



REQUEST FOR QUALIFICATIONS

Energy Savings Performance Contracting Services

TSC RFQ 17-30

Submission Date:
August 10, 2017

REQUEST FOR QUALIFICATIONS (RFQ)

A - OWNER INFORMATION

1. Purpose of Solicitation

This solicitation is a Request for Qualifications (RFQ). The purpose is to solicit qualifications from Energy Service Companies (ESCOs) that describe their capabilities to identify, design, install, maintain, monitor, and arrange financing of a comprehensive utility conservation program for Texas Southmost College (Owner). This program includes the services listed in this request pursuant to the provisions of Texas law. For the purpose of this RFQ, “ESCO” refers to any entity that is qualified to provide a turnkey utility conservation program that includes the services listed in this request and meets the requirements of the Texas Energy Performance Contracting Guidelines. Owner intends to select an ESCO and to award a single or multiple contract(s) to perform cost-effective utility conservation retrofits.

2. Owner Background

Texas Southmost College (TSC) was initially created in 1926 as The Junior College of the Lower Rio Grande Valley. In 1931, the college name was changed to the Brownsville Junior College and then to TSC in 1949. The main campus is located in Brownsville, Texas and occupies the site of old Fort Brown, a National Historic Site with buildings dating from the 1850’s.

In 1973, TSC offered space on its campus to establish a four-year extension program in Brownsville with Pan American University (now the University of Texas of the Rio Grande Valley in Edinburg, Texas). On September 1, 1991, TSC and The University of Texas-Pan American at Brownsville combined their educational functions with The University of Texas at Brownsville (“UTB”). This entity was created as an upper-division university by the Texas Legislature in May 1991 and was authorized to enter into a partnership agreement with TSC. This resulted in the creation of The UTB/TSC Partnership.

On November 10, 2010, the Board of Regents of the University of Texas System (UTS) voted to terminate the Partnership Agreement. In February 2011, the TSC Board of Trustees approved a motion, whereby TSC would become an autonomous institution and efforts began to develop a model and create legislation.

The Texas Legislature approved legislation to provide for the dissolution of the existing partnership agreement, ending on or before August 31, 2015, to the extent necessary to ensure accreditation.

TSC started classes in August 2013 and developed independent operations for services to the campus. Accreditation from the Southern Association of Colleges and Schools (SACS) was obtained in January 2016.

3. Services Requested

Owner proposes to address all utility and water consumption in all of its facilities for this conservation program. Additionally, Owner intends to upgrade outdated and obsolete building equipment and perform utility-related facility improvements through the program.

Owner anticipates a major reduction in annual utility consumption and associated operational costs through the implementation of this utility conservation program. As part of the process, a contract must include provision for monitoring and verification of utility savings and any

guaranteed operational savings. If requested, the ESCO shall arrange financing or assist the Owner in procuring the most cost effective funding for the project. The term is not-to-exceed twenty years from the final date of installation.

Owner intends to structure the program's implementation schedule in a manner to minimize its financed capital needs.

Respondents to this RFQ shall identify their experience and qualifications to perform analysis, design engineering, preparation of engineering plans and specifications, installation, commissioning, monitoring and verification of savings, and management of a major utility conservation project that has involved Utility Cost Reduction Measures (UCRM) which address facility components and applications. Such components and applications shall include: lighting, space heating, ventilation, air-conditioning, building envelope, heat recovery, energy and water management systems, environmental system controls, motors, domestic water heating, fuel switching, air distribution systems, or other energy and water conservation related improvements or equipment including improvements or equipment related to renewable energy. Owner also requires a description of the ESCO's qualifications and experience related to training facility occupants and maintenance workers in energy and water conservation awareness.

4. Buildings/Project Description

The owner has the following campuses:

Site	Approximate Sq. Ft.
Fort Brown Campus	962,122
ITECC	629,954

5. Procurement Process

a. Owner Publishes RFQ

The Request for Qualifications (RFQ) is the first step in a multi-step process aimed at identifying one or more qualified ESCOs. The RFQ or notice of availability of the RFQ must be published in accordance with state law. The RFQ details the requirements for response, deadlines, and directions for submittal in subsequent sections. This process must conform to provisions of Texas Government Code 2254.004.

b. Selection of Qualified Provider or Short-list of Providers

A committee has been formed to review responses submitted. Based on the selection criteria described in this document, the committee may select a short-list of the most qualified respondents.

c. Walk-through Site Visit Led by Owner

The short-listed respondents may be provided an opportunity to separately walk through one or more facilities with the Owner to develop an understanding of those facilities and the opportunities for improvements in energy and water efficiency equipment or practices. The owner may also choose to have the respondents conduct a Preliminary Utility Audit (PUA) during this step.

d. Oral Presentation

Oral presentations may be required of each of the interested short-listed respondents covering their general qualifications in the field of performance contracting for utility

efficiency improvements. This presentation will include each stage of work required, the firm's initial impression of the Owner's facility status, and a likely conceptual approach to improving the efficiency of the facility.

e. Negotiate Utility Assessment Contract

The Owner will select one respondent to provide detailed utility audits of one or more facilities (or all facilities).

f. Prepare Utility Assessment Report (UAR) for Final Project Proposal

The Owner and the selected respondent will negotiate a contract in which the Owner assigns a facility for the respondent to audit and agrees to pay a negotiated fee for performance of this work. The selected respondent will agree to perform the UAR (detailed audit) according to the Energy Performance Contracting Guidelines. The UAR must be performed and sealed by a licensed Texas Professional Engineer working for a firm that is registered with the Texas Board of Professional Engineers.

Owner expects the ESCO to perform the UAR on a contingent basis (i.e. not bill for the audit until the UAR is completed and the project is developed) and roll the agreed upon cost of the UAR into the final project cost. The owner reserves the right to pay for the UAR or finance it with the rest of the project. Owner may expect a minimum level of savings to be guaranteed based on preliminary utility audits that the ESCO performed.

g. Submittal of Final Proposal

The selected respondent will provide a final proposal for the Owner's utility efficiency improvement project. The final proposal will include the completed Utility Assessment Report, documentation of potential utility and operational savings, and all associated implementation costs. It must also include a Measurement and Verification Plan and a Sample Periodic Savings Report.

h. Review and Recommendation of Final Proposal

The Owner's review committee will review the final proposal and either accepts the proposal, accept the proposal with exceptions or modification, or reject the proposal.

i. Negotiate Master Performance Contract

After the Final Proposal is accepted, the selected respondent and the Owner will negotiate a master implementation contract. The Contract will include authority to proceed with final design and installation/construction and detail the payment schedule to the ESCO.

j. Contract Approval and Review

State law requires that the State Energy Conservation Office (SECO) develops guidelines and an approval process and approves the agency ESPC, and that the UAR be reviewed by an independent, licensed third party engineer prior to contract execution. As part of SECO's approval process, a review of the M&V Plan, a Sample Periodic Savings Report, and the Contract by a licensed third party engineer is also required. The contract review by the third party Engineer will ensure that the essential elements of the enabling statute are covered and accounted for in the contract.

k. Bond Review Board Approval

Any lease-purchase obligation issued by or on behalf of a state agency that has a stated term of longer than five years or has an initial principal amount of greater than \$250,000 must receive Bond Review Board approval prior to their issuance. Bond Review Board rules for the application and approval process can be found in the Texas Administrative

1. Perform Project

Once the Contract is approved and executed, and funding has been secured, the ESCO may proceed with the detailed project engineering design and construction/installation.

6. Evaluation Criteria

Qualifications of all business entities that respond to a solicitation, including any subcontractors to be utilized, should be evaluated using selection criteria similar to the following:

a. Business Qualifications (25%)

- Business unit dedicated to performance contracting.
- Years in business as an ESCO or provider of the services being offered for this program.
- Equipment, services, or utility services manufactured or provided by the business. What percentage of the total business revenues generated by ESCO services?
- ESPC Annual Revenues.
- General project track record.
- Services to be provided under this project.
- Affiliation with all other subcontractors listed in this response.
- Office location from where this project will be managed.
- Proof of current Texas Professional Engineering Registration.
- Local presence in area; current customers in area.
- Specific experience with projects of a comparable nature.

b. Personnel Qualifications (20%)

Background and professional qualifications of personnel assigned to this project, including subcontract personnel. Provide descriptions of their responsibilities, related experiences, and references. Indicate only staff to be directly involved with the project.

c. Financial Qualifications (10%)

To ensure the financial viability of the respondent, at a minimum the following will be considered:

- The financial viability of the entity proposed to provide technical and financial guarantees, as well as other entities proposed to participate in project.
- ESCO will provide audited financial statements including income statement, balance sheets, and statements of changes for three (3) most recently completed fiscal years. If audited financial statements are not available, provide evidence of the level of third party review of the financial statements.
- The financing capability of the respondent. The respondent should provide information that documents sources of proposed financing and specific projects that have used proposed financing sources.
- References from subcontractors used on previous jobs to indicate fiscal responsibility.
- The willingness to adhere to the Owner's standard contract terms and conditions.

d. Project Management Qualifications (10%)

Ability to assign responsibility and coordinate the detailed utility audit project and construction for management of the following project phases:

- Detailed utility audit
- Engineering and design
- Procurement
- Construction
- Commissioning
- Monitoring and verification
- Operations and maintenance, if required

Ability to adhere to project schedules and complete all phases of the performance contracting program process in a timely manner.

e. Experience (35%)

- Experience with implementing similar utility conservation projects on a performance contracting basis.
- Experience with the full range of responsibilities contemplated for this project (e.g., identification and analysis of UCRMs, design, installation, operation, training, financing, savings verification, etc.)
- Performance on prior projects, including data on projecting, achieving monitoring and documenting (measurement and verification) of utility and operational savings in order to ascertain accuracy of projections.
- References from prior projects of a comparable nature performed on a performance contracting basis.

Instructions to Respondents

a. Inquiries and Interpretations

Responses to inquiries which directly affect an interpretation or change to this Request for Qualifications (RFQ) will be issued in writing by the College as an addendum.

All such addenda issued by the College prior to the time that proposals are received shall be considered part of this RFQ, and the Respondent shall be required to consider and acknowledge receipt of each addendum in its proposals. Only those inquiries the College replies to by addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect. All addendums, if any, can be obtained at the following website:

<http://tsc.edu/index.php/about/purchasingqx/vendor-information.html>

b. Point of Contact

The College requires that Respondents restrict all contact and questions regarding this RFQ to the individual named below.

Any questions or concerns regarding this solicitation including terms and conditions, submission requirements, technical requirements and contract award shall be directed in writing to:

Patricia G Saldivar
Purchasing Office
Texas Southmost College
Tandy 110

80 Fort Brown
Brownsville, Texas 78520
Phone: 956-295-3423
Fax: 956-295-3408
patricia.saldivar@tsc.edu

It is TSC's intent to respond to all appropriate questions and concerns; however, TSC reserves the right to decline to respond to any question or concern.

c. Submission of Proposals

Submittal Deadline:

College will accept proposals until Thursday, August 10, 2017 at 2:00 p.m. local time. Proposals in print format shall be submitted to the TSC Purchasing Office located at Tandy 207; 80 Fort Brown; Brownsville, Texas 78520 in attention to Ms. Patricia G. Saldivar, Coordinator of Purchasing. Subsequently, proposals will be read aloud in Tandy 212 Conference Room of the Fort Brown Campus. A non-mandatory pre-proposal conference is scheduled for Monday, July 31, 2017 at 9:00 a.m. at Tandy 212 of the TSC Fort Brown Campus.

The proposal(s) must be received on or before the time and date specified above to the point-of-contact identified below. College delivery hours are from Monday thru Friday from 8:00 a.m. to 5:00 p.m. except during holidays and other College closures. Late submissions will be returned to the Respondent unopened. The College will not accept submissions delivered by telephone, email or facsimile (fax). Proposals properly received will not be returned to Respondents.

Submission Format:

Submittals should be on letter-size (8-1/2"x11") paper and assembled with spiral-type bindings or staples. Do not use metal-ring hard cover binders. Preprinted material should be referenced in the submittal and included as labeled attachments. Each part of the proposal should be separated by use of a divider sheet with an integral tab for ready reference.

All submittals should include a Table of Contents for the Proposal and page numbers for each part of the Proposal as well as any separate attachments. Supplementary information not required should be clearly identified in the Table of Contents and provided as a separate part.

Submit three (3) copies of the proposal in print format and one (1) copy of the proposal in electronic format. The electronic copy shall be submitted in a USB/Flash Drive or in a CD in the same envelope as the hard-copy (print format) original proposal.

Important Proposal Submittal Documents: The following documents, at minimum, must be filled out, signed by an authorized representative, and returned as part of the proposal submittal:

Exhibit A – ANTI-COLLUSION CERTIFICATION
Exhibit B – EXECUTION OF OFFER
Exhibit E – CONFLICT OF INTEREST QUESTIONNAIRE

B - RESPONDENT'S SUBMITTAL

1. Corporate Background and Experience

- Describe your firm's organizational structure, including any limited partnerships and how they are applied to this proposed project.
- How many years has your firm been in business under its present name?
- Indicate all other names by which your firm has been known and length of time known by each name.
- Include the address of your firm's website, if applicable.
- Describe your firm's general approach to energy performance contracting.
- List any equipment manufactured by your company that may be included with this project.
- Describe your willingness to include other manufacturers products
- List past or present litigation in which your company is a defendant pertaining to ESPC projects in Texas.
- List any contracts in Texas in the last ten years that were terminated by the owner prior to completion due to nonperformance.
- List above information related to any previous business names.
- Identify and describe any business associations with equipment manufacturers or suppliers that might be specified for this project.

2. Key Project Personnel

Provide information regarding capabilities and experience of personnel directly assigned to this project that include the following:

- Professional resumes for key personnel and their responsibilities for the duration of the Contract.
- Indicate the education and professional licensing of each person as it relates to this project. Include a list of previous projects, similar in size and complexity, in which each team member has played a significant role.
- Clearly identify who will have primary technical responsibility for utility analysis, engineering and design work, contract negotiations, construction management, training, and performance monitoring.
- Provide an organizational chart that clearly describes your firm's project organization with supervisory reporting for this project.

3. Energy Performance Contracting Experience

- State how many years your firm has been in the energy/water performance contracting business.
- Describe the complete range of utility services and capabilities your firm offers: such as engineering, design, auditing, energy and water equipment selection and installation, operation and maintenance, commissioning, monitoring and verification, and training.
- List all services which your firm performs with your own employees.
- What types of services are usually subcontracted?
- Describe the process of subcontractor selection.

4. Project Team Organization

- Identify the services, name of the firms involved, and the principal contact for each service subcontracted for this project.
- Provide a project organization chart listing each subcontract team member and their area of responsibility to deliver this project.
- Include a description of projects that the firm and its proposed subcontractors have jointly performed.

5. Project Management Plan

Include a plan describing how your firm will manage subcontractors. Describe the processes that will be used for the assignment of tasks, project scheduling, and budget control, as well as capability to provide all services required for construction and implementation of retrofit projects on a performance contracting basis. Provide specific information on management of the following project phases:

- Detailed utility audit
- Engineering and design
- Procurement
- Construction
- Submittal drawings, equipment manuals, and warranties
- Commissioning
- Monitoring and verification
- Operations and maintenance, if required

Provide a timeline indicating necessary activities with a suggested schedule for implementing the detailed audit and project development plan through the procurement process, as referenced in the Owner Supplied Information.

6. Corporate Financial Information

The ESCO will provide audited financial statements including income statements, balance sheets, and statements of changes for the three (3) most recently completed fiscal years. If audited financial statements are not available, provide evidence of the level of third party review of the financial statements. ESCOs shall also provide documenting source(s) and levels of financing (e.g., a letter from a financial institution describing a relationship with the ESCO).

The ESCO shall provide a letter from its surety company demonstrating the ESCO's capability to provide a payment and performance bond associated with construction projects equal to one hundred percent (100%) of the estimated total implementation cost of this project. The letter should also state the bonding capacity of the ESCO.

Provide a copy of an actual bond if available.

7. Risk Mitigating Strategies

Describe any risk minimizing strategies intended to protect the Owner.

8. Performance Contracting References

Discuss your project team's experience with Energy Performance Contracting projects at similar facilities. List references within the past five years indicating experience in conducting comprehensive utility efficiency and guaranteed savings programs of a similar nature to this project (at least two years of guarantee performance must be demonstrated). Include the following specific information for each project:

- Date

- Project title and location
- Name, address, and phone number of Owner's representative
- Trade references from subcontractors
- Nature of your firm's responsibility
- Scope of work including types of utility conservation measures evaluated and installed with type of equipment used
- Total dollar contract amount and term in years
- Type of contract (guaranteed savings, shared savings, direct cost, etc.)
- Source of project funding
- Projected and actual project start and end dates
- Projected annual utility savings (dollars and kWh or BTUs and kW; kgallons)
- Actual and measured annual utility savings (dollars and kWh, kW, Mcf., etc.; kgallons)

9. Utility Savings Verification

Changes to the estimated utility savings can occur as a result of installation of additional mechanical, natural gas, and lighting equipment, expansion of operating schedule, and weather fluctuations. Explain how you will account for this and include an actual Utility Audit Report, Measurement and Verification Plan, and Periodic Utility Savings Report that your firm developed for a facility of similar size and scope.

Describe the methodology for calculating baseline utility consumption for a similar facility. If proprietary software is used, provide a copy of the manual.

Describe how your firm treats actual savings that exceed the guaranteed savings amount.

10. Operational Savings Verification

If operational (non- utility) savings are to be incorporated within the proposed project, address the following questions:

Do you use any of the following types of cost savings to help repay the financing of your project?

- Deferred Maintenance
- Man Power
- Materials
- Administrative Costs
- Scheduled or Unscheduled Equipment Replacement
- Outside Contracts
- Parts
- Equipment Repairs
- Other

Explain how these savings are calculated. Any savings used to calculate the payback must be guaranteed. Explain how you monitor and verify that operational savings have been realized. In the event that operational savings are not realized, what actions would be taken to rectify the shortcomings?

11. Financial Guarantees

Explain in detail how you will guarantee the savings associated with this project. Discuss the following areas in detail:

- Frequency of reconciliation
- Repayment of missed savings

- Treatment of "Operational" (non-utility) savings as they pertain to the guarantee
- Any situations that would void the guarantee
- If measured specific guarantees are or are not used, explain how and to what extent
- If stipulated savings are to be used, explain how and to what extent

12. Equipment and Training

Demonstrate expertise in building operations and maintenance training in terms of successfully completed projects. Specifically discuss the following areas:

- Types of training
- Location of training
- Frequency of training
- Training provided by your personnel
- Training provided by others

13. Project Financing and Incentives

Financing capability will be evaluated. The ESCO will provide information that documents sources of proposed financing and specific projects that have used proposed financing sources.

The ESCO shall also describe in detail how they intend to secure the annual savings project guarantee. Identify alternate financing options or incentives that may be available to the Owner for funding this project. Disclose any relationship, fee, or incentive the ESCO might have or receive related to this financial institution or transaction.

14. Contract Terms and Conditions

While the Owner expects respondents to adhere to their standard contract terms and conditions, identify any contract provisions that the ESCO takes exception to. State any additional terms and conditions that your firm would include, particularly any the ESCO considers nonnegotiable.

15. Respondent's Questions

Please list any questions you have of the Owner that have not been addressed up to this point.

C- GENERAL TERMS AND CONDITIONS

These General Terms and Conditions shall be made a part of and govern any Purchase Order and/or contract resulting from this Request for Proposals.

TITLE AND RISK OF LOSS: The title and risk of loss for goods delivered under this contract, if any, shall not pass to TSC until it actually receives, takes possession and accepts the goods at the point or points of delivery.

ACCEPTANCE OF PRODUCTS AND SERVICES: All products furnished and/or services performed under this Contract shall be to the satisfaction of TSC and in accordance with the specifications, terms, and conditions of the Contract.

INDEMNIFICATION: To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless TSC, its officers, employees, and agents harmless from and against all claims of any nature or kind arising out of or caused from the performance of services, or provision of goods, by the Contractor pursuant to this contract, which are caused, in whole or in part, by any negligent act or omission of the contractor.

COMPLIANCE WITH LAW: Contractor is aware of and in full compliance with its obligations

under existing applicable law and regulations, including the Immigration Reform and Control Act of 1986, Title VI of the Civil Rights Act of 1964 (as amended), the Age Discrimination Act of 1975, the Fair Labor Standards Act (as amended), the Americans with Disabilities Act of 1990, and all other applicable laws and regulations.

PAYMENTS: Payment for services/goods will be made after acceptable performance of services and/or receipt of items in good condition and after receipt of a valid invoice. Payment shall be in accordance with the State of Texas Prompt Payment Act, Chapter 225 of the Government Code.

CONTRACT AMENDMENTS: The Contract may be amended within the Contract period by mutual consent of the parties. No modification or amendment to the Contract shall become valid unless in writing and signed by both parties.

INDEPENDENT CONTRACTOR STATUS: Contractor agrees that it is engaged as an independent contractor and acknowledges that TSC will have no responsibility to provide benefits normally associated with an employer-employee relationship. Contractor agrees that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of TSC.

NON-DISCLOSURE: Contractor and TSC acknowledge that they or their employees may, in the performance of this contract, come into the possession of proprietary or confidential information owned by or in the possession of the other. Neither party shall use any such information for its own benefit or make such information available to any person, firm, corporation, or other organizations, whether directly or indirectly affiliated with Contractor or TSC, unless required by law.

PUBLICITY: Contractor agrees that it shall not publicize this Contract or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of TSC's name in connection with any sales promotion or publicity event without the prior express written approval of TSC.

SEVERABILITY: If any provision of this Contract, or the application of any provision to any party or circumstance is held invalid, unenforceable, or illegal in any respect, the remainder of the Contract and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

FORCE MAJEURE: If either TSC or Contractor is delayed at any time in the performance of its obligations under this contract by economic industry-wide strikes, fire, floods, acts of government, unavoidable casualties, or other causes reasonably beyond the control of either party and which could not have been reasonably anticipated, then the party affected by such an event shall give notice to the other party of the probable extent to which the affected party will be unable to perform or be delayed in performing its obligations hereunder. If the performance of either party is delayed or prevented by such an event, both parties shall be excused from performing their obligations hereunder while and to the extent the conditions arising from the event exist, after which the parties' performance shall be resumed. A delay or failure in performance by either party under this paragraph shall not constitute default hereunder, or give rise to any claim for damages.

GOVERNING LAW: This contract will be governed and construed according to the laws of the State of Texas. Both parties agree that venue for any litigation arising from this contract shall lie in Cameron County, Texas.

ASSIGNMENT: The contractor shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of TSC.

INSURANCE: Contractor shall obtain and keep in effect during the term of this contract, insurance coverage in the below listed types and amounts. As evidence of insurance coverage, Contractor shall furnish to TSC certificate(s) of insurance before commencement of any work under this contract.

TYPE OF COVERAGE	LIMITS
A. Worker's Compensation	Statutory
B. Comprehensive General Liability	\$1,000,000 Ea. occurrence \$2,000,000 aggregate
C. Automobile Liability(owned/leased, non-owned, and hired)	
(1) Bodily Injury	\$1,000,000 Ea. Person \$1,000,000 Ea. Occurrence
(2) Property Damage	\$1,000,000 Ea. Occurrence

MINIMUM WAGE: TSC requires that all employees of prime and subcontractors who submit proposals for, and perform contractual work for TSC receive a living wage consistent with human dignity and the needs of life. TSC policy requires that the contractor pay all employees' wages at least \$8.50 per hour as per Resolution in Support of a Living Wage Requirement for Those Employed By, and Those Doing Business With, TSC. Resolution passed by the Board of Trustees on September 30, 2009.

EXHIBITS

Exhibit A

ANTI-COLLUSION CERTIFICATION

By submission of this proposal, the Proposer certifies that:

1. This proposal has been independently arrived at without collusion with any other Proposer or with any competitor;
2. This proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of proposals for this project, to any other proposer competitor or potential competitor;
3. No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a proposal;
4. The person signing this proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the proposer as well as to the person signing in its behalf.

By: Signature and Title

Firm

Date

Exhibit B

EXECUTION OF OFFER

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

2.1 By signature hereon, Proposer represents and warrants the following:

- 2.1.1 Proposer acknowledges and agrees that (1) this RFP/ is a solicitation for a proposal and is not a contract or an offer to contract; (2) the submission of a proposal by Proposer in response to this RFP/ will not create a contract between Texas Southmost College (TSC) and Proposer; (3) College has made no representation or warranty, written or oral, that one or more contracts with College will be awarded under this RFP/; and (4) Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP/.
- 2.1.2 Proposer is a reputable company that is lawfully and regularly engaged in providing the Services.
- 2.1.3 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.
- 2.1.4 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
- 2.1.5 Proposer understands (i) the requirements and specifications set forth in this RFP/ and (ii) the terms and conditions set forth in the Agreement under which Proposer will be required to operate.
- 2.1.6 If selected by TSC, Proposer will not delegate any of its duties or responsibilities under this RFP/ or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
- 2.1.7 If selected by TSC, Proposer will maintain any insurance coverage as required by the Agreement during the term thereof.
- 2.1.8 All statements, information and representations prepared and submitted in response to this RFP/ are current, complete, true and accurate. Proposer acknowledges that College will rely on such statements, information and representations in selecting the Contractor. If selected by the College, Proposer will notify College immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
- 2.1.9 Proposer will defend with counsel approved by TSC, indemnify, and hold harmless, The College, the State of Texas, and all of their regents, officers, agents and employees, from and against all actions, suits, demands, costs, damages, liabilities and other claims of any nature, kind or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing, arising out of, connected with, or resulting from any negligent acts or omissions or willful misconduct of Proposer or any agent, employee, subcontractor, or supplier of Proposer in the execution or performance of any contract or agreement resulting from this RFP/.
- 2.1.10 Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Proposer under any contract or agreement resulting from this RFP/ may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

2.2 By signature hereon, Proposer offers and agrees to furnish the Services to College and comply with all terms, conditions, requirements and specifications set forth in this RFP/.

2.3 By signature hereon, Proposer affirms that it has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its submitted proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting contracts, and the Proposer may be removed from all proposal lists.

2.4 By signature hereon, Proposer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Tax Code*, or that Proposer is exempt from the payment of those taxes, or that Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting contract or agreement.

2.5 By signature hereon, Proposer hereby certifies that neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et seq., *Business and Commerce Code*, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

- 2.6 By signature hereon, Proposer certifies that the individual signing this document and the documents made a part of this RFP/, is authorized to sign such documents on behalf of Proposer and to bind Proposer under any agreements and other contractual arrangements that may result from the submission of Proposer's proposal.
- 2.7 By signature hereon, Proposer certifies as follows: "Under Section 231.006, *Family Code*, relating to child support, Proposer certifies that the individual or business entity named in the Proposer's proposal is not ineligible to receive the specified contract award and acknowledges that any agreements or other contractual arrangements resulting from this RFP/ may be terminated if this certification is inaccurate."
- 2.8 By signature hereon, Proposer certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers, or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any component of the College, on the other hand, other than the relationships which have been previously disclosed to College in writing and (ii) Proposer has not been an employee of any component institution of TSC within the immediate twelve (12) months prior to the Submittal Deadline. All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before College enters into a contract or agreement with Proposer.
- 2.9 By signature hereon, Proposer certifies that in accordance with Section 2155.004, *Government Code*, no compensation has been received for its participation in the preparation of the requirements or specifications for this RFP/. In addition, Proposer certifies that an award of a contract to Proposer will not violate Section 2155.006, *Government Code*, prohibiting College from entering into a contract that involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or 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, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Pursuant to Sections 2155.004 and 2155.006, *Government Code*, Proposer certifies that Proposer is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if these certifications are inaccurate.
- 2.10 By signature hereon, Proposer certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.11 By signature hereon, Proposer represents and warrants that all products and services offered to College in response to this RFP/ meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the *Texas Hazard Communication Act*, Chapter 502, *Health and Safety Code*, and all related regulations in effect or proposed as of the date of this RFP/.
- 2.12 Proposer will and has disclosed, as part of its proposal, any exceptions to the certifications stated in this Execution of Offer. All such disclosures will be subject to administrative review and approval prior to the time College makes an award or enters into any contract or agreement with Proposer.
- 2.13 **Proposer should complete the following information:**
- If Proposer is a Corporation, then State of Incorporation: _____
- If Proposer is a Corporation then Proposer's Corporate Charter Number: _____
- RFP/ No.: _____

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER SECTIONS 552.021 AND 552.023, *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER SECTION 559.004, *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Submitted and Certified By:

(Proposer Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

Exhibit C

PROPOSAL REQUIREMENTS:

- 1.1 Proposal must be properly identified with a Proposal No. and Opening Date. Proposals must be time-stamped at Texas Southmost College, 80 Fort Brown St., Brownsville, TX 78520 on or before opening date and time shown on other side of this form. Late proposals will not be considered.
- 1.2 Proposals should be quoted F.O.B. Destination. If otherwise, proposal will show exact cost to deliver. Proposal unit price on the quantity specified, extend and show total. In case of errors, unit prices shall govern. Proposal prices will be considered firm for acceptance within 90 days after the proposal opening date unless otherwise specified. Cash discounts will not be considered in determining award; all cash discounts offered will be taken if earned. Proposal will list and deduct all trade discounts, educational discounts, and other discounts, not based on early payment from the proposal's prices quoted.
- 1.3 College is exempt from State Sales Tax and Federal Excise Tax. Do not include in proposal. Tax Exemption Certificate furnished upon request.
- 1.4 College reserves the right to accept or reject all or part of any proposal, waive any formalities or technical inconsistencies, delete any requirement or specification from this invitation, or terminate this solicitation when deemed to be in College's best interest.
- 1.5 Facsimile proposals, telephone proposals and/or email proposals are not acceptable in response to this invitation.
- 1.6 Respondent hereby assigns to College any and all claims for overcharges associated with any resulting contract arising under antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq. (1973) and the State of Texas, Tex. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).
- 1.7 The Vendor ID number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. If the Vendor ID number is not known, enter Respondent's Federal Employer's Identification Number, or Social Security Number if a sole owner. (Disclosure of SSN, if applicable, is mandatory pursuant to Section 231.005, Texas Family Code, and will be used in determining whether any person having 25% or greater ownership interest in the proposal company is more than 30 days delinquent in paying child support.)
- 1.8 In case of tie proposals, any award will be made pursuant to Texas Bldg. & Procurement Comm. Rule 1; T.A.C. Section 113.6 (b)(3)(8) (preferences).
- 1.9 Respondent shall not assign any resulting contractor Purchase Order without prior written approval from the College.
- 1.10 Substitutions will not be allowed after a proposal has been submitted for consideration.
- 1.11 Each sealed proposal shall constitute an offer to the Board of Trustees, as outlined therein, and shall be irrevocable after the time announced for the opening thereof. TSC reserves the right to reject any and all proposals and to waive informalities in proposals and to resolve ambiguities in the District's favor.
- 1.12 Public Works only: Each proposal shall include a cashier's check or certified check, or acceptable Respondent's bond payable to the Owner in the amount of not less than **5%** of the largest total of the proposal submitted.
- 1.13 Public Works only: A **payment bond in the amount of 100%** of the full contract amount will be required on all contracts over \$25,000.
- 1.14 Public Works only: A payment **performance bond in the amount of 100%** of the full contract amount will be required on all contracts over \$100,000. If the Respondents fails to execute the contract and provide satisfactory payment and performance bonds and insurance certificates within ten (10) days of the day on which Respondent is notified that said proposal was accepted or Notice to Proceed is issued, the proposal security shall be forfeited to TSC.

SPECIFICATIONS

- 1.1 Unless specifically stated otherwise, any catalog, brand name or manufacturer's reference used in this Invitation is descriptive (not restrictive), and is used to indicate type and quality desired. Proposals on

brands of like nature and quality will be considered. If proposing on other than referenced specifications, the proposal MUST show manufacturer brand or trade name and description of product offered. Illustrations and complete descriptions of product offered should be made part of the proposal. If Respondent does not identify exceptions to the specifications shown in this Request for Competitive Sealed Proposals it will be required to furnish brand names, numbers, etc., as shown in the Request.

- 1.2 All items shall be new, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated in this solicitation. Verbal agreements to the contrary will not be recognized.
- 1.3 Respondent warrants fault free performance in the processing of date and date related data (including, but not limited to, calculating, comparing and sequencing) by the product(s) identified on this Invitation. Fault free performance includes, but is not limited to, the manipulation of data with dates prior to, through, and beyond January 1, 2000, and during leap years, and performance shall be transparent to the user.

DELIVERY

- 1.4 Proposal should show the number of days required to deliver items to College's designated location under normal conditions. Unrealistically short or long delivery promises may cause proposal to be disregarded. Failure to state delivery time obligates Respondent to complete delivery in 14 calendar days.
- 1.5 The Texas Hazard Communication Act (Article 5182b, VTCS) requires chemical manufacturers and distributors to provide Material Safety Data Sheets (MSDSs) for hazardous materials sold. Products covered by this Act must be accompanied by a MSDS, and such products must be labeled in compliance with the law. For any product not covered under the Act, a statement of exemption must be provided.
- 1.6 Deliveries are accepted from Monday thru Friday from 8:00 a.m. to 5:00 p.m.

PROPOSALDER AFFIRMATION: BY SIGNATURE HEREON

- 1.7 Respondents affirms that it has not given or offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal. Failure to sign the proposal may, and signing it with a false statement shall, void the submitted proposal or any resulting contract and Respondent will be removed from all proposal lists.
- 1.8 Respondent affirms that no kinship, relationship, or affiliation exists between owners, officers, administrators and employees of the Respondent and the College which could be construed as a conflict of interest.
- 1.9 Respondent certifies that it is not currently delinquent in the payment of any franchise tax owed the State of Texas under Chapter 171, Texas Tax Code. Respondent acknowledges that making a false statement as to its corporate tax status is a material breach of any resulting contract.
- 1.10 Respondent certifies that neither the Respondent nor any firm, corporation, partnership or institution represented by Respondent or anyone acting for any such entity, has violated the antitrust laws of this State, (codified in Section 15.01 et seq., Texas Business and Commerce Code), or the Federal Antitrust Laws, or communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 1.11 Respondent has not received compensation for participation in the preparation of the specifications for this Competitive Sealed Proposals.
- 1.12 Under Section 2155.004, Texas Government Code (re: collecting state and local sales and use taxes) Respondent certifies that the individual or entity named in its proposal is not ineligible to receive the specified contract, which may be terminated and/or payment withheld if certification is inaccurate.
- 1.13 Respondent agrees that any payments due under any resulting contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
- 1.14 Respondent certifies, if awarded a contract, that Respondent shall defend, indemnify, and hold harmless the Board of Trustees of Texas Southmost College, and all of their respective officers, agents and employees from and against all claims, actions, suits, demands, proceedings costs, damages, and

liabilities, arising out of, connected with, or resulting from any acts or omissions of Respondent, or any agent, employee, subcontractor or supplier of Respondent in the execution or performance of the contract.

Exhibit D

PURCHASE ORDER TERMS AND CONDITIONS

1. Except when issued to carry out a written agreement signed by Vendor and TSC, these Terms and Conditions constitute the entire agreement for the sale and purchase of the goods and/or services covered by this Purchase Order.
2. By acceptance of this Purchase Order, Vendor affirms that it has not given or offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Purchase Order. In addition, Vendor affirms that no kinship, relationship, or affiliation exists between owners, officers, administrators and employees of the der and the College which could be construed as a conflict of interest
3. The Vendor certifies that neither the Vendor nor any firm, corporation, partnership or institution represented by Vendor, or anyone acting for any such entity, has violated the antitrust laws of this State, (codified in Section 15.01 et seq., Texas Business and Commerce Code), or the Federal Antitrust Laws.
4. The Vendor agrees to protect, indemnify and hold harmless TSC from and against any claim, damage or liability arising out of or in connection with this Purchase Order, except to the extent that it is directly due to the negligent acts or omissions of any of the officers, employees or agents of TSC.
5. The Vendor certifies that it is not currently delinquent in the payment of any franchise tax owed the State of Texas under Chapter 171, Texas Tax Code
6. The Vendor warrants that it will comply with all federal, State of Texas, and local laws and ordinances and regulations as applicable to its performance under this Purchase Order, including, without limitation, the Fair Labor Standards Act of 1938 as amended, the Equal Employment Opportunity clauses prescribed by Executive Order 11246, as amended by Executive Order 11375, the Contract Work Hours and Safety Standards Act, the Americans with Disabilities Act of 1990 and Title VI of the Civil Rights Act of 1964 as amended.
7. The Vendor certifies that Public Liability Property Damage and Worker's Compensation Insurance will be carried for all personnel making deliveries to or performing services at College's premises.

SPECIFICATIONS

8. The Vendor warrants that the goods and/or services supplied to TSC will conform to the specifications, drawings or other referenced description upon which this Purchase Order is based. In the event of a conflict between the specifications, drawings and description, the specifications should govern.
9. All products shall be new, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated. Verbal agreements to the contrary will not be recognized.
10. The Vendor warrants fault free performance in the processing of date and date related data (including, but not limited to, calculating, comparing and sequencing) by the product(s) identified on the Purchase Order. Fault free performance includes, but is not limited to, the manipulation of data with dates prior to through, and beyond January 1, 2000, and during leap years, and performance shall be transparent to the user.

DELIVERY

11. F.O.B Destination Freight prepaid unless delivery terms are specified otherwise in the quote/.

12. Deliveries are accepted from Monday thru Friday from 8:00 a.m. to 5:00 p.m. except during Holidays.

13. The place for delivery should be that set forth in the block of the Purchase Order entitled "Shipping Address".

14. Unless otherwise stated in this Purchase Order, title and risk of loss to the goods shall remain with the Vendor until the goods are delivered at the point or points specified in the Purchase Order.

15. The Texas Hazard Communication Act (Article 5182b, VTCS) requires chemical manufacturers and distributors to provide Material Safety Data Sheets (MSDSs) for hazardous materials sold. Products covered by this Act must be accompanied by a MSDS, and such products must be labeled in compliance with the law. For any product not covered under the Act, a statement of exemption must be provided.

PACKING AND RECEIVING

16. The Purchase Order number must appear on all invoices, packages, statements, and delivery tickets.

17. Vendor shall be responsible for industry standard packaging, which conforms to requirements of carrier tariffs and ICC regulations. Containers must be clearly marked as to lot number, destination, address and Purchase Order number.

INSPECTION

18. Unless otherwise specified in this Purchase Order, the goods shall be new and unused. Vendor warrants that it will deliver to TSC title to the goods free of all security interests, liens, charges, restrictions or encumbrances of any kind, nature or description and that the goods shall be free from defects in material and/or workmanship.

19. TSC shall have the right to inspect any and all goods upon receipt. TSC, by reason of its election to not inspect any goods immediately upon receipt, shall not be deemed to have accepted any defective goods or goods which do not conform to the specifications herein, or to have waived any of its rights or remedies arising by virtue of such defect or non-conformance.

INVOICING AND PAYMENT

20. College is exempt from State Sales Tax and Federal Excise Tax. Do not include in invoice. Tax Exemption Certificate furnished upon request.

21. Payment by TSC for goods and/or services provided by Vendor under this Purchase Order shall be subject to the provisions of Texas Government Code, Chapter 2251.

22. TSC shall tender payment within 30 days upon receipt of invoice. Invoices should be prepared and delivered after acceptance of goods and/or completion of services.

23. Price(s) quoted by Vendor's representative(s) shall not be changed after receipt of Purchase Order. For this purpose, such order shall be deemed to have been received on the date it is mailed or transmitted by electronic means such as electronic mail or facsimile.

24. Invoices should be submitted to the TSC authorized Accounts Payable representative as stated in the block of the Purchase Order entitled "Billing Address".

MODIFICATION AND CANCELLATION

25. Changes or substitutions in merchandise order will not be permitted, unless expressly assented to in writing. No modification of this Purchase Order shall be binding unless TSC agrees to the modification in writing.

26. TSC reserves the right to cancel this Purchase Order at any time upon written notice hereof.

27. However, this Purchase Order will automatically terminate upon occurrence of the following conditions unless specified in writing: a) incomplete order, where not all merchandise is received by TSC according to the specified delivery date; or b) outstanding orders that are not received on or before the end of the College's fiscal year (August 31st).

GOVERNING LAW

28. This Purchase Order shall be governed by the laws of the State of Texas and suits pertaining to this Purchase Order may be brought only in the courts of the State of Texas, with venue in Brownsville, Texas.

Exhibit E

Texas Southmost College is required to comply with TEX. LOCAL GOV'T CODE, Chapter 176, Disclosure of Certain Relationships with Local Government Officers. Any company that does business with ASC must fill out a Conflict of Interest Questionnaire (CIQ) whether or not a conflict of interest exists.

In no conflict of interest exist, please state "NONE" in section one, sign and submit

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor or other person doing business with local governmental entity		
<p>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>		OFFICE USE ONLY
1 Name of person who has a business relationship with local governmental entity.		Date Received
2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.		
(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)		
3 Name of local government officer with whom filer has employment or business relationship.		
<div style="text-align: center;">_____ Name of Officer</div> <p>This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p>		
4		
_____ Signature of person doing business with the governmental entity		_____ Date

Adopted 06/29/2007