a) All Proposals shall be delivered to the Texas Department of Banking, addressed to the attention of Vance Ivie, at the address in Paragraph 3.6 below, prior to 5 p.m., Central Daylight Time, on the date specified in the Paragraph 3.1 above. If submitted at, or near, the deadline, the Proposer should obtain a time-stamped or marked receipt from the Texas Department of Banking, acting for the Agencies. The Agencies reserve the right to reject late submittals. The Agencies WILL NOT accept a U.S. Postal Service (USPS) postmark or round validation stamp, a mail receipt with the date of mailing, stamped by the USPS, a dated shipping label, invoice, or receipt from a commercial carrier; or any other documentation in lieu of the on-site time stamp.

(b) Proposals should be placed in a separate envelope or package and clearly marked as a Proposal for the Agencies' Hearings Officer Services with the RFP number and submittal deadline date and time. It is Respondent's responsibility to appropriately mark and deliver the Proposal by the specified date and time.

(c) Telephone and facsimile Proposals will not be accepted.

(d) Proposers are responsible for checking the Electronic State Business Daily for all addenda to this RFP. Receipt of all addenda to this RFP should be acknowledged by returning a signed copy of each addendum with the submitted Proposal.

**3.6 DELIVERY OF PROPOSALS.** Proposals shall be submitted to the Agencies by U.S. Postal Service, Overnight/Express Mail, or hand delivery addressed to:

Texas Department of Banking  
Attn: Vance Ivie, Purchaser  
2601 North Lamar Boulevard  
Austin, Texas 78705-4294

For hand delivery, please note that office hours are 8:00 a.m. to 5:00 p.m. (C.D.T.).

**3.7 PROPOSAL OPENING.** Proposals will be opened by the Texas Department of Banking, on behalf of the Agencies, at 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

- (a)** All submitted Proposals become the property of the Agencies after the RFP submittal deadline date. The submitted Proposals and accompanying documentation will not be returned.
- (b)** Proposals submitted shall constitute an offer for a period of 150 days from the opening date or until Contract award is made by the Agencies, whichever occurs earlier.

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**3.8 PROPOSAL EVALUATION AND AWARD.**

**(a)** The Agencies will make their selection and award of a Contract for hearings officer services pursuant to this RFP to a Respondent whose Proposal offers the best value for the Agencies, or for each individual Agency, and the State under Texas Government Code §§ 2155.074 and 2156.125. The Agencies reserve the right to award one Contract or up to three Contracts with each of the Agencies to one or more Respondents whose Proposals satisfy the above best value criteria. The Agencies collectively, or individually, are not required to select the lowest-priced proposal, but will take into consideration services which represent the best combination under the criteria listed in subparagraph (b).

**(b)** The Agencies reserve the right to check references prior to award. Any negative responses received may be grounds for disqualification of the proposal.

**(c)** The Agencies reserve the right to award Contract(s) without any negotiations and reserve the right to not make awards.

**(d)** Each Respondent is strongly encouraged to provide its best price in its Proposal because the Agencies make absolutely no guarantee that there will be any opportunity to negotiate or provide alternative pricing at any point during the RFP process.

**(e)** The Agencies will individually evaluate and determine whether Respondents' Proposals satisfy the requirements of this RFP and applicable law and which Respondent Proposals provide the best value for each of the Agencies and the State by applying the following criteria and assigned weighted values:

CRITERIA	WEIGHT
Demonstrated experience, competence, qualifications, and capability to perform hearings officer services as specified	<b>50%</b>
Demonstrated ability to perform hearings officer services on a timely basis	<b>10%</b>
Capability for performance of legal research as needed and access to legal research resources	<b>10%</b>
Adequacy of administrative and support resources for performance of hearings officer duties and services	<b>10%</b>
References and other indicators of probable performance under the Contract such as past performance, responsibility, financial resources, and ability to perform.	<b>10%</b>
Fairness and reasonableness of proposed hourly or other fees	<b>10%</b>
Total	<b>100%</b>

**(f)** In evaluating Proposals, the Agencies may consider information related to past contract performance of a Respondent including, but not limited to, the Texas Comptroller of Public Accounts Vendor Performance Tracking System (available at <http://venperf.cpa.state.tx.us/vpedit/Dreport.cfm>).

**(g)** The Agencies, in their sole discretion: (1) may elect to have Respondents provide oral presentations and respond to inquiries from the Agencies related to their Proposals; and (2) will determine if Best and Final Offers are necessary. Award of a Contract may be made without Best and Final Offers. A request for a Best and Final Offer is at the sole discretion of the Agencies and will be extended in writing.

(h) The Agencies reserve the right to reject any and all offers, to re-solicit, or to cancel this RFP, if such action is deemed in the best interests of the State of Texas or the Agencies.

(i) Following completion of the evaluation process, the Agencies, in their sole discretion, may select and award a Contract to a single Respondent if its Proposal provides the best value for all three Agencies, or individual Agencies may select and award a Contract to the Respondent whose Proposal provides the best value for that Agency. Final selection and award of one or more Contracts is scheduled to be made by the Agencies prior to September 2014.

(j) The Agencies will provide written notice to the Respondents within two weeks after the award of a Contract or Contracts. After the selection, the Proposals will be available for public inspection in accordance with the Texas Public Information Act, Government Code, Chapter 552.

**3.9 EXECUTION OF CONTRACT.** If the Respondent selected does not execute a Contract within 30 days after notification of selection, the Agencies may cancel that selection and give notice to the Respondent of the Agencies' intent to select the next most qualified Respondent or call for new Proposals, whichever the Agencies deem appropriate. If the successor Respondent's Proposal is in excess of the original accepted Proposal, the original selected Respondent will be responsible for paying the Agencies the price differential.

**3.10 AWARD OF CONTRACT.** A Proposal submitted in response to this RFP is an offer to contract based upon the terms, conditions, and specifications contained herein, including those in Exhibits A, B and C attached hereto. A Proposal of a Respondent selected by the Agencies to provide hearings services under this RFP will not result in a Contract until it is accepted through purchase orders issued by the contracting Agencies.

#### **SECTION IV GENERAL TERMS AND CONDITIONS**

The terms and conditions stated in the form of a contract in Exhibit A apply to this RFP and are incorporated by reference herein. Any Contract awarded as a result of this RFP will contain the general terms and conditions listed in Exhibit A, as well. The Contractor or Contractors selected pursuant to this RFP, and their subcontractors, shall comply with these terms and conditions. The Agencies, individually and collectively, reserve the right to add, delete or revise terms of the Contract or Contracts issued under this RFP before execution by all parties. While drafted as a form of Contract between the Agencies and a selected Contractor to provide hearings officer services, the form may be adapted for a Contract between a single Agency, or two of the Agencies, and a selected Contractor to provide hearings officer services to that single or those two Agencies, if the Agencies choose, in their sole discretion, to award one or more such Contracts pursuant to this RFP.

#### **SECTION V SUBMISSION CHECKLIST**

This checklist is provided for Respondent's convenience only and identifies documents that must be submitted with a Proposal in order to be considered responsive. Any Proposals received without these requisite documents may be deemed non-responsive and may not be considered for contract award.

**DOCUMENTS OR INFORMATION TO BE INCLUDED  
WITH OR IN PROPOSAL**

1. The Original Proposal and three (3) copies
2. Original Exhibit B, Execution of Proposal, signed, with any exceptions noted (Section 3.3(d)(5))
3. Compensation and Fee Proposal (Section 3.3(d)(2))
4. Respondent Information (Section 3.3(d)(1))
5. Proposed Services (Section 3.3(d)(3)), with all required information including:
  - a. Qualifications/Competencies Information for Respondent, List of Key Personnel/Licenses, and 2 Prior Proposals (Section 3.3(d)(3) a.)
  - b. Experience, Client information, and 3 References (Section 3.3(d)(3) b.)
  - c. Work Plan, Research Tools, Administrative Support, and Other Hearings Officer contracts (Section 3.3(d)(3) c.)
6. Conflict of Interest Disclosure (Section 3.3(d)(4))
7. Signed copies of any Addenda to the RFP (Sections 3.3(a) and 3.5(d))

## EXHIBIT A

### TO REQUEST FOR PROPOSAL FOR HEARINGS OFFICER SERVICES

#### A CONTRACT

AMONG  
TEXAS DEPARTMENT OF BANKING,  
TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING,  
AND OFFICE OF CONSUMER CREDIT COMMISSIONER,

AND

\_\_\_\_\_ [CONTRACTOR] \_\_\_\_\_

Contract No. \_\_\_\_\_

This agreement ("**Contract**") is entered into by the following agencies of the State of Texas, the Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Office of Consumer Credit Commissioner ("**the Agencies**"), which are overseen by the Finance Commission of Texas ("**Finance Commission**"), and \_\_\_\_\_ ("**Contractor**"), located at \_\_\_\_\_.

#### I. Recitals

Whereas, on \_\_\_\_\_, 2014, the Agencies, acting through the Texas Department of Banking, issued a Request for Proposals ("**RFP**") from qualified, independent individuals or firms to provide hearings officer services for the Agencies; and

Whereas, Contractor submitted a proposal ("**Proposal**") dated \_\_\_\_\_, 2014, in response to the Agencies' RFP; and

Whereas, Contractor was selected to provide hearings officer services for each Agency and the Finance Commission as permitted by Texas Finance Code, § 11.202(b) for the period beginning September 1, 2014 and ending August 31, 2015;

Now therefore, the Agencies and Contractor hereby agree as follows:

#### II. Authority

This Contract is entered into pursuant to Texas Finance Code, §§ 11.202(b), and 16.006, and authority delegated by the Texas Comptroller of Public Accounts to procure services under Texas Government Code, §§ 2155.131- 2155.132, and 2156.121 -2156.125, and 34 Texas Administrative Code ("**T.A.C.**") § 20.41.

#### III. Services, Standards of Performance, and Contract Administration

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

1. This Contract
2. The Award Letter of the Agencies
3. The Purchase Orders of the Agencies
4. Statement of Work, if any
5. The RFP and Addenda, if any
6. Contractor's Proposal and Contractor's Best and Final Offer
7. Authorized Key Personnel List, if any
8. Nondisclosure Agreement to Protect Against Release of Confidential Information.

All of the above are attached to and incorporated as part of this Contract for all purposes. All of these documents constitute the “**Standards of Performance**” for this Contract.

**3.2** In the case of conflicts between this Contract and any of its exhibits or attachments, such conflicts shall be resolved by reference to the Contract and its exhibits or attachments in the order of their numbered priority in Paragraph 3.1. Thus, for example, this Contract shall control over the Purchase Orders of the Agencies.

**3.3** Contractor shall provide all of the above services and all reasonably related services in accordance with applicable professional standards of a Contractor providing hearings officer services. Contractor represents and warrants that it has the requisite qualifications, experience, personnel and other resources required by the RFP to perform in the manner required by this Contract.

#### **IV. Personnel**

**4.1** If Contractor is a firm, Contractor shall assign only qualified personnel to this Contract. On the effective date of this Contract, the Agencies shall authorize Contractor, if an individual, or Contractor’s key personnel, if Contractor is a firm, listed in the Authorized Key Personnel List, if any, referenced in Paragraph 3.1, to provide hearings officer services under this Contract. Contractor may substitute appropriate key personnel, not identified in Contractor’s original Proposal, to accomplish its duties only if: (a) Contractor provides prior written notice of such substitution and obtains written approval from the Agency for which services are to be rendered; and (b) the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the services required by the RFP as the members of Contractor’s firm originally listed in Contractor’s Proposal.

**4.2** 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 that the services are provided in full compliance with all terms of the RFP and this Contract. If Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply:

- (a)** Contractor shall perform the Contract with its own resources and those subcontractors identified in its Proposal. If Contractor plans, after Contract award, to subcontract all or a portion of the work to be performed to subcontractors not identified in its Proposal, Contractor must provide 30 days’ prior notice and obtain the approval of the Commissioner of the Agency for which the services are being performed before using the services of such subcontractors. Contractor shall also transmit to the Commissioner of such Agency for review and prior approval a true copy of the subcontract it proposes to execute with a subcontractor.
- (b)** Subcontracting shall be solely at Contractor’s expense. In subcontracting for any performances specified in the RFP or Contract, the Contractor understands and expressly acknowledges that the Agencies will not be liable, in any manner, to any subcontractors of Contractor,
- (c)** The Agencies retain the right to check subcontractor’s background, qualifications, and conflicts and to approve or reject the use of submitted subcontractors.
- (d)** Contractor shall be the sole contact for the Agencies or shall list or provide a designated point of contact for all inquiries from the Finance Commission or the Agencies.

#### **V. Payments**

**5.1** Prior to authorizing payment to Contractor, each Agency shall evaluate Contractor’s performance. Contractor shall provide separate invoices to each Agency for services performed. Invoices must be submitted not later than the 10th day of the month following the month in which services have been performed. No payment shall be made under this Contract without the prior submission of detailed, correct invoices. Each invoice must specify the Texas Comptroller issued vendor identification number or social security number for Contractor and a description of the services provided. The invoice must also list, by service topic, the number of hours worked by each representative or employee of Contractor. No advance payments will be made under the Contract pursuant to Government Code § 2155.382(d). All taxes due shall be the responsibility of Contractor. Subject to the foregoing, each Agency must make all payments in accordance with the Texas Prompt Payment Act, Government Code Chapter 2251.

**5.2** Under Texas Finance Code, Title 2, Chapter 16, the Agencies are self-directed and semi-independent financial regulatory agencies. The Finance Code requires that state funds collected by each Agency must be approved by the Finance Commission for expenditure as part of each Agency's budget. Contractor acknowledges and agrees that:

(a) Payments under this Contract are subject to the availability of state funds approved for expenditure by the Finance Commission;

(b) The State of Texas will not be liable for any expense or debt under this Contract, and money from the general revenue fund may not be used to repay the expense or debt under this Contract, if incurred by the Agencies while self-directed, semi-independent financial regulatory agencies; and

(c) The Contract creates no personal liability on the part of members or employees of the Finance Commission or employees of the Agencies.

**5.3** Total fees and expenses payable to Contractor during the term of this Contract shall not exceed \$100,000.

## **VI. Term, Suspension, and Termination**

**6.1. (a) Original Term.** This Contract shall become effective September 1, 2014 or after execution by all parties and as of the date signed by the appropriate officials of the Agencies, whichever date is later, and shall expire on August 31, 2015, unless terminated earlier as provided in this Contract.

(b) **Option to Renew Contract.** The Agencies reserve the right to renew any Contract resulting from this RFP, at their sole discretion, for up to three (3) one (1)-year renewal terms, at the Contract rate, or rates, as modified during the term of the Contract. A written renewal notice must be delivered during the 60 day period preceding the termination date of the Contract. The expiration of any Contract awarded pursuant to this RFP shall not extend beyond the state's fiscal year end for the appropriate period.

**6.2. Suspension.** Upon reasonable notice to Contractor, the Agencies may suspend the Contract, withhold further payments, and prohibit Contractor from incurring additional obligations under the Contract with respect to one or more of the Agencies. The written notice of suspension must describe the reasons for suspension and the suspension's effective date. A suspension with respect to an Agency continues until lifted by the Agency.

**6.3 Termination for the Convenience of the State.** The Agencies reserve the right, in their sole discretion and at their sole option, to terminate this Contract, in whole or in part, without penalty, 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. Following such notice, Contractor shall, unless otherwise mutually agreed in writing, cease all services immediately, except such services as are necessary to wind up, in a cost-effective manner, all services being provided. The Agencies shall be liable for payments for all services performed until the effective date of termination, plus any necessary services to cost effectively wind up services. The notice of termination shall state the effective date of termination.

**6.4 Termination without Penalty.** Contractor acknowledges and agrees that payments under this Contract are subject to termination or cancellation without penalty to any of the Agencies, either in whole or in part, subject to the availability of state funds. Each Agency is a state agency whose authority, revenues and appropriations are subject to actions of the Texas Legislature and of the Finance Commission, pursuant to Finance Code, Title 2, Chapter 16. If any of the Agencies becomes subject to a legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds collected by each Agency pursuant to Finance Code, Title 2, Chapter 16, or otherwise becomes subject to a condition that would render Agency's or Contractor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and deemed null and void. Contractor further acknowledges and agrees that payments under this Contract will be subject to termination or cancellation without penalty to any of the Agencies, either in whole or in part, subject to the availability of appropriated funds, if Chapter 16 is repealed, or if the Agencies are no longer self-directed and semi-independent under that chapter, or if the Agencies otherwise are returned by state law to being funded through the legislative appropriations process. In the event

of a termination or cancellation under this Paragraph, Agency will not be liable to Contactor for any payments, damages or any other amounts which were otherwise due or which may be caused by or associated with such termination or cancellation, and Agency will not be required to give prior notice.

#### **6.5 Termination for Cause/Other Remedies.**

**(a) Termination.** If Contractor fails to provide the services contracted for according to the provisions of the Contract, fails to comply with any of its terms or conditions, or otherwise is found to be in default under any provision of the Contract, the Agencies may, upon ten (10) days' written notice of default to Contractor, immediately terminate all or any part of this Contract and procure the services of another provider by a new solicitation or award of the Contract to the next best responsive and responsible Respondent under the RFP. Contractor will be responsible for paying damages to the Agencies, including, but not limited to, re-procurement costs, any costs over the amount of this Contract for the services of such other provider, and any consequential damages to the State of Texas or the Agencies resulting from Contractor's breach or non-performance. The defaulting Contractor will not be considered in any 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.

**(b) Other Remedies.** Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law, or under this Contract. The Agencies may exercise any other right, remedy, or privilege which may be available to them under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless the Agencies notify the Contractor in writing prior to the exercise of such remedy. The Contractor shall be liable for all costs and expenses, including court costs, incurred by the Agencies with respect to the enforcement of any of the remedies listed herein.

**6.6 Remedies.** Notwithstanding any exercise by the Agencies of their rights of early termination pursuant to this paragraph, Contractor will not be relieved of any liability to the Agencies for damages due to the Agencies by virtue of any breach of this Contract by Contractor or for amounts otherwise due to the Agencies by Contractor.

**6.7 Termination by Contractor.** With cause, Contractor may terminate this contract upon furnishing the Agencies with 90 (ninety) days' advance written notice of its intent to cancel.

**6.8 Termination Notices.** Termination notices may be provided by facsimile or certified mail, return receipt, requested and will be effective upon receipt by the party receiving notice of termination.

**6.9 No Liability upon Termination.** Except as provided in Paragraph 6.3, the Agencies 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 termination by the Agencies of this Contract. However, Contractor may be entitled to the remedies provided in Government Code, Chapter 2260.

**6.10. Rights upon Termination or Expiration; Partially Completed Work.** In the event that the Contract is terminated for any reason, or upon its expiration, the Agencies shall retain ownership of all case record files and all other completed, or partially completed, work, and any and all reports, work papers, research, materials, documentation, information, and other associated work products produced or generated by, or obtained from, the Contractor under the Contract and results of the services in whatever form such work, documentation, information, work products or results may exist (**collectively, "Work Product"**). Following such expiration or termination, or at the request of the Agencies, Contractor shall immediately transfer all case record files to the respective Agencies and, to the extent requested by the Agencies, all other Work Product. All work performed pursuant to this Contract and all Work Product shall be the exclusive property of the Agencies. The Agencies may copy, modify, publish, display, transfer, distribute, prepare derivative works from, or otherwise use, any component of the Work Product or other deliverables made the subject of this Contract at no additional cost to the Agencies. Failure to timely deliver such Work Product shall be considered a material breach of this Contract. Contractor shall not make or retain any copies of the Work Product without the prior written consent of the Agencies.

**6.11. Survival of Contract Provisions Following Termination or Expiration.** Termination of the Contract for any reason shall not release the Contractor from liability or obligation set forth in the Contract that is

expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification, and default. Such provisions shall also survive the expiration of this Contract.

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

**7.1** Notwithstanding any provisions of this Contract to the contrary, Contractor understands that the Agencies will comply with the Texas Public Information Act, Government Code, Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. All information, documentation, and other material submitted under the RFP, this Contract, and any reports, analysis, data and other information generated as a result of the Contract or otherwise obtained in performance of the Contract may be subject to public disclosure under the Texas Public Information Act. The Agencies agree 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 the Agencies in the production of documents responsive to such requests. The Agency which receives a request for information will make a determination whether to submit a Public Information Act request to the Attorney General. Contractor will notify the Agencies within twenty-four (24) hours of receipt of any third party requests for information that were provided by the State of Texas for use in performing the Contract.

**7.2** Contractor is required to make any information created or exchanged with Agency or the state pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to Agency or the state.

**7.3** Contractor agrees to maintain the confidentiality of information received from the Finance Commission, the Agencies, or the State of Texas during the performance of this Contract, including information which is confidential under the Texas Finance Code, is confidential by law, or discloses confidential personal information, particularly, but not limited to, social security numbers. Contractor will be required to complete a Nondisclosure Agreement to Protect against Release of Confidential Information related to any and all confidential records and documents Contractor will receive or access in connection with the Contract.

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

Contractor represents and warrants that it will, within five (5) business days of executing this Contract, provide the Agencies with current certificates of insurance or other proof acceptable to the Agencies of the following insurance coverage: Professional Liability Insurance with minimum limits of \$500,000 per claim and \$1,000,000 annual aggregate covering the Contractor and all personnel who will provide services under this Contract for rendering or the failure to render professional services. Contractor represents and warrants that the above coverage is with a company licensed in the state of Texas, with "A" rating from Best, and authorized to provide the corresponding coverage. Contractor also represents and warrants that Contractor that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to the Agencies. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide the Agencies with an executed copy of the policies immediately upon request.

## **IX. INDEMNIFICATION**

### **9.1 Acts or Omissions**

**Contractor shall indemnify and hold harmless the State of Texas and the Texas Finance Commission, the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, And the Office Of Consumer Credit Commissioner, AND THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from, any acts or omissions of Contractor or its agents, employees, subcontractor, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT**

**AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE STATE AGENCIES AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

## **9.2 Infringements**

**(a) Contractor shall indemnify and hold harmless the State of Texas and the Texas Finance Commission, The Texas Department of Banking, The Texas Department of Savings and Mortgage Lending, And The Office Of Consumer Credit Commissioner, AND THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND DESIGNEES from any and all third party claims involving infringement of United States patents, trademarks, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE STATE AGENCIES AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**

**(b) Contractor shall have no liability under this paragraph if the alleged infringement is caused in whole or in part by: (1) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor's written approval, (iii) any modifications made to the product by the Contractor pursuant to the Agencies' specific instructions, (iv) any intellectual property right owned by or licensed to the Agencies, or (v) any use of the product or service by Agencies that is not in conformity with the terms of any applicable license agreement.**

**(c) If Contractor becomes aware of an actual or potential claim, or the Agencies provide Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against Customer, shall), at Contractor's sole option and expense; (1) procure for the Agencies the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Agencies' use is non-infringing.**

## **9.3 Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

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

**(b) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE TEXAS FINANCE COMMISSION, THE TEXAS DEPARTMENT OF BANKING, THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, AND THE OFFICE OF CONSUMER CREDIT COMMISSIONER, AND THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS AND ASSIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY**

**LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE STATE AGENCIES AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**X. Dispute Resolution/No Waiver of Immunities**

**10.1. Chapter 2260 Process.** The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used by Contractor and the Agencies to resolve any dispute arising under this Contract. Any Contractor claims for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B. To initiate the process, Contractor shall submit written notice, as required by Subchapter B, to each Agency, specifically stating that the provisions of Subchapter B, Chapter 2260, are being invoked. Compliance by Contractor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Subchapter C.

**10.2. Contested Case Process.** The contested case process provided in Government Code, Chapter 2260, Subchapter C is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the Agencies if the parties are unable to resolve their disputes under the negotiation process provided in Paragraph 10.1. Compliance with the contested case process provided in Subchapter C is a condition precedent to seeking consent to sue from the Legislature under Texas Civil Practices and Remedies Code, Chapter 107.

**10.3. Governing Rules.** The submission, processing, and resolution of Contractor's claim is governed by the published rules (7 TAC §§ 10.1 *et seq.*) adopted by the Texas Finance Commission to govern the mediation and negotiation of breach of contract claims against the Agencies pursuant to Texas Government Code, Chapter 2260.

**10.4 No Waiver of Immunities or Rights**

**(a)** Nothing in this Contract shall be considered as a waiver of the state's sovereign immunity. This Contract shall not constitute or be construed as a waiver of the State's sovereign immunity or of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas or the Agencies. The Agencies do not waive any privileges, rights, defenses, or immunities available to the Agencies by entering into this Contract or by their conduct prior to or subsequent to entering into this Contract.

**(b)** The Agencies' participation in, or the results of, the dispute resolution process provided for in Government Code, Chapter 2260, or in mediation or negotiation of breach of contract claims against the Agencies under 7 TAC §§ 10.1 *et seq.*, or otherwise under this section, shall not be construed as a waiver by the Agencies of (1) any rights, privileges, defenses, remedies or immunities available to any of the Agencies as an agency of the State of Texas or otherwise available to the Agencies; (2) the Agencies' termination rights; or (3) other termination provisions or expiration dates of the Contract.

**(c)** The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas or the Agencies 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.

**(d)** Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the Agencies, the Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Government Code, § 2251.051, and such suspension of performance is expressly applicable and authorized under that law.

## XI. Representations, Warranties, and General Provisions

**11.1. Contractor Certifications.** Contractor hereby represents and warrants that all of Contractors' certifications in Contractor's Execution of Proposal remain current, complete, and accurate.

**11.2. Good Standing; Disciplinary Sanctions.**

(a) Contractor represents and warrants that:

- (1) Contractor and all members of Contractor's firm, who are to provide hearings officer services to the Agencies, are members in good standing of the State Bar of Texas.
- (2) Neither Contractor nor any member of Contractor's firm, if Contractor is a firm, has been disciplined, reprimanded, suspended or otherwise sanctioned for professional misconduct by the State Bar of Texas, a federal bar association, or another state bar association.
- (3) Neither Contractor nor any member of Contractor's firm has been reprimanded for judicial misconduct by the Texas Commission on Judicial Conduct or an organization with comparable authority in another state or federal jurisdiction.

(b) Contractor agrees that subparagraph (a) contains continuing representations and warranties and that Contractor will notify the Agencies if Contractor, or any member of Contractor's firm, is no longer a member in good standing of the State Bar of Texas or is disciplined, reprimanded, suspended or otherwise sanctioned, as described in subparagraph (a), and will provide the Agencies full information regarding any such disciplinary action, suspension, reprimand, sanction or loss of good standing.

**11.3. Family Code.** Under Family Code, § 231.006(d), regarding child support, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Contractor subject to § 231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Proposal under the RFP. This information must be provided prior to Contract award.

**11.4. 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. None of the Agencies shall be liable for any taxes, including state sales tax and federal excise tax, resulting from this Contract. Excise exemption certifications are available upon request.

**11.5. Historically Underutilized Businesses.** Contractor represents and warrants that it shall comply with the Historically Underutilized Business requirements of Government Code, Chapter 2161, and the rules adopted by the Texas Comptroller of Public Accounts at 34 T.A.C. §§ 20.11-20.28. Contractor agrees to report, on a monthly basis, to the Agency or Agencies for which it provides hearings officer services the information required regarding any HUB subcontractors, as required by Paragraph 2.5 of the RFP.

**11.6. Equal Opportunity.** Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, or disability in the performance of this Contract.

**11.7. No Conflicts.**

(a) **Actual and Perceived Conflicts.** Contractor represents and warrants that Contractor, its employees, and its subcontractors have no actual or potential conflict of interest in entering a Contract with an Agency or Agencies that it did not disclose in its Proposal. Contractor also represents and warrants that entering a Contract with the Agencies will not create the appearance of impropriety. Contractor represents that no member of the Finance Commission, or officer or employee of the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, or the Office of Consumer Credit Commissioner has a direct or indirect interest in the proceeds from a Contract resulting from this RFP. Contractor represents that it is not funded by, affiliated with, or related to any

person or entity licensed, chartered, registered or regulated by any of the Agencies, other than entities disclosed in its Proposal.

**(b) Current and Former Finance Commission and Agency Employees.** Except as disclosed in its Proposal, Contractor has no personnel who are current or former officers or employees of the Finance Commission or the Agencies, or who are related, within the third degree by consanguinity (as defined by Government Code, § 573.023) or within the second degree by affinity (as defined by Government Code, § 573.025), to any current or former officers or employees of the Finance Commission or the Agencies. If Contractor has members of its firm, who are former officers or employees of the Finance Commission or the Agencies, Contractor and such members agree to fully comply with the requirements of Government Code, § 2252.901.

**11.8. 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 the Agencies of the facts and circumstances surrounding the conviction.

**11.9. Prohibited Use of Appropriated or Other Funds under Control of State Agency; Lobbying.** The Contractor represents and warrants that Contractor's receipt of state funds or appropriated funds, if any, under this Contract is not prohibited by Government Code, §§ 556.005 or 556.008.

**11.10. Licenses, Patents, and Permits.** 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.

**11.11 Records Retention; Supporting Documents; Right to Audit.**

**(a) Records Retention.** The Contractor shall deliver all case record files to the applicable Agency within 90 (ninety) days of closing a case and all case records to the respective Agencies upon termination of the Contract.

**(b) Supporting Documents.** Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract 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 ("**Comptroller**") and the State Auditor's Office ("**SAO**"). Contractor must retain all work, documents and other records pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by the Agencies and any authorized agency of the State of Texas. Contractor shall maintain all such documents and other records relating to this Contract and the State's property that are not transferred to the Agencies at Contract termination 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, upon reasonable notice, and for reasonable periods, all work, documents, and other records pertaining to this Contract, as well as documents and other information related to "**Work Product**" as defined in Paragraph 6.10 of this Contract. Contractor shall cooperate with any authorized agents of the State of Texas, including the Comptroller and the SAO, and shall provide them with prompt access to all of such State's work as requested and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor relating to this contract. Contractor's failure to comply with this paragraph shall constitute a material breach of this Contract and shall authorize the Agencies and the State of Texas to immediately assess appropriate damages for such failure.

**(c) Right to Audit.** Pursuant to Texas Government Code, § 2262.154, the State Auditor's Office, or successor agency, may conduct an audit or investigation of the Contractor or any other entity or person receiving funds from the State directly under the Contract or indirectly through a subcontract under the Contract. The Contractor understands that acceptance of state funds under this Contract acts as acceptance of the authority of the State Auditor's Office, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the SAO in the conduct of the audit or investigation, including providing all records requested and access to any information the SAO considers relevant to the audit or investigation. 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. The Contract may be amended unilaterally by the Agencies to

comply with any rules and procedures of the SAO in the implementation and enforcement of § 2262.154.

**11.12 Force Majeure.** Neither the Contractor nor the Agencies shall be liable to the other party for any delay in, or failure of, performance of any requirement included in this Contract 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.

**11.13. Eligibility/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 represents and warrants that Contractor is not delinquent in the payment of any franchise taxes owed the State of Texas. 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.

**11.14. Buy Texas.** In accordance with Government Code, § 2155.4441, the State of Texas requires that during the performance of a contract for services, Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the State.

**11.15. Independent Contractor.** Contractor and each of Contractor’s employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any Contract resulting from this RFP. Contractor, its employees, its representatives, its agents and any subcontractors shall not be employees of the Agencies.

**11.16 Federal, State, and Local Requirements.** If Contractor is a firm, 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 workers’ compensation insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements.

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

**11.18. Financial Interests; Gifts.** Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from any of the Agencies or any agency of the State of Texas for participation in preparation of specifications for this Contract. Government Code, § 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract. Under Texas Government Code, § 2155.004, Contractor represents and warrants that Contractor is not ineligible 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 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 any public servant or employee in connection with this Contract.

**11.19 Certification Concerning Hurricane Relief.** Government Code, §§ 2155.006 and 2261.053 prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita,

Hurricane Katrina, or any other disaster, as defined by Government Code, § 418.004, occurring after September 24, 2005. Under Government Code, § 2155.006, the Contractor certifies that the individual or business entity named in its Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certifications inaccurate.

**11.20. Compliance with Applicable Law; 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. The Agencies reserve the right, in their sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for compliance by the Agencies or Contractor with all applicable state and federal laws and regulations.

**11.21. Amendments.** Except as provided in Paragraphs 11.11(c) and 11.20, this Contract may be amended only upon written agreement between the Agencies and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.

**11.22. Applicable Law; Venue.** This Contract shall be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. The exclusive jurisdiction and venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

**11.23. 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.

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

**11.25. 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.

**11.26. Limitation on Authority; No Other Obligations.** Contractor shall have no authority to act for or on behalf of any of the Agencies 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 the Agencies.

**11.27. Notices.** Any written notices required under this Contract will be by either hand delivery or by U.S. Mail, certified, return receipt requested, to Contractor's office address specified on Page 1 of this Contract or to the Agencies through Banking Commissioner Charles G. Cooper, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this paragraph by written notification to the other party.

**11.28. False Statements; Breach of Representations.** By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signed its Proposal with a false statement or signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract and the Agencies may terminate or void this Contract for cause and pursue other remedies available to the Agencies under this Contract and applicable law.

## **XII. Signatories**

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective parties.

## **XIII. Merger**

This Contract contains the entire agreement between Contractor and the Agencies and supersedes any prior understandings or oral or written agreements among the Agencies and Contractor on the matters contained

herein. Except as provided in Paragraphs 11.11(c) and 11.20, 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 the Agencies and Contractor.

**[CONTRACTOR NAME]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

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

**OFFICE OF CONSUMER CREDIT COMMISSIONER**

BY: \_\_\_\_\_  
**Leslie L. Pettijohn**  
**Consumer Credit Commissioner**  
**2601 North Lamar Boulevard, 2<sup>nd</sup> Floor**  
**Austin, Texas 78705-4294**

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

**TEXAS DEPARTMENT OF BANKING**

BY: \_\_\_\_\_  
**Charles G. Cooper**  
**Banking Commissioner**  
**2601 North Lamar Boulevard**  
**Austin, Texas 78705-4294**

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

**TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

BY: \_\_\_\_\_  
**Douglas B. Foster**  
**Department of Savings and Mortgage Lending Commissioner**  
**2601 North Lamar Boulevard, Suite 201**  
**Austin, Texas 78705-4294**

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



## EXHIBIT B

### TO REQUEST FOR PROPOSAL FOR HEARINGS OFFICER SERVICES

#### EXECUTION OF PROPOSAL

RFP No. \_\_\_\_\_

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

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

All statements and information prepared and submitted in the Proposal responding 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 Proposal.

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, 15 U.S.C. § 1 *et seq.*; or (2) communicated the contents of this Proposal either directly or indirectly to any competitor or any other person engaged in such line of business.

When a Texas business address is shown hereon, that address is, in fact, the legal business address of Respondent and Respondent qualifies as a Texas Resident Bidder under Texas Administrative Code, Title 34, Part 1, Chapter 20.

Under Texas Government Code, § 2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent's Proposal. Neither Respondent nor any person or entity that will participate financially in this Contract has received compensation from any of the Agencies or any agency of the State of Texas for participation in preparation of specifications for this RFP. Furthermore, under § 2155.004, Respondent certifies that the individual or business entity named in this Proposal is not ineligible to receive the specified Contract under this RFP and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

Respondent certifies either:

1. Respondent has not, and Respondent's employees have not, been convicted of a felony criminal offense; or
2. If such a conviction has occurred, Respondent has fully disclosed the facts and circumstances surrounding the conviction in its Proposal.

Under Texas Family Code, § 231.006, regarding child support, Respondent certifies that the individual or business entity named in this Proposal is not ineligible to receive the specified payment and acknowledges 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 any person holding at least a twenty-five percent (25%) ownership interest in the business entity submitting the Proposal.

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

Under Texas 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 Finance Commission, the Texas Department of Banking (“**DOB**”), the Texas Department of Savings and Mortgage Lending (“**SML**”), the Office of Consumer Credit Commissioner (“**OCCC**”) 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 Finance Commission, the DOB, the SML, or the OCCC or other state agency, then Respondent shall provide the following information in order for the Proposal to be evaluated: Name of former executive, name of state agency, date of separation from state agency, position with Respondent, and date of employment with Respondent

Respondent certifies that either:

1. Respondent is an individual and has not been an employee of the Finance Commission or any of the Agencies within the last twelve (12) months; or
2. Respondent is a firm and: (a) Respondent has no firm member who has been an employee of the Finance Commission or the Agencies in the last twelve (12) months; or (b) if any member of Respondent’s firm has been such an employee within the last twelve (12) months, Contractor and such member agree to comply fully with the requirements of Texas Government Code, § 2252.901.

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

Respondent certifies that: (1) 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; (2) Respondent is in compliance with the State of Texas statutes and rules relating to procurement; and (3) Respondent is not listed on the federal government’s terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

Under Texas Government Code, § 2155.006(b) a state agency may not accept a proposal 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 proposal or award, has been: (1) convicted of violating a federal law, 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 Texas Utilities Code, § 39.459, Hurricane Katrina, or any other disaster occurring after

September 24, 2005. Pursuant to Government Code, § 2155.006, the Respondent certifies that the individual or business entity named in this Proposal is not ineligible to receive the specified Contract and acknowledges that any Contract resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.

Respondent represents that it is not claiming a preference under 34 TAC § 20.38, or if it is claiming such a preference, that it is stated in Respondent's Proposal.

Respondent represents and warrants that the individual signing this Execution of Proposal is authorized to sign this document on behalf of Respondent and to bind Respondent under any contract resulting from this Proposal.

**RESPONDENT (COMPANY):** \_\_\_\_\_

**SIGNATURE (INK):** \_\_\_\_\_

**NAME (TYPED/PRINTED)** \_\_\_\_\_

**TITLE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**STREET:** \_\_\_\_\_

**CITY/STATE/ZIP:** \_\_\_\_\_

**TELEPHONE AND FACSIMILE NUMBERS:** \_\_\_\_\_

**TEXAS IDENTIFICATION NUMBER (TIN):** \_\_\_\_\_