

SECTION I SPECIFICATIONS

A. Introduction

The Texas Comptroller of Public Accounts (CPA), an agency of the State of Texas, issues this Price Request (PR) to solicit pricing from qualified vendors to lease storage hardware for Open Systems and Mainframe backups and refresh our IP Based Storage Array. CPA's objective is to refresh this hardware and obtain the best value for CPA and the State of Texas according to the terms and conditions of this PR.

CPA reserves the right not to award a Purchase Order (PO) for the performance of all or part of the requirements of this PR. This PR is not exclusive and CPA reserves the right to issue additional solicitations regarding the Services described in this PR or similar services at any time. All Respondents are encouraged to offer their best pricing at all times.

All costs associated with the Services, as defined by this PR, must be included in the Respondent's Offer. Offers that do not meet all of the requirements or contain all of the required documentation specified in this PR will be rejected as non-responsive.

B. Background

CPA's Information Technology (IT) Division is responsible for managing CPA's data processing operations. This includes developing and maintaining systems that support CPA's duties as well as managing a data center that supports statewide applications. IT management is committed to providing superior customer service and price effective management of its information technology infrastructure.

CPA is in the process of performing a storage hardware refresh of the Backup Storage Array which supports both Open Systems and Mainframe backups and refreshing the IP Based Storage Array used for primary storage of unstructured data, surveillance videos, images and various other workloads.

C. Definitions and Acronyms

- **Backup Storage Array** – A centralized disk storage target for both Open Systems and Mainframe backups.
- **CIFS:** Common Internet File System. The standard way that computer users share files across corporate intranets and the Internet.
- **COTS:** Commercial Off-The-Shelf. Software or hardware products already made and available for sale to the general public.
- **CT:** Central Time.
- **FICON:** Fiber Optic Channel technology that increases capacity and lowers the cost of enterprise system connection. FICON is a proprietary IBM fiber channel (FC), layer-4 protocol with a channel to control unit cabling infrastructure.
- **Fiscal Year (FY):** The State of Texas and CPA's fiscal year begins on September 1 and ends on August 31.
- **Hardware:** Servers, computers, storage, network or related infrastructure to support information processing and any component parts and ancillary equipment that are provided under any contract resulting from this PR.
- **IP Based Storage Array:** Internet Protocol based storage system.
- **iSCSI:** Transport layer protocol that describes how Small Computer System Interface packets are transported over a TCP/IP network.
- **NFS:** Network File Systems
- **OEM:** Original Equipment Manufacturer.
- **Open Systems:** CPA's reference to the following operating systems and related components: Microsoft Windows, RedHat Linux and VMware.

- **RHEL:** RedHat Enterprise Linux.
- **SATA:** Serial Advanced Technology Attachment. A computer bus interface that connects host bus adapters to mass storage devices such as hard disk drives and optical drives.
- **Service Technicians:** OEM trained or OEM certified service technicians.
- **SMB:** Server Message Block.
- **Storage Solution (Solution or Services):** All of the Hardware, Lease Services, Full-Service Maintenance Services, Documentation, Pre-Installation Services, Installation and Implementation Services, Training Services, Technical Services, and other items listed in this Section and the PR. Services include, but are not be limited to, any Optional Features, Products, or Services, shipping charges, freight charges, and any other Prices associated with Successful Respondent’s performance under any PO resulting from this PR.
- **VM:** Virtual Machine.
- **VTL:** Virtual Tape Library.

D. Requirements - Scope of Services

D.1 General

Successful Respondent shall provide the Storage Solution Services as set forth in this PR (“Services”). Services include, without limitation, (1) the Lease of Hardware for Backup Storage Array and IP Based Storage Array, (2)Pre-Installation, Installation, Implementation, Configuration, Maintenance, Data Migration and Related Services for the Hardware, (3) Removal and Return of Data Domain and Netapp Equipment.

Successful Respondent shall provide a fully operational and integrated Storage Solution which includes all the required Hardware, operating system software, migration services, interfaces, and Related Services that are necessary to implement the Storage Solution and provide ongoing support.

The Backup Storage Array is the primary storage target for Open Systems and Mainframe backups. It must support disk storage for Open Systems backups and must provide a Virtual Tape Library for Mainframe backups. The Backup Storage Array must provide compression and deduplication of all backup data and support replication to a remote Data Domain DD9800 and DLM8500 used for disaster recovery. The Backup Storage Array must also provide in-flight encryption and support sending Mainframe long term backups to a cloud vendor.

The IP Based Storage Array must support NFS, iSCSI and CIFS or SMB workloads and must provide tiered storage for various workloads based on the performance needs of the data.

Successful Respondent shall be responsible for the removal and all associated costs of any hardware provided to CPA pursuant to any lease agreement resulting from this PR at the end of such lease.

In its Offer, Respondent must submit a completed Mandatory Price Form as set forth in Section II of this PR which includes all costs associated with the Services. The Mandatory Price Form contains four (4) Price schedules.

In its Offer, Respondent must submit detailed hardware specifications lists or bill of materials in the format prescribed in Appendix A of the PR.

D.2 Functional Requirements

D.2.1 IP Based Storage Array

D.2.1.A. Successful Respondent shall lease to CPA an IP Based Storage Array that meets or exceeds the requirements in this Part D.2.1.A and the specifications in Table A-1: IP Based Storage Array Minimum Configuration Requirements.

Table A-1: IP Based Storage Array Minimum Configuration Requirements		
Qty	Item	Description
416	TB of Usable Storage	Usable Data without data manipulation (compression, deduplication) 30 TBs FLASH drives with 15 GB/s read
		178 TBs SATA drives 3 GB/s read
		208 TBs SATA drives 1.5 GB/s read
1	Compression	Hardware based compression
1	Deduplication	Hardware based deduplication
1	Encryption at rest	Data encryption of disks at rest
1	CIFS	Virtual Windows File server services
1	NFS	Network File System
1	iSCSI	IP based SCSI connection to storage
2	10Ge Ports	10 Gigabit Physical interfaces
2	25G	Copper
1	OEM Rack(s)	OEM supplied rack(s) for equipment

Successful Respondent shall provide an IP Based Storage Array that will allow CPA to utilize low price disks and physical interfaces with access via Ethernet and allow for rapid low-price growth and which leverages 10 gigabit Ethernet (10Ge) utilizing the NFS version 4.0 or newer protocol for all storage.

D.2.3 Backup Storage Array

Successful Respondent shall lease to CPA a Backup Storage Array that meets or exceeds the requirements in this Part D.2.3 and the specifications in Table A-2: Backup Storage Array Minimum Configuration Requirements.

Table A-2: Backup Storage Array Minimum Configuration Requirements		
Qty	Item	Description
500	TB of Usable Storage	Backup Storage Array Open Systems and Mainframe data 500 TB of usable data storage
1	Compression	Hardware based compression
1	Deduplication	Hardware based deduplication of data
1	Replication	Replication of backup data to a remote Data Domain DD9800
1	Encryption at Rest	Data encryption of disks at rest
1	Encryption in-flight	Data encryption of data in-flight
1	CIFS Services	Virtual Windows File server services
1	NFS Services	File server services
1	FCP Services	Fiber Channel Protocol
1	iSCSI Services	IP based SCSI interconnect
1	FICON Services	Fiber Connection for Mainframe
1	VTL	Support 512 virtual tape drives
8	10Ge	10 Gigabit Physical interfaces
4	16 Gbps FICON	Fiber connection for mainframe physical interfaces
1	OEM Rack	OEM supplied rack(s) for equipment

Successful Respondent shall provide a Backup Storage Array that leverages a centralized backup storage target for both Open Systems and Mainframe environments and which has the functionalities of compression and global deduplication for all backup data for both Open Systems and Mainframe backups.

Successful Respondent shall provide a Backup Storage Array that will allow CPA to extend replication of the backup data to a Data Domain DD9800/DLm8500 located in an offsite Disaster Recovery (DR) facility. The replicated backup

data must not hydrate the data prior to replication and shall keep the deduplicated state intact to lower the network bandwidth required for replication. The Backup Storage Array must accept native connections for all mainframe data via FICON and Open Systems backup data via IP protocol.

D.3 Services

Successful Respondent shall provide Statement of Work for Services in Section D.3 shall include tasks to be completed and the roles and responsibilities of each party necessary for preparing and beginning for performing Pre-Installation Services, Installation and Implementation Services, and Data Migration Services.

D.3.1 Pre-Installation Services

Successful Respondent shall provide Pre-Installation Services that include all of the necessary tasks to be completed for preparing and beginning the installation and implementation of the Storage Solution.

There shall be no additional charge to CPA for any Pre-Installation Services.

D.3.2 Delivery of Hardware

Successful Respondent shall ship a complete order of the Hardware from respective OEMs to arrive during normal CPA business hours which are from 8:00 A.M. to 5:00 P.M. CT, Monday through Friday, unless otherwise agreed to by both parties prior to delivery, to CPA's Data Center located at 111 East 17th Street, Austin, Texas.

Table B-1 Hardware Systems CPA's Proposed Installation Dates	
Preferred Dates	September 13, 2022
Alternate Dates #1	September 20, 2022
Alternate Dates #2	September 27, 2022
Alternate Dates #3	September 30, 2022

In its Offer, Respondent shall outline the OEM's maximum order lead time (in number of calendar days) necessary to meet the Preferred Dates and Alternate Dates outlined in Table B-1 of this PR. Successful Respondent shall not deliver the Hardware prior to two weeks before the scheduled installation date unless otherwise agreed to by both parties in writing.

D.3.3 Installation and Implementation Services

Successful Respondent shall provide Installation and Implementation Services that include, without limitation, installation, configuration, activation, implementation, initial operational support, Hardware migration, and acceptance testing for the Storage Solution and services set forth in this Part D.3.3.

In its Offer, Respondent must submit a detailed Statement of Work describing in detail all of the Installation and Implementation Services tasks to be completed, the roles and responsibilities of each party, and criteria for a successful installation of the Storage Solution.

Successful Respondent shall provide Installation and Implementation Services for the following:

- IP Based Storage Array,
- Backup Storage Array,

Successful Respondent shall provide OEM certified personnel to perform Installation and Implementation Services for Hardware. Prior to the start of any and all Installation and Implementation Services, Successful Respondent shall provide CPA with legible documentation of the certification or training of the personnel performing the Installation and Implementation Services. Documentation should include the name of the OEM, the name of the trained or certified technician, equipment the personnel have been trained on, and expiration of certifications (if any). CPA will accept a letter on company letterhead or email with this information from the OEM with verifiable contact information.

D.3.4 Data Migration Services

Successful Respondent shall provide certified personnel to perform all Technical Services. Successful Respondent shall provide OEM certified personnel to perform Technical Services for Hardware.

In its Offer, Respondent must submit a detailed Statement of Work describing any and all tasks to be completed and the roles and responsibilities of each party for Technical Services.

In its Offer, Respondent must submit architecture, design, implementation plans and tasks and testing in the following areas:

Successful Respondent shall migrate Open Systems backup data and Mainframe backup data from the current Data Domain DD9800 and DLM located in the CPA Data Center to the new Hardware.

D.3.5 Acceptance Test; Evaluation Period; Minimum Performance Standard for Hardware

Upon completion of the Successful Respondent's Installation, Implementation, Data Migration, validation and diagnostics of the Hardware, CPA will test the Hardware. CPA will have an Evaluation Period of thirty (30) calendar days to conduct acceptance testing.

In order to meet the Minimum Performance Standards, the Hardware must:

- a) Conform with the OEM and Successful Respondent's technical specifications and functional descriptions, as demonstrated;
- b) Conform with CPA's technical specifications required by this PR and any contract resulting from this PR;
- c) Run necessary programs with CPA data, without interruption or failure;
- d) Operate, without requiring modification(s) to other CPA operational system(s) and network(s); and
- e) Operate without causing performance degradation or malfunctions to CPA operational system(s) and network(s) relative to the current environment

If the Hardware does not at least meet the Minimum Performance Standards during the acceptance testing, CPA reserves the right, in its sole discretion, to:

- a) Request and receive replacement Hardware; or
- b) Continue the acceptance testing, until the Minimum Performance Standards are met for the duration of the Evaluation Period.

If CPA decides to continue the acceptance testing and the Hardware fails to meet the Minimum Performance Standard after thirty (30) calendar days from the commencement of the acceptance testing, then CPA may, in its sole discretion, terminate that portion of the contract, without penalty. CPA's right to terminate that portion of the contract after thirty (30) calendar days will remain effective until the Hardware meets the Minimum Performance Standard for the time period specified in the Evaluation Period.

The official "Acceptance Date" shall be the day immediately following the successful completion of acceptance testing. CPA will issue an official written certificate of acceptance for the Hardware that at least meets the Minimum Performance Standard for the duration of the Evaluation Period. CPA shall not provide any written certificates of acceptance prior to CPA's receipt and acceptance of the Hardware or its components. CPA's acceptance of any Hardware shall not be deemed to waive any rights CPA may have against the manufacturer or licensor, as applicable.

D.3.6 Dates and Timeframes

Respondent shall use CPA's Proposed Installation Dates specified in Table B-1 of this PR as a benchmark for preliminary project planning, delivery, installing and implementing the Hardware. Any changes to these dates must be detailed in the Project Plan and shall include a business justification for the change. See Section I, Part D.9 (Project Plan) of this PR. The installation dates and times will be based upon CPA's established implementation schedules by month. Prior to contract award, CPA will verify delivery dates and times for installation.

Successful Respondent shall complete installation and cut over of the Hardware no later than the dates presented in Table B-1 of this PR. Installation of the Hardware shall occur on a date and time in accordance with Section I, Part D.3.3 of the PR and as mutually agreed upon by CPA and Successful Respondent.

D.4 Training Services

Successful Respondent shall provide CPA with any Training Materials and Web Based side by side instruction associated with the Storage Solution provided under any contract resulting from this PR.

Successful Respondent shall provide Training Services for the following:

- Backup Storage Array Hardware,
- IP Based Storage Array Hardware,

Each training session shall allow multiple CPA employees to attend and learn all the functional operations of the Storage Solution. CPA prefers online training.

Any and all costs associated with Training Services must be included in Respondent's Offer. All costs for Training Services shall be based on a firm fixed price i.e., "fully loaded." Successful Respondent shall not invoice and CPA shall not pay for any additional charges associated with the Training Services such as travel costs, per diem expenses, or other out-of-pocket expenditures.

D.5 Services for the Removal and Return of the Data Domain and NetApp Equipment

Successful Respondent shall be responsible for the discontinuation, de-installation, planning, removal, packaging, and return shipping – including all associated costs – of the Data Domain and NetApp equipment at the end of CPA's lease. Successful Respondent shall provide OEM certified personnel to perform Services for the removal and return of the Data Domain and NetApp Equipment

D.6 Full Service Maintenance Services

D.6.1 General

Successful Respondent shall provide Full Service Maintenance. Full Service Maintenance is defined as both (1) Scheduled Preventative Maintenance and (2) Remedial Maintenance. Full Service Maintenance shall include all warranty, ongoing maintenance and support services. Scheduled Preventative Maintenance is defined as all scheduled service and maintenance performed or required to be performed to maintain the Hardware in operating condition in accordance with OEM published specifications and any additional specifications contained in this PR. Remedial Maintenance includes the following: managing and resolving problems or issues with the Hardware; making repairs; and technical support services. CPA will consider any repair problem or service request within the scope of Full Service Maintenance.

Successful Respondent shall provide CPA with Full Service Maintenance Services 24 hours per day, 7 days a week coverage, including all holidays, for the full term of any Hardware lease resulting from this PR. OEM certified Service Technicians shall provide and be available for all Full Service Maintenance Services. Only OEM certified Service Technicians can diagnose any problems, perform repairs, and provide Full Service Maintenance Services.

For any Hardware that does not come with maintenance service provided 24 hours per day, 7 days per week coverage, including holidays, Respondent shall submit in its Offer all associated costs to meet or exceed the Full Service Maintenance Services requirements of this PR.

Respondent must submit in its Offer a firm-fixed price for a multi-year maintenance term for the leased Hardware specified in Schedules B, E, and H of Section IV, Mandatory Price Form, of this PR.

Successful Respondent must be able to provide documentation confirming that only qualified Service Technicians will service the Hardware as specified within this PR.

Service Technicians must complete any and all Engineering Changes ("EC") in the field as released by an OEM at no additional charge to CPA.

Service Technicians must be available in Austin, Texas and any other location as necessitated by emergency, data center move, merger, or consolidation. Successful Respondent shall ensure the OEM or Manufacturer provides more than one Service Technician in Austin, Texas or its immediate vicinity.

Successful Respondent shall ensure the Hardware is maintained in accordance with the OEM's recommended specifications under both Scheduled Preventative Maintenance and Remedial Maintenance. CPA will, in accordance

with CPA's policies and procedures, provide Successful Respondent with reasonable access to the data storage system to perform maintenance services.

Successful Respondent shall be responsible for ensuring all Service Technicians have real-time electronic access to the OEM's remote technical assistance information network, all of the OEM's micro-code updates, and direct access to the OEM's engineering group.

Successful Respondent shall provide unlimited Full Service Maintenance Services under any contract resulting from this PR.

Respondent shall price Full Service Maintenance Services to include all parts, labor, and travel associated with the maintenance service. All equipment will be located within Austin, Texas. CPA will not pay for any additional travel charges or excess mileage as long as the equipment is installed at CPA's Data Center located in the LBJ State Office Building, 111 East 17th Street, Austin, Texas, 78774.

D.6.2 Scheduled Preventative Maintenance

As part of the Full Service Maintenance Services, Successful Respondent shall perform Scheduled Preventative Maintenance in accordance with OEM's recommended standards, outside of CPA's regular business hours of 8:00 AM to 5:00 PM, CT, Monday through Friday, and agreed upon by Successful Respondent and CPA. However, Successful Respondent and CPA may modify the Scheduled Preventative Maintenance times upon mutual written agreement. Currently, CPA's preventative maintenance is scheduled on selected Sundays between 5:00 AM and 10:00 AM.

D.6.3 Remedial Maintenance

As part of the Full Service Maintenance Services, Successful Respondent shall perform Remedial Maintenance after CPA's notification that Hardware is malfunctioning, according to procedures mutually agreed upon by CPA and Successful Respondent. The response time for Remedial Maintenance shall be one (1) hour or less, 24 hours a day, 7 days a week. Remedial Maintenance response time is defined as the period between the Successful Respondent's receipt of a trouble call and the time the Service Technician is on-site with repair efforts underway. For Service Level resolution times, see Section II, Part D.8.7 of the PR. Successful Respondent must provide CPA with designated points of contact to receive notifications that the Hardware is malfunctioning.

D.6.4 Malfunction Reports

CPA and Successful Respondent shall complete, jointly, a malfunction incident report for each Remedial Maintenance call. The report shall include, as a minimum, the following:

- 1) Date and time notified;
- 2) Date and time of arrival;
- 3) Type and model(s) of machine(s);
- 4) Time spent for repair;
- 5) Description of malfunction; and
- 6) Description of corrective action taken.

D.6.5 Support Line and Support Call Center

Successful Respondent must provide and maintain a toll-free telephone number support line for CPA's requests for Remedial Maintenance. Successful Respondent must inconspicuously mark the toll-free number on each Hardware component.

Successful Respondent must maintain a Support Call Center to receive CPA's notifications of Hardware malfunctions and requests for Remedial Maintenance. Successful Respondent must staff the Support Call Center with an adequate number of qualified technical personnel sufficient to meet the services levels required by this PR. Support Call Center personnel must relay Remedial Maintenance requests to an authorized Service Technician with sufficient amount of time to ensure that the appropriate service level is met. Successful Respondent shall allow at least six (6) authorized CPA contacts to submit requests for Remedial Maintenance.

D.6.6 Escalation Process For Resolving Issues

If Successful Respondent cannot repair a Hardware malfunction within one (1) hour of being on-site for repair, notification of the malfunction must be reported to the Service Technician’s manager, and repair efforts must be escalated to the corresponding level of Successful Respondent's organization.

If Successful Respondent cannot repair a Hardware malfunction within two (2) hours of being on-site for repair, notification of the malfunction must be reported to the Service Technician’s regional management, and repair efforts must be escalated to the corresponding level of Successful Respondent's organization.

If Successful Respondent cannot repair a Hardware malfunction within five (5) hours of being on-site for repair, notification of the malfunction must be reported to the Service Technician’s corporate management, and repair efforts must be escalated to this level of Successful Respondent's organization.

If Successful Respondent cannot repair a Hardware malfunction within eight (8) hours of being on-site for repair, notification of the malfunction must be reported to the president of Successful Respondent's company, and repair efforts must be escalated to the top level of Successful Respondent's organization.

Upon contract award, Successful Respondent must provide the names and telephone numbers of the Successful Respondent’s personnel corresponding to points of contact positions set forth in this Part D.8.6. Successful Respondent must keep this contact information updated and current throughout the term of any contract resulting from this PR.

D.6.7 Service Level Resolution Times

Successful Respondent shall meet the following Service Levels:

Table A-10

On-Site Response	On-site within ONE HOUR from time of call
Severity Level 1	Problem resolved within FOUR HOURS for 99.9% of all problems
Severity Levels 2, 3, and 4	Problem resolved within TWO HOURS for 90% of all problems.
Severity Levels 2, 3, and 4	Problem resolved within FOUR HOURS for 95% of all problems
Severity Levels 2, 3, and 4	Problem resolved within EIGHT HOURS for 100% of all problems

Table A-11

Severity Levels	Descriptions
Severity Level 1 Problem	Total outage of the machine, or an outage of a critical component of the machine, rendering the machine unusable
Severity Level 2 Problem	Failure of any component which leaves the machine usable, but with diminished performance, capacity or functionality, e.g. processor failure, memory failure, FC feature failure.
Severity Level 3 Problem	Failure of any component which leaves the machine usable, but with diminished performance, capacity or functionality, but a workaround is available.
Severity Level 4 Problem	Informational problem needs attention before the machine becomes unusable or begins performing with diminished capacity, performance or functionality.

D.6.8 Credit for Equipment Malfunction

Failure by Successful Respondent to meet the Service Levels specified in Section II, Part D.8.7 of this PR will result in a credit to CPA from Successful Respondent in the amount of any fees which may be assessed by CPA in accordance with this Part D.8.8. If the Storage Solution remains inoperative for a total of six (6) hours or more in any twenty-four (24) hour period, Successful Respondent will provide a credit to CPA, provided the malfunction was not caused by the fault and negligence of CPA, or was not due to causes external to the equipment. Such credit shall be given for the inoperative Hardware and for any other interconnected equipment deemed unusable as a result of the breakdown. The amount of credit shall be computed as follows: \$10,000 for every six (6) hours of downtime.

Downtime for each incident shall start from the time CPA notifies Successful Respondent's designated representative(s) via the specified contact telephone contact number. Downtime shall end when the equipment is returned to full operating condition.

In the event that equipment is inoperable due to equipment failure, and the total number of hours of downtime exceeds 10% of the total scheduled use time during the month for three consecutive calendar months during the term of the contract, as calculated by CPA Incident Management system, CPA reserves the right to require Successful Respondent to replace the equipment with equivalent or better equipment at Successful Respondent's expense. Refusal of Successful Respondent to promptly replace the Hardware will be considered a material breach of contract.

D.6.9 Major Field Modification

Successful Respondent may provide for on-site field modification of the Hardware. These modifications may be based upon CPA's request, or engineering changes that are sponsored by Successful Respondent.

D.6.10 Maintenance Parts

Successful Respondent or the OEM service provider shall use only new standard parts or parts of equal quality and operating specifications in providing Full Service Maintenance.

Parts that are removed and replaced by Successful Respondent or the OEM service provider shall become the property of Successful Respondent or the OEM service provider.

All parts placed into operation shall be deemed to be additions and accessories to the listed equipment involved and shall become part of the Hardware under the lease.

Successful Respondent or the OEM service provider must maintain an inventory of new or "parts of equal quality and operating specifications" for use in installed equipment in Austin, Texas.

Successful Respondent or the OEM service provider must have the capacity to supply loaner equipment during the time equipment provided under the terms of this contract is out of service for maintenance.

D.6.11 No Additional Charges

There shall be no additional charges, under any contract resulting from this PR, for the following:

- 1) Preventative Maintenance;
- 2) Remedial Maintenance;
- 3) Remedial Maintenance required again within 48-hours due to a recurrence of the same malfunction;
- 4) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, etc., after maintenance has commenced;
- 5) Remedial Maintenance required when the Scheduled Preventative Maintenance preceding the malfunction had not been performed;
- 6) Replacement parts;
- 7) Any and all travel expenses associated with service; and
- 8) CPA shall provide reasonable storage space for spare parts and reasonable working space, including heat, light, ventilation, electrical current and outlets for use of Successful Respondent's maintenance personnel. These facilities shall be within a reasonable distance of the equipment to be serviced and shall be provided at no charge to Successful Respondent.

D.6.12 Exclusion

Under any contract resulting from this PR, Full Service Maintenance does not include the following:

- 1) Electrical work external to the equipment or maintenance of accessories, alterations, attachments or other devices not furnished or installed by Successful Respondent;
- 2) Repair of damage or increase in service time caused by: neglect or misuse on the part of anyone other than Successful Respondent; alterations, which shall include, but not be limited to, any deviation from circuit or structural equipment design as provided by Successful Respondent, installation or removal of Successful Respondent's features, or any other modification, whenever any of the foregoing is performed by other than Successful Respondent; any equipment other than that owned by Successful Respondent under this section;
- 3) Repair of damage or increase in service time resulting from failure of CPA to provide a reasonably suitable installation environment as required in Successful Respondent's installation specifications or from use of supplies or materials not meeting Successful Respondent's reasonable specifications for such installation;
- 4) Repair of damage or increase in service time attributable to the use of the equipment for other than data processing purposes for which they were designated;
- 5) Furnishing platens, supplies or accessories; painting or refinishing the equipment or furnishing material thereof; making specification changes or performing services connected with relocation of equipment; or adding or removing accessories, attachments or other devices; and
- 6) Such service which is impractical for Successful Respondent to render because of alterations in the equipment or their connection by mechanical or electrical means to another equipment or device.

D.7 Project Plan

In its Offer, Respondent must submit a comprehensive Project Plan that documents all activities required to successfully install and implement the Storage Solution. The Project Plan must utilize the following Phases to (i) describe the sequential tasks necessary to initiate and complete each Phase; and (ii) provide a detailed timeline required to complete each Phase:

- a) Phase 1: Pre-Installation Services
- b) Phase 2: Installation and Implementation Services
- c) Phase 3: Technical Migration Services
- d) Phase 4: Services for the Removal and Return of Data Domain/DLm and IP Based Storage Array

If Respondent is unable to meet the Preferred Dates specified in Table B-1 in Part I, Section D.3.4 of this PR, Respondent shall adjust the timeline, as needed, according to the Alternate Dates specified in Table B-1.

Successful Respondent shall obtain CPA's written approval of the Project Plan prior to commencing work. Successful Respondent shall only implement the Project Plan approved by CPA. Successful Respondent shall not proceed to the next phase without written approval from CPA.

Respondent shall use the timeframes in Figure 1 of this PR to prepare the Project Plan.

Data Storage Project	Weeks									
	1	2	3	4	5	6	7	8	9	10
Project and Pre-Delivery Planning										
Backup Storage Array – Delivery and Installation Services										
IP Storage Array – Delivery and Installation										
Data Migration										

Figure 1: Estimated Durations

D.8 Written Deliverables

Successful Respondent shall provide CPA with documentation pertaining to the Services which must include, but is not limited to, the following:

- 1) Pre-Installation Written Deliverables: Prior to any Hardware delivery, Successful Respondent shall provide CPA with the following:
 - Project Plan; and
- 2) Installation Written Deliverables: Prior to any Hardware installation, Successful Respondent shall provide CPA with the following:
 - Technical operational documentation.
- 3) Post Implementation Written Deliverables: Successful Respondent shall provide CPA with the following written deliverables on an ongoing basis as Hardware is implemented:
 - Technical operational documentation;
 - System configuration / performance documentation; and
 - Training documentation.

D.9 Original Equipment Manufacturer Warranty

Successful Respondent shall complete all warranty registration procedures and maintain all warranties offered by the Original Equipment Manufacturer (OEM) for the storage and equipment included in and covered by any contract resulting from this PR. In addition, Respondent shall enforce the provisions of the OEM's warranty to ensure that the storage and hardware are properly maintained.

All OEM storage and hardware specific warranties shall remain effective throughout their original warranty period, whether or not those warranties extend beyond the term(s) of any PO resulting from this PR.

During the OEM warranty period, Successful Respondent shall provide onsite maintenance and repair services to keep the Hardware operating in accordance with OEM's requirements and specifications. CPA shall, in accordance with CPA policies and procedures, provide Successful Respondent reasonable access to the Hardware to perform maintenance services. The maintenance services provided by Successful Respondent during the OEM warranty period must at least meet the specifications described in Section II, Parts D.6.2 (Scheduled Preventative Maintenance), D.6.3 (Remedial Maintenance), and D.6.7 (Service Level Resolution Times). In addition, the OEM authorized Service Technicians providing the services must be available in Austin, Texas.

Successful Respondent shall provide maintenance during the OEM warranty period through its own maintenance program, the OEM Warranty, or the OEM maintenance program.

Respondent must include in its pricing all costs including, but not limited to, labor and parts that are provided by the Respondent pursuant to any contract resulting from this PR. The OEM warranty for the Hardware will commence on the date that CPA issues its written acceptance of the Hardware. Full Service Maintenance Services commence upon expiration of OEM warranty.

D.10 Lease Services

Successful Respondent shall provide Lease Services for the Hardware. Lease Services are defined to include all costs, reasonably related services, and resources necessary for Successful Respondent's performance under any lease agreement resulting from this PR. The lease agreement resulting from this PR shall be a Master Operating Lease Agreement pursuant to a DIR contract, not a financing lease or a lease purchase.

At the end of the lease term, CPA shall not exercise any option to purchase equipment, or any other lease option, that might otherwise be available to CPA under the standard terms if a lease agreement.

Successful Respondent shall be solely responsible to CPA for all performances of Successful Respondent's subcontractors, suppliers, business partners and similar entities. Respondent must disclose in its Offer the legal nature of all proposed relationships between Respondent and its subcontractors, suppliers, business partners or similar entities that are required for Respondent's performance under any lease agreement that results from this PR. CPA's payments for authorized Lease Services shall be payable solely to Successful Respondent CPA shall not enter into any contract with Successful Respondent's subcontractors, suppliers, business partners, financing companies, or similar entities. Successful Respondent shall be solely responsible for all payments to its subcontractors, suppliers, business partners, financing companies, or similar entities.

D.11 Documentation.

Documentation refers to the complete set of operating manuals necessary to enable CPA to properly install and use the Hardware, including but not limited to all updates, revisions, and corrections to the manual. Successful Respondent must provide to CPA at least one (1) copy of the documentation via online or hardcopy. . Successful Respondent must provide CPA either (1) written approval which authorizes CPA to make additional copies of the Documentation at no charge or (2) access to additional copies of the Documentation at no charge. CPA will restrict distribution of Documentation to those users with a “Need to Know” classification. **CPA shall not remove, deface, or otherwise obscure any copyright, patent, trademark, service mark, or other proprietary legend (Proprietary Legends) on the Documentation. Furthermore, CPA shall include such Proprietary Legends in any reproductions of Documentation that CPA is permitted to make.**

D.12 Secure Erasure of Hard Disk Capability.

All equipment provided to CPA by Successful Respondent that is equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment’s useful life or the end of the related services agreement for such equipment, in accordance with 1 Texas Administrative Code §202.

D.13 Optional Features, Products, or Services

Respondents are encouraged to submit and describe in detail in their offers optional features, products or services that would benefit CPA but are not part of the minimum requirements of this PR. Optional features, products, or services, may include additional training, additional maintenance, increased service levels, etc. In its Offer, Respondent must describe with specificity any proposed optional features, products, or services. For pricing associated with optional items that exceed the minimum requirements, Respondent must include the line item cost associated with each proposed optional feature, product, or service in the “Optional Features, Products or Services” pricing portion (Schedule D of the Mandatory Price Form, Section IV of this PR.

D.14 CPA Data Safeguard Standards.

- a) Defined Terms. The term “CPA Data” refers to CPA’s information as well as other entity information in the possession of CPA that is processed, stored, or transmitted by a computer. CPA Data includes all data that is generated by Successful Respondent in performance of a contract with CPA. The term “CPA Information System” refers to those devices, networks and related infrastructure that CPA owns, operates or has obtained for use to conduct CPA business. Devices include, but are not limited to, CPA-owned or managed storage, processing, and communications devices, as well as personally owned devices.
- b) Access to CPA Data. Successful Respondent represents and warrants that it will implement, maintain, and use appropriate administrative, technical, and physical safeguards to preserve the confidentiality, integrity, and availability of CPA Data. Successful Respondent will not collect, access, use, disclose, or retain CPA Data other than as necessary to perform the services specified in a contract resulting from this solicitation or as otherwise authorized in writing by CPA. Successful Respondent will restrict access to CPA Data to only those personnel who must have the information on a “need to know” basis. Successful Respondent will not use CPA Data, or any information derived from CPA Data, for its own benefit or the benefit of any other person or entity. Successful Respondent will not share CPA Data with its parent company or other affiliate without CPA’s express written consent.
- c) Web-Based Remote Access to CPA Information Systems. Successful Respondent may use third-party web-based remote access connections to CPA Information Systems to provide support services under the following conditions:
 - (1) CPA shall affirmatively initiate and accept Successful Respondent’s connections to CPA Information Systems.
 - (2) CPA shall monitor Successful Respondent’s connections to CPA Information Systems for the duration of the Services.
 - (3) CPA shall terminate Successful Respondent’s connections to CPA Information Systems upon completion of the Services.
- d) Remote Access to CPA Information Systems. Successful Respondent shall accept the CPA Remote Access Terms and Conditions and obtain CPA’s written approval of Successful Respondent’s Remote Access Request Form before CPA will issue Successful Respondent with credentials to remotely access CPA Information Systems (e.g., for continuous access). Successful Respondent may contact the CPA Contract Manager for the applicable forms. Successful Respondent shall only access CPA Information Systems in accordance with CPA’s security protocols using CPA-approved remote access technologies, processes, and procedures. CPA reserves the right to immediately terminate any access to a CPA Information System.
- e) CPA-Required Security Awareness Training. As a condition of CPA issuing credentials and Successful Respondent gaining access to a CPA Information System, Successful Respondent shall participate in CPA’s security awareness training on an annual basis during the contract term. Within five (5) business days of CPA’s written request, Successful Respondent

shall submit to the CPA Contract Manager (i) a list of individuals who have access to CPA Information Systems, (ii) the most recent completion date of the CPA-required training for each individual, and (iii) copies of the training records. Successful Respondent shall maintain records of all individuals who have completed the CPA-required training for the duration of the individual's employment or other business relationship with Successful Respondent, plus five years. CPA, in its sole discretion, may deny network or system access to any individual that does not complete the CPA-required training within thirty (30) calendar days following the date of CPA's grant of access to the CPA Information System(s).

- f) Location of CPA Data. Successful Respondent shall ensure that CPA Data (*i.e.*, primary and backup) remains, at all times, within the continental United States. Successful Respondent shall receive, process, transmit, and store all CPA Data within the continental United States. Successful Respondent's point of access to CPA Data shall be within the continental United States.
- g) Encryption Standards.
 - (1) Successful Respondent shall encrypt CPA Data in transit and at rest. Data in transit means data is moving via email, in applications, or through browsers and other web connections. Data at rest (including data backups) means data is stored in databases, the cloud, removable media, or mobile devices.
 - (2) Successful Respondent shall utilize encryption standards that are FIPS 140-2 compliant or, upon the written approval of CPA's Chief Information Security Officer, shall meet the intent of the standards as described in FIPS 140-2.
 - (3) The minimum cryptographic algorithm used by Successful Respondent must be Advanced Encryption Standard (AES) 128 or higher (256 AES is preferred).
 - (4) Successful Respondent shall encrypt CPA Data transmitted over a public or private network. CPA approved data encryption transmission protocols include the following: (1) SFTP (FTP over SSH), (2) FTPS (FTP over SSL), (3) HTTPS (HTTP over SSL), and (4) virtual private network.
- i) Auditable Information Security Framework. Successful Respondent shall secure its own and its third-party service providers' systems (*e.g.*, IT service provider, Cloud Service Provider) in a manner consistent with an auditable information security framework *e.g.*, NIST, ISO 27001.
- l) Independent Information Security Assessment. If Successful Respondent has access to a CPA Information System or receives, processes, transmits, or stores CPA Data, then Successful Respondent shall provide CPA with a summary report of the most recent information security assessment conducted by an independent third-party (*e.g.*, SSAE-18 SOC 2 Type II, ISO 27002) upon contract award and annually thereafter. CPA, in its sole discretion, may conduct a security assessment of any information system holding CPA Data or connected to a CPA Information System. CPA's security assessment may consist of a review of the following: (i) independent third-party assessment(s) contracted by Successful Respondent (*e.g.*, SSAE-18 SOC 2 Type II, ISO 27002), and, and (ii) Successful Respondent's System Security Plan.
- m) Media Sanitization. Successful Respondent shall sanitize information system media, both digital and non-digital, in accordance with NIST Special Publication 800-88 (Guidelines for Media Sanitization) when CPA Data in the custody of Successful Respondent is no longer required to be retained by contract with CPA. Successful Respondent must maintain a record documenting each sanitization procedure that, at a minimum, includes the following information: (i) date sanitization completed, (ii) description of the item(s), serial number(s), inventory control number(s), if applicable, and (iii) sanitization method used. No later than sixty (60) calendar days from contract expiration or termination or as otherwise specified in the contract with CPA, Successful Respondent must either (i) complete the sanitization and submit via email to the CPA Contract Manager all sanitization documentation or (ii) submit a written statement via email to the CPA Contract Manager explaining the reason that destruction of CPA Data by Successful Respondent is technically impossible or impractical. Successful Respondent's obligations set forth in this clause survive the termination or expiration of the contract as long as Successful Respondent retains CPA Data.
- n) Third-Party Service Providers. It is Successful Respondent's sole responsibility to ensure that its access and the access Successful Respondent grants to its service providers to CPA Data or CPA Information Systems does not result in unauthorized access to CPA Data or CPA Information Systems.

D.15 Liquidated Damages. In submitting an Offer, Respondent agrees that the measure of damages in the event of a default or breach by Successful Respondent may be difficult or impossible to calculate. In the event Successful Respondent fails to perform Services or complete the obligations under the Contract, as defined in Section I, Part E (Contract Resulting From This Solicitation), in a timely manner, CPA may require Successful Respondent to pay, as liquidated damages and not as a penalty, an amount equivalent to two percent (2%) of the total cost for Services or obligations not completed as required by the Contract per calendar day of delay. CPA may impose, but is not obligated to impose, these liquidated damages in lieu of any monetary damages available to CPA under the Contract or applicable law.

E. Contract Resulting From This Solicitation. The term "Contract" refers to the contract resulting from this PR, if any. Respondent's Offer is an offer to contract based upon the terms, conditions, and specifications set forth in this PR. An Offer becomes a contract with CPA only when a duly authorized representative of CPA issues a valid Purchase Order (PO). CPA may

award the Contract by issuing a PO only, or the PO may incorporate by reference a formal agreement executed by authorized representatives of CPA and Successful Respondent.

The Contract will be between CPA and the Successful Respondent who will be responsible and accountable for providing the Services. The term "Successful Respondent" includes employees, representatives, agents, subcontractors, suppliers, and third-party service providers of Successful Respondent, regardless of how such persons or entities are employed or contracted by Successful Respondent. Successful Respondent shall be solely responsible to CPA for all performances by Successful Respondent's employees, representatives, agents, subcontractors, suppliers, third-party service providers, and similar entities.

F. Contract Term. The initial term of the Contract shall be from November 1, 2022 to October 31, 2026.. To exercise the option to extend the term, CPA will notify Successful Respondent; such notice may be by PO issuance. Notwithstanding the termination or expiration of the Contract, certain provisions *e.g.*, indemnification, confidentiality, right to audit, shall survive the termination or expiration of the contract.

G. Payments. Payment(s) to Successful Respondent will be based upon the schedule described in Section II (Mandatory Price Sheet) and the Contract. CPA may, in its sole discretion, process payments on a monthly basis. CPA makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the Contract. Payment shall be made in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code.

H. PO Addition and Deletion. CPA reserves the right, in its sole discretion, to add or delete products or Services during the period(s) covered under the Contract. All additions or deletions will be processed through CPA's Procurement Section. The rate at the time of the addition or deletion shall be the same as the rate quoted in the Contract for the same model product or service. The effective date of any addition or deletion will be no later than five (5) business days after receipt of CPA's written notification of the addition or deletion. For this purpose, written notification includes registered mail, regular mail, facsimile transmission with confirmation of receipt, or email with confirmation receipt.

For any additions, CPA's Procurement Section will provide a revised PO to Successful Respondent. The total number of additions allowed to CPA is determined by the number CPA chooses to purchase. For any deletions, CPA's Procurement Section will provide a revised PO to Successful Respondent and a letter indicating the effective date of the deletion, the amount of the reduction or refund (if any), and the equipment serial number, if applicable.

I. Respondent Documents.

a) All Respondent documents that are related to the Services, this PR, Respondent's Offer, or the Contract, including, but not limited to, boilerplate service agreements, service schedules, published specifications, license agreements, etc., are collectively referred to in this PR as "Respondent Documents." Respondent must include copies of all proposed Respondent Documents with Respondent's Offer. CPA reserves the right, in its sole discretion, to amend Respondent Documents to conform to this PR and Texas law and provide them to Respondents for approval and signature prior to CPA's issuance of any PO. Respondent Documents that are (1) submitted as part of the Offer and (2) amended to conform to this PR and Contract, through mutual, written agreement of Successful Respondent and CPA, in the described manner will be incorporated as part of the Contract.

J. Offer Content, Format, and Submission Requirements.

a) Offers must be submitted to the address set forth on the first page of this PR.

b) **Late Offers will not be accepted.**

c) **Respondent Questionnaire: Respondent's Qualifications, Experience and Past Performance.** In its Offer, Respondent must provide information regarding Respondent's Qualifications, Experience, and Past Performance that address the following:

(1) **Profile.** In its Offer, Respondent must provide a profile that:

- 1) describes the size and scope of all of Respondent's operations, including number of Respondent's employees and years in business;
- 2) describes the general nature of previous similar work performed by Respondent, particularly work in the last three (3) years;
- 3) describes Respondent's prior contracting experience with CPA and other public sector entities;
- 4) includes a statement regarding the financial stability of Respondent, including the ability of Respondent to perform the Services and any other services proposed in its Offer; and
- 5) includes any other information Respondent believes is pertinent to this PR (*e.g.*, certificates, industry awards).

(2) **References.** In its Offer, Respondent must provide a list of at least three (3) customers other than CPA for which Respondent has provided the proposed Services. The customer reference list must include a customer contact name, phone number and e-mail address.

CPA will not notify Respondent prior to contacting Respondent's designated reference(s). CPA is not obligated to contact Respondent in the event incomplete reference information is submitted in the Offer. Consequently, Respondent's failure to provide all or part of the requested reference information in its Offer may be reflected as a score of "0" for the applicable evaluation criterion. In the event Respondent's reference(s) fails to respond to CPA's inquiry within five (5) business days following the date of CPA's e-mail correspondence or date of CPA's voicemail for a return call, as applicable, then Respondent's score for such reference shall be "0" for the applicable evaluation criterion.

CPA may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (VPTS) as authorized by 2262.055 of the Texas Government Code, CPA may examine other sources of Respondent performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Such sources of Respondent performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, CPA may initiate such examinations of Respondent performance based upon media reports. Any such investigations shall be at the sole discretion of CPA, and any negative findings, as determined by CPA, may result in a non-award to Respondent. Information pertaining to the VPTS is located on the CPA website at: <https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>.

- (3) **Cancellations or Terminations.** Respondent must list all contracts or purchase orders that Respondent executed or accepted within the last three (3) years and which were canceled or terminated before completion by any state agency or other entity with which Respondent contracted. For each cancelled or terminated contract or purchase order, Respondent must include a detailed explanation for the cancellation or termination and final resolution of the matter. Include the names and telephone numbers of each such agency's or firm's contact person. If there were no contracts or purchase orders cancelled or terminated before completion in the last three years, specify none.
- d) **Respondent Questionnaire: Respondent's Compliance with CPA Specifications.** In its Offer, Respondent must submit a detailed narrative explanation of how the offered services will meet the requirements of Section I, Part D (Scope of Services) of this PR. Respondent must provide in its Offer all the information requested in the Scope of Services in conformity with the structure outlined in Section II, Part D (Scope of Services) of this PR. **In the narrative, Respondent must also provide the following:**
- (1) information requested in Part D.14 (Data Safeguard Standards) of this PR.
 - (2) copies of all Respondent Documents applicable to the proffered Services. Refer to Part I of this PR.
 - (3) a detailed description of how Respondent will provide problem or trouble resolution, its escalation procedures, and the timeframe in which Respondent will respond to CPA's request for maintenance and technical support.
 - (4) a description of the qualifications of personnel who will provide the offered Services. In addition, Respondent must identify all proposed personnel who will or may provide services under the Contract. For each proposed individual, Respondent must provide a resume that includes the following information: (1) professional employment history, (2) education, (3) relevant professional training, and (4) professional certifications. Respondent must also identify the roles and responsibilities of the proposed personnel and provide an organizational chart depicting the lines of authority and functional titles of the proposed personnel.
- e) **Required Forms.** The following documents must be completed, signed, and included in the Offer:
- Signed Offer (See page 1 of this PR),
 - Mandatory Price Sheet (See Section II),
 - Nondisclosure Agreement (See Section IV),
 - Conflict of Interest/Disclosure Statement (See Section VI), and
 - Certification Regarding Public Nature of Bid (See Section VII).
- f) **Description of All Offered Optional Features, Products, and Services.** If offered, Respondent must describe in its Offer any Optional Features, Products or Services that would benefit CPA, but are not part of the minimum requirements of this PR. Refer to Section I, Part D.13 of this PR. Respondent must provide line-item pricing for each option on the Mandatory Price Sheet in Section I of this PR.

K. Anticipated Schedule of Events. CPA currently anticipates that the selection of Successful Respondent and award of the Contract will proceed according to the following schedule:

Date	Event
February 9, 2022	Issuance of PR
February 16, 2022	Deadline for Submission of Questions (2:00 p.m., CT)
February 21, 2022	Release of Official Responses to Questions (or as soon thereafter as practical)
March 3, 2022	Deadline for Submission of Offers (2:00 p.m., CT) <u>Late Offers will not be considered</u>

CPA reserves the right, in its sole discretion, to change the dates listed in the Anticipated Schedule of Events. Notices of changes to items directly impacting the original PR or solicitation process will be emailed to Respondent’s point of contact.

L. Questions and Answers.

- a) Questions regarding this PR must be submitted via email by the deadline specified in Part K (Anticipated Schedule of Events) to Pamela Sneed, CPA’s designated contact, at bid@cpa.texas.gov. **Respondent is solely responsible for verifying CPA’s timely receipt of its questions by the specified deadline.**
- b) **Telephone inquiries will not be accepted.**
- c) CPA intends to release the Official Responses to Questions received by Potential Respondents to the Respondents’ points of contact listed for the Respondent’s DIR Contract via email on the date set forth in Part K (Anticipated Schedule of Events).

M. PR Notices. Notices of changes to items directly impacting the original PR or solicitation process (e.g., addendum to the PR, questions received from potential Respondents) will be emailed to Respondent’s point of contact. Respondent is solely responsible for verifying CPA’s receipt of its questions, if applicable, and Offer by the deadlines specified in this PR.

N. Evaluation Process. Evaluation of Offers will begin as soon as practical after receipt. Offers that are responsive to the PR will be evaluated using the following criteria and weights:

<u>Criteria</u>	<u>Weight</u>
Costs	20%
Compliance with CPA Specifications	40%
Respondent’s Qualifications, Experience, and Past Performance	20%
Project Plan	10%
Delivery	10%
Total:	100%

Best and Final Offers may be sought from Respondents whose Offers are ranked most highly by the evaluation committee. CPA reserves the right in its sole judgment and discretion, and at any time upon failure of negotiations, to reissue or withdraw the PR rather than continue with negotiations.

O. Contact with CPA Staff. Upon issuance of this PR, employees and representatives of CPA, other than the CPA Contact Person identified in Part L, will not discuss the contents of this PR with any Respondent or its representatives. **Failure of a Respondent or any of its representatives to observe this restriction may result in disqualification of any related Offer.** This restriction does not preclude discussions between the parties to conduct business unrelated to this procurement.

**SECTION II
MANDATORY PRICE SHEET**

Respondent must include all costs for providing the Services for the items listed on the **Mandatory Price Sheet**. CPA requests that Respondents quote costs as an annual fee. CPA will not prepay any amounts. The not-to-exceed prices associated with the Services shall be inclusive of all travel, meals, lodging, or other related expenses.

This Mandatory Price Sheet consists of four (4) Price Sheets:

- (1) 48 Month Operating Lease for IP Based Primary Storage Array Hardware and Hardware Maintenance;
- (2) 48 Month Operating Lease for Backup Storage Array Hardware and Hardware Maintenance;
- (3) Pre-Installation, Installation and Implementation Services and Removal for IP Based Primary Storage Array and Data Domain Hardware and Technical Services
- (4) Optional Features, Products, or Services.

Mandatory Price Sheet Schedule 1 48-Month Operating Lease for IP Based Primary Storage Array Hardware and Hardware Maintenance (Refer to Section I, Part D.2 of the PR)			
Description	Quantity	Unit of Measure	Price
IP Based Primary Storage Array Hardware (or Converged Infrastructure, if offered) – Monthly Operating Lease	1	Month	\$ /month
Full Service Maintenance Services for DIP Based Primary Storage Array Hardware	1	Month	\$ /month
Total Price for Monthly Operating Lease:			\$ /month
Operating Lease Term:			x 48 Months
Total Price for 48-Month Operating Lease:			\$

Mandatory Price Sheet Schedule 2 48-Month Operating Lease for Backup Storage Array Hardware and Hardware Maintenance (Refer to Section I, Part D.2 of the PR)			
Description	Quantity	Unit of Measure	Price
Backup Storage Array - Monthly Operating Lease	1	Month	\$ /month
Full Service Maintenance Services for Backup Storage Array Hardware	1	Month	\$ /month
Total Price for Monthly Operating Lease:			\$ /month
Operating Lease Term:			x 48 Months
Total Price for 48-Month Operating Lease:			\$

**Mandatory Price Sheet
Schedule 3
Pre-Installation, Installation and Implementation Services and Removal for
IP Based Primary Storage Array and Data Domain Hardware and Technical Services
(Refer to Section I, Part D.7 of the PR)**

Description	Quantity	Unit of Measure	Price
Pre-Installation, Installation, Configuration and Implementation Services for IP Based Primary Storage Array (Refer to Section I, Part D.4 of the PR)	1	LOT	\$
Pre-Installation, Installation, Configuration and Implementation Services for Backup Storage Array Storage Array (Refer to Section II, Part D.4 of the PR)	1	LOT	\$
Data Migration Technical Services (Refer to Section I, Part D.5.2 of the PR)	1	LOT	\$
Services for the Removal and Return of the Data Domain and NetApp Equipment (Refer to Section I, Part D.6 of the PR)	1	LOT	\$
		Total Price of Services:	\$

**Mandatory Price Sheet
Schedule 4
Optional Features, Products or Services
(Refer to Section I, Part D.16 of the PR)**

Description	Quantity	Unit of Measure	Price
			\$
			\$
			\$
			\$
		Total Price of Services:	\$

THIS FORM MUST BE COMPLETED AND SUBMITTED WITH OFFER

Respondent's name: _____

SECTION III
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
PRICE REQUEST (PR)
STANDARD TERMS AND CONDITIONS

Items below apply to and become a part of Respondent's Offer.

1. OFFER REQUIREMENTS:

- 1.1 Offers should be submitted on this form. Offers must be time stamped at Texas Comptroller of Public Accounts (CPA) on or before the hour and date specified for the offer opening.
- 1.2 Late and/or unsigned Offers will not be considered under any circumstances. Person signing Offer must have the authority to bind the firm in a contract.
- 1.3 Respondents must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
- 1.4 Respondents must price per unit shown. Unit prices shall govern in the event of extension errors.
- 1.5 Quote FOB destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 1.6 Offer prices are requested to be firm for CPA acceptance for 120 days from offer opening date. "Discount from list" offers are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts offered will be taken if earned.
- 1.7 Offers should give Texas Identification Number (Payee ID Number), full firm name and address of Respondent on the face of this form. Additionally, firm name should appear on each continuation page of an offer, in the block provided in the upper right hand corner. The Payee ID Number is the taxpayer number assigned and used by CPA. If this number is not known:
 - Provide the Federal Employer Identification Number (Federal EIN) on the face of this form.
 - For Respondent that is a sole proprietor that does not have a Texas Identification Number or Federal EIN, should enter Social Security Number:

□□□□-□□□-□□□□□□

- 1.8 Offer cannot be altered or amended after opening time. Alterations made before opening time should be initialed by Respondent or Respondent's authorized agent. No Offer can be withdrawn after opening time without approval by CPA based on an acceptable written reason.
- 1.9 Purchases made for CPA's use are exempt from the State Sales tax and Federal Excise tax. CPA will provide Tax Exemption Certificates upon written request. Respondent represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State or local income, sales or excise taxes of Respondent or its employees. CPA shall not be liable for any taxes resulting from the Contract.
- 1.10 CPA will not reimburse for travel, meals, lodging or other related expenses unless specifically provided for in the Contract. In that event, such costs will be invoiced to CPA based on actual expenses and CPA shall not be liable for reimbursement of expenses that (1) were not pre-approved in writing by CPA or (2) exceed the current State of Texas Travel Regulations. Receipts are required to validate invoicing.
- 1.11 The following is applicable to "as-needed" or "time and materials" contracts: Successful Respondent is not guaranteed any minimum amount.
- 1.12 CPA reserves the right to make an award on the basis of low line item offer, low total of line items, or in any other combination that will serve the best interest of the State of Texas and to reject any and all offered items in the sole discretion of the State of Texas.
- 1.13 CPA reserves the right to accept or reject all or any part of any kind, waive minor technicalities and award the Offer to best serve the interests of the State of Texas.
- 1.14 Awards will be made in accordance with Rule 34 TAC Sections 20.207 and 20.306 (preferences). The factors listed in Sections 2155.074, 2156.007, 2157.003 of the Texas Government Code shall also be considered in making an award when specified. Consistent and continued tie offers could cause rejection of offers by the CPA and/or investigation for antitrust violations.
- 1.15 Copyrighted offers are unacceptable and are subject to disqualification as non-responsive.
- 1.16 Due to changed building access restrictions, Respondents will not be permitted to hand deliver Offers to the Issuing Office. Respondents are required to submit Offers electronically via email as set forth on the first page of this PR.
- 1.17 Inquiries pertaining to this PR must refer to the PR number and opening date.

2. SPECIFICATIONS:

- 2.1 Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Offers on brands of like nature and quality will be considered unless advertised under Section 2155.067 of the Texas Government Code. If offering on other than references, Offer must show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified offered, illustrations and complete description of product offered are required to be made part of the offer. Failure to take exception to specifications or reference data will require Respondent to furnish specified brand names, numbers, etc.
- 2.2 Unless otherwise specified, items shall be new and unused and of current production.
- 2.3 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.

- 2.4 Samples, when requested, must be furnished free of expense to CPA. If not destroyed in examination, they will be returned to the Respondent, upon request, at Respondent's expense. Each sample should be marked with Respondent's name and address, and PR number. Do not enclose in or attach Offer to sample.
- 2.5 CPA will not be bound by any oral statement or representation contrary to the written specifications of this PR.
- 2.6 Manufacturer's standard warranty shall apply unless otherwise stated in the PR.
- 2.7 CPA will receive and Successful Respondent will convey to CPA clear title, ownership and licenses, whichever is applicable, to all requested items under the Contract.
- 2.8 Successful Respondent will be responsible for payment of all taxes, including, but not limited to, state, federal, foreign, or local taxes, including income tax, withholding tax, social security tax, pension contributions, and any other form of payroll or other taxes, for Successful Respondent and Successful Respondent's employees. Successful Respondent must have basic insurance (workers comp., commercial general liability, etc.), if it is coming on-site or if type of contract is one that can generate third-party claims such as moving services, installation of equipment, etc. At Successful Respondent's sole cost and expense, Successful Respondent will secure and maintain any and all insurance premiums which are required by this PR, the Contract, or are necessary to protect the interests of CPA or which Successful Respondent may need or desire for Successful Respondent or Successful Respondent's employees. Successful Respondent shall indemnify CPA and pay to CPA all costs, penalties, losses, and other amounts resulting from the Successful Respondent's omission or breach of this Paragraph.

3. AWARD OF CONTRACT: A response to this PR is an offer to contract based upon the terms, conditions and specifications contained herein. Offers do not become contracts unless and until they are accepted by a Purchase Order (PO) issued by CPA. CPA reserves the right to make any corrections or include additional requirements in the Contract prior to issuance which are necessary for CPA's compliance, as an agency of the State of Texas, with all state and federal requirements.

4. DELIVERY:

- 4.1 Show number of days required to place material in receiving agency's designated location under normal conditions. Delivery days means calendar days, unless otherwise specified. Failure to state delivery time obligates Respondent to deliver in 14 calendar days. Unrealistic delivery promises may cause Offer to be disregarded.
- 4.2 Time is of the essence in the Contract and accordingly all time limits will be strictly construed and rigidly enforced. If delay is foreseen Respondent shall give written notice to CPA. Respondent must keep CPA advised at all times of status of order. Default on promised delivery (without accepted reasons) or failure to meet specifications authorizes CPA to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.
- 4.3 No substitutions permitted without written approval of CPA.
- 4.4 Delivery shall be made during normal working hours only, unless prior approval has been obtained from ordering agency.

5. INSPECTION AND TESTS: All goods will be subject to inspection and test by CPA. Authorized CPA personnel shall have access to supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the Offer or on samples taken from regular shipment. All costs shall be borne by the Respondent in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at CPA's option, be returned to the vendor or held for disposition at vendor's expense. Latent defects may result in revocation of acceptance.

6. ACCEPTANCE OF PRODUCT(S)/SERVICE(S): Prior to any payments being made under the Contract, CPA shall evaluate the product(s)/service(s) under the following criteria and any additional acceptance criteria of the product(s)/service(s) agreed to prior to the award and included in the Contract:

- (a) The product(s)/service(s) must meet all Requirements and Standards of Performance of the Contract, PR and Offer; and
- (b) The product(s)/service(s) must comply with all published specifications.

7. PAYMENT: Successful Respondent shall submit an itemized invoice showing order number to the address indicated on the PO. CPA will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. CPA, in its sole discretion, reserves the right to the extent permitted by Texas law and CPA regulations to prepay for any requested items delivered to or provided to CPA by Successful Respondent in its performance under the Contract. CPA may inspect, test and evaluate the requested items prior to acceptance and payment. All invoices will be paid in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code.

8. GOVERNING LAW; VENUE: The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to CPA.

9. ASSIGNMENTS: CPA or Successful Respondent may assign its interest in or duties or rights under the Contract without prior written approval to: (i) a successor in interest (for CPA, another state agency as designated by the Texas Legislature), or (ii) a subsidiary, parent company, or affiliate. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party.

10. RESPONDENT AFFIRMATIONS: Signing this Offer with a false statement is a material breach of contract and shall void the submitted Offer or the Contract, and Respondent shall be removed from all bid lists. By signature hereon affixed, the Respondent hereby certifies that:

- 10.1 Pursuant to Section 2155.003 of the Texas Government Code, 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 Offer.

- 10.2 Respondent is not currently delinquent in the payment of any franchise tax owed the State of Texas under Chapter 171 of the Texas Tax Code.
- 10.3 Respondent represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Offer to any competitor or any other person engaged in the same line of business as Respondent. Respondent assigns to CPA all of Respondent's rights, title and interest in and to all claims and causes of action Respondent may have under the antitrust laws of Texas or the United States for overcharges associated with this PR or the Contract.
- 10.4 Pursuant to Section 2155.004(a) of the Texas Government Code, Respondent certifies that neither Respondent nor any person or entity represented by Respondent has received compensation from CPA to participate in the preparation of the specifications or solicitation on which this Offer or Contract is based. Under Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Offer or Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
- 10.5 Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.
- 10.6 Pursuant to Section 231.006(d) of the Texas Family Code, regarding child support, Respondent certifies that the individual or business entity named in the Offer is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Offer. If applicable, this information must be provided prior to award. Enter the Name and Social Security Number for each person below:

Name & SSN: _____

Name & SSN: _____

Name & SSN: _____

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2) of the Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e) of the Texas Family Code.

- 10.7 In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of CPA, (2) a person who at any time during the four years before the date of the contract was the executive head of CPA, or (3) a person who employs a current or former executive head of CPA.
- 10.8 In accordance with Section 2155.4441 of the Texas Government Code, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside Texas.
- 10.9 Respondent represents and warrants its intent to furnish the requested items at the prices quoted and comply with all terms, conditions, and requirements set forth in this PR and the Offer.
- 10.10 Respondent represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exist between Respondent and an employee of any CPA component, and Respondent has not been an employee of any CPA component within the immediate twelve (12) months prior to Respondent's Offer.
- 10.11 Respondent represents and warrants that its prices include all costs of Respondent in providing the requested items that meet all specifications of this PR, and that its prices will remain firm for acceptance for a minimum of one hundred twenty (120) days from deadline for submission of Offers.
- 10.12 Respondent represents and warrants that each employee, including 'replacement employees', will possess the qualifications, education, training, experience and certifications necessary to perform the services in the manner required by this PR.
- 10.13 Respondent represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest or not reasonably create an appearance of impropriety.
- 10.14 Respondent represents and warrants that all articles and services quoted in response to this PR meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* and its regulations in effect or proposed as of the date of this solicitation.
- 10.15 Respondent represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 10.16 Respondent represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.
- 10.17 Respondent represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

- 10.18 Respondent represents and warrants that CPA's payments to Respondent and Respondent's receipt of appropriated or other funds under the Contract are not prohibited by Sections 556.005, 556.0055, or 556.008, Texas Government Code.
- 10.19 Respondent represents and warrants that it has read and understood and shall comply with CPA's Anti-Fraud Policy, located on CPA's website at <https://comptroller.texas.gov/about/policies/ethics.php>, as such Policy currently reads and as it is amended throughout the term of the Contract.
- 10.20 Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 10.21 Respondent certifies that the offering 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. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.
- 10.22 Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting an Offer or awarding a contract that includes proposed financial participation by a 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 Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Respondent certifies that the individual or business entity named in its Offer or the Contract is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.
- 10.23 If Respondent is submitting an Offer for the purchase or lease of computer equipment, then Respondent hereby certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
- 10.24 Respondent represents and warrants that it and each of its subcontractors have the requisite resources, qualifications and independence to conduct the services free from outside direction, control, or influence, and subject only to the accomplishment of CPA's objectives.
- 10.25 Respondent represents and warrants that if selected for award of a contract as a result of this PR, Respondent will submit to CPA a Certificate of Interested Parties prior to contract award in accordance with Section 2252.908 of the Texas Government Code.
- 10.26 Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Contract. Respondent shall state any facts that make it exempt from the boycott certification in its Offer.
- 10.27 Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 10.28 Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in the Offer or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 10.29 Respondent represents and warrants that all statements and information prepared and submitted in response to this solicitation are current, complete, and accurate.
- 10.30 Respondent represents and warrants that the individual signing this document and the documents made part of this PR and Offer is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of the Offer.
- 10.31 Pursuant to Government Code Section 2274.0102, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.
- 10.32 If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must so indicate in its Offer and state why the verification is not required.
- 10.33 If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. If Respondent does not make that verification, Respondent must so indicate in its Offer and state why the verification is not required.
- 10.34 Pursuant to Section 161.0085 of the Texas Health and Safety Code, Respondent certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Respondent's business. Respondent acknowledges that such a vaccine or recovery requirement would make Respondent ineligible for a state-funded contract.

11. RESPONDENT EXCEPTIONS: If Respondent takes any exceptions to any provisions of the PR, these exceptions must be specifically and clearly identified by Section in Respondent's Offer in response to the PR and Respondent's proposed alternative must also be provided in the Offer. Respondents cannot take a 'blanket exception' to the entire PR. If any Respondent takes a 'blanket exception' to the entire PR or does not provide proposed alternative language, the Respondent's Offer may be disqualified from further consideration.

12. DISCOUNTS: If Successful Respondent at any time during the term of the Contract provides a discount on the final negotiated contract costs, Successful Respondent will notify CPA in writing ten (10) days prior to effective date of discount. CPA will generate a PO Change and send a corrected PO to Successful Respondent. If an early payment discount is available to CPA, then in its Offer Respondent must describe with specificity

the early payment discount offered and the discount percentage that would apply to CPA's early payment within ten, fifteen, twenty, or twenty-five calendar days after receipt of a correct invoice.

13. REFUNDS: Successful Respondent will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by CPA which are not expressly authorized under the Contract.

14. INDEPENDENT CONTRACTOR: Successful Respondent or Successful Respondent's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under the Contract. Successful Respondent and Successful Respondent's employees, representatives, agents and any subcontractors shall not be employees of CPA. Should Successful Respondent subcontract any of the services required in this PR, Successful Respondent expressly understands and acknowledges that in entering into such subcontract(s), CPA is in no manner liable to any subcontractor(s) of Successful Respondent. In no event shall this provision relieve Successful Respondent of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this PR.

15. BUSINESS ATTIRE; CONDUCT; CPA GUIDELINES: Successful Respondent must ensure that its employees conduct themselves in a professional manner and are in appropriate business attire when on CPA's premises as a result of the Contract. In addition, Successful Respondent must ensure that its employees comply with all guidelines established by CPA for independent contractors required to provide services on CPA's premises. These guidelines may address issues which include, but are not limited to, the following: building security, IT security, records, safety, professional conduct, use of State owned property, non-disclosure of confidential information, drug and alcohol free workplace rules, and other requirements for on-site independent contractors.

16. USE OF STATE PROPERTY: Successful Respondent is prohibited from using State Property for any purpose other than performing Services authorized under the Contract. State Property includes, but is not limited to, CPA's office space, identification badges, CPA information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any CPA-issued software, and the CPA Virtual Private Network (VPN client)), and any other resources of CPA. Successful Respondent shall not remove State Property from the continental United States. In addition, Successful Respondent may not use any computing device to access CPA's network or e-mail while outside of the continental United States. Successful Respondent shall not perform any maintenance services on State Property unless the Contract expressly authorizes such services. During the time that State Property is in the possession of Successful Respondent, Successful Respondent shall be responsible for (i) all repair and replacement charges incurred by CPA that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Successful Respondent's use of State Property that exceeds the contract scope. Successful Respondent shall fully reimburse such charges to CPA within ten (10) calendar days of Successful Respondent's receipt of CPA's notice of amount due. Use of State Property for a purpose not authorized by contract shall constitute breach of contract and may result in termination of the contract and the pursuit of other remedies available to CPA under contract, at law, or in equity.

17. RECORDS: Successful Respondent will maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These supporting fiscal documents will be maintained and retained by Successful Respondent for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Successful Respondent will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Successful Respondent pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by CPA or the State of Texas.

18. ROLLING ESTOPPEL: If Successful Respondent is aware a problem exists and fails to report the problem to CPA, Successful Respondent continues to be responsible for meeting the goals and timelines established in the Contract. Under these circumstances, CPA will not be liable for any detrimental consequences.

19. FORCE MAJEURE: Neither Successful Respondent nor CPA shall be liable to the other for any delay in, or failure of performance, of any requirement included in the 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.

20. NO WAIVER: Nothing in the Contract shall be construed as a waiver of the state's sovereign immunity. The Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under the 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. CPA does not waive any privileges, rights, defenses, or immunities available to CPA by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

21. TEXAS PUBLIC INFORMATION ACT: Notwithstanding any provisions of this PR to the contrary, Respondent understands that CPA will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this PR or the Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Successful Respondent is required to make any information created or exchanged with the State pursuant to the 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 the State. Specific formats acceptable to CPA include Word, Excel, and pdf. Within three (3) days of receipt, Successful Respondent will refer to CPA any third-party requests, received directly by Successful Respondent, for information to which Successful Respondent has access as a result of or in the course of performance under the Contract. Any part of the Offer that is of a confidential or proprietary nature must be clearly and prominently marked as such by the Respondent.

22. STATE AUDITOR'S RIGHT TO AUDIT: In addition to and without limitation on the other audit provisions of this PR or the Contract, pursuant to Section 2262.154 of the Texas Government Code, the Texas State Auditor's Office ("state auditor") may conduct an audit or investigation of any other entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Successful Respondent or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Successful Respondent or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. The contract may be amended unilaterally by CPA to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code. Successful Respondent shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Successful Respondent and the requirement to cooperate is included in any subcontract it awards.

23. DEBTS AND DELINQUENCIES AFFIRMATION: Respondent acknowledges and agrees that, to the extent Respondent owes any debt, including but not limited to delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Respondent is otherwise owed under the Contract may be applied by CPA toward any debt Respondent owes the State of Texas until the debt is paid in full. These provisions are effective at any time Respondent owes any such debt or delinquency. Respondent shall comply with rules adopted by CPA under Sections 403.055, 403.0551, 2252.903 of the Texas Government Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

24. DISPUTE RESOLUTION: The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by CPA and the Successful Respondent to attempt to resolve any dispute arising under the Contract.

25. INDEMNIFICATION (GENERAL): SUCCESSFUL RESPONDENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CPA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF SUCCESSFUL RESPONDENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY SUCCESSFUL RESPONDENT WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUCCESSFUL RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. SUCCESSFUL RESPONDENT AND CPA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

26. INDEMNIFICATION (IP): SUCCESSFUL RESPONDENT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CPA AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF RESPONDENT PURSUANT TO THE CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED UNDER THE CONTRACT; AND/OR (3) CPA'S AND/OR SUCCESSFUL RESPONDENT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO CPA BY SUCCESSFUL RESPONDENT OR OTHERWISE TO WHICH CPA HAS ACCESS AS A RESULT OF SUCCESSFUL RESPONDENT'S PERFORMANCE UNDER THE CONTRACT. SUCCESSFUL RESPONDENT AND CPA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. SUCCESSFUL RESPONDENT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY SUCCESSFUL RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND SUCCESSFUL RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, SUCCESSFUL RESPONDENT WILL REIMBURSE CPA AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF CPA DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF SUCCESSFUL RESPONDENT OR IF CPA IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, CPA WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND SUCCESSFUL RESPONDENT WILL PAY ALL REASONABLE COSTS OF CPA'S COUNSEL.

27. TERMINATION BY MUTUAL AGREEMENT: Upon the mutual written agreement of CPA and Successful Respondent, the Contract may be terminated or cancelled.

28. TERMINATION FOR CONVENIENCE: CPA may terminate the Contract for convenience upon thirty (30) calendar days written notice. There is no buy out or other amounts due if CPA terminates early. Upon termination under this provision, Successful Respondent shall refund to CPA any amounts attributable to the terminated months within thirty (30) days of the termination.

29. EXCESS OBLIGATIONS PROHIBITED: The Contract is subject to termination or cancellation, without penalty to CPA, either in whole or in part, subject to the availability of state funds. CPA is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If CPA becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render CPA's or Successful Respondent's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, CPA will not be liable to Successful Respondent for any damages that are caused or associated with such termination or cancellation, and CPA will not be required to give prior notice.

30. SUCCESSFUL RESPONDENT'S NONPERFORMANCE: If Successful Respondent fails to comply with any requirement of the Contract, including, but not limited to, those included in this PR, CPA may immediately terminate or cancel all or any part of the Contract, may obtain substitute requested items, may withhold acceptance and payments to Successful Respondent, may revoke any prior acceptance, may require Successful Respondent to refund amounts paid prior to revocation of acceptance and may pursue all rights and remedies against Successful Respondent under the Contract and any applicable law. In addition, CPA will report defaulting Successful Respondent to the Statewide Procurement Division for its possible action against defaulting Successful Respondent.

31. TERMINATION RIGHTS & REMEDIES: CPA reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to CPA under the Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Successful Respondent's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to CPA under the Contract or under applicable law. CPA reserves the right to pursue any and all applicable rights and remedies if the Contract is terminated for any reason and CPA expressly waives no such rights or remedies.

32. REPRESENTATIONS AND WARRANTIES RELATED TO SOFTWARE: If any software is provided under the Contract, Successful Respondent represents and warrants each of the following:

- Successful Respondent has sufficient right, title, and interest in the software to grant the license required by the Contract;
- if Successful Respondent is a software publisher, Successful Respondent has implemented processes for the protection, detection, remediation, mitigation and timely customer notification of software vulnerabilities associated with its software;
- the software does not infringe upon or constitute a misuse or misappropriation of any patent, trademark, copyright, trade secret or other proprietary right;
- the software and any Software Update, Software Enhancement/Release, Software Patch/Fix, and Software Upgrade does not contain viruses, malware, spyware, key logger, back door or other covert communications, or any computer code intentionally designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of the computer program, or any other associated software, firmware, hardware, or computer system, (including local area or wide-area networks), in a manner not intended by its creator(s); and
- the software does not contain any computer code that would disable the software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs", "time locks", or "drop dead devices") or that would permit Successful Respondent to access the software to cause such disablement or impairment (sometimes referred to as a "trap door" or "back door").

33. TECHNOLOGY ACCESS CLAUSE: Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Respondent represents and warrants to CPA that the technology provided to CPA for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Part 33, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

34. INTERNAL REVENUE SERVICE DATA – Reference Exhibit 7 (Contract Language for General Services) of IRS Publication No. 1075 posted 12-22-2016: In performance of the Contract, the Successful Respondent agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

- (1) All work will be performed under the supervision of Successful Respondent or Successful Respondent's responsible employees.
- (2) Successful Respondent and Successful Respondent's employees with access to or who use FTI (Federal Tax Information) must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of the contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone other than an officer or employee of Successful Respondent is prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (5) No work involving returns and return information furnished under the contract will be subcontracted without prior written approval of the IRS.
- (6) Successful Respondent will maintain a list of employees authorized access. Such list will be provided to CPA and, upon request, to the IRS reviewing office.
- (7) CPA will have the right to void the contract if Successful Respondent fails to provide the safeguards described above.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction

by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of the contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1. Additionally, it is incumbent upon Successful Respondent to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. Granting Successful Respondent access to FTI must be preceded by certifying that each individual understands CPA's security policy and procedures for safeguarding IRS information. Successful Respondent must maintain its authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in CPA's files for review. As part of the certification and at least annually afterwards, Successful Respondent must be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 4, *Sanctions for Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*, of Publication 1075). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10 of Publication 1075) For both the initial certification and the annual certification, Successful Respondent must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

The IRS and CPA with 24 hour notice shall have the right to send its inspectors into the offices and plants of Successful Respondent to inspect facilities and operations performing any work with FTI under the contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where Successful Respondent is found to be noncompliant with contract safeguards.

35. INFORMATION SECURITY REQUIREMENTS: Successful Respondent shall comply with all applicable state and federal laws and regulations regarding confidentiality, privacy, and security pertaining to confidential CPA information. If communications with Successful Respondent necessitate the release of confidential CPA information, each individual who will require access to or may be exposed to that information must sign the CPA Confidential Treatment of Information Acknowledgement (CTIA) form. See Section V for the CTIA.

36. ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, 1 TAC §213.17: Respondent represents and warrants that any electronic and information resources products developed, procured, maintained, or used by CPA directly or used by the Respondent under the Contract which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product complies with the applicable State of Texas Accessibility requirements for Electronic and Information Resources specified in the Department of Information Resources' rules at 1 Texas Administrative Code Chapter 213.

37. SECURITY INCIDENT NOTIFICATION: Successful Respondent shall have policies and procedures for the effective management of Security Incidents which shall be made available to CPA upon written request. Within twenty-four (24) hours of Successful Respondent's discovery or reasonable belief that there has been an event which results in the accidental or deliberate unauthorized access, loss, disclosure, modification, disruption, or destruction of confidential CPA information ("Security Incident"), Successful Respondent shall provide notice to CPA by calling (800) 531-5441 EXT 34357. Until the investigation is complete, Successful Respondent shall submit on a daily basis, or as otherwise agreed by CPA, a written report via encrypted email to information.security@cpa.texas.gov which includes, at a minimum, the following:

- Date and time incident occurred,
- Date and time incident detected,
- Date and time incident contained,
- Address where incident occurred,
- Name of person(s) that discovered incident,
- Description of how Successful Respondent discovered incident,
- Type of CPA information involved,
- Description of the nature of the incident,
- Description of the steps Successful Respondent has taken or will take to investigate incident,
- Description of the steps Successful Respondent has taken or will take to mitigate any negative impacts of incident,
- Information technology involved (e.g., laptop, server, mainframe),
- Description of steps taken to preserve computer evidence and maintain chain of custody, and
- Description of corrective action Successful Respondent has taken or will take to prevent future incidents.

Successful Respondent shall coordinate all media or other breach notifications with CPA in advance of such notification(s), unless expressly prohibited by law. Subject to review and approval of CPA, Successful Respondent shall provide notice at its own cost that satisfies the requirements of applicable law to individuals whose information was compromised or likely compromised as a result of the Security Incident. If CPA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing the notice shall be reimbursed to CPA by

Successful Respondent. If Successful Respondent does not reimburse such costs within thirty (30) days of CPA's written request, then CPA shall have the right to collect such costs. CPA reserves the right to conduct an independent investigation of any Security Incident, and should CPA choose to do so, Successful Respondent shall cooperate fully with CPA and assume responsibility at its own expense for making personnel, resources, and systems access available to CPA and CPA's authorized representative(s).

38. LEGAL AND REGULATORY ACTIONS: Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Offer within the five (5) calendar years immediately preceding the submission of Respondent's Offer in response to this PR that would or could impair Respondent's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to CPA's consideration of Respondent's Offer. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Offer a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to CPA's consideration of Respondent's Offer. In addition, Respondent represents and warrants that it shall notify CPA in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update CPA shall constitute breach of contract and may result in immediate termination of the Contract.

39. NO FELONY CONVICTION CERTIFICATION: Respondent represents that neither Respondent or any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, proposed in the Offer has been convicted of a felony criminal offense, or that if such a conviction has occurred Respondent has fully advised CPA of the facts and circumstances in its Offer.

40. CRIMINAL BACKGROUND INVESTIGATION:

(1) Criminal Background Investigation by Successful Respondent. Prior to an Assigned Personnel commencing Services under the Contract, Successful Respondent shall conduct a criminal background investigation and provide written notice via email to CPA's Criminal Investigation Division of any Assigned Personnel that have any felony criminal conviction(s). If any information for the Assigned Personnel changes during the contract term, Successful Respondent shall provide written notice via email to CPA's Criminal Investigation Division no later than three (3) business days after Successful Respondent's discovery of such changed information that relates to felony criminal conviction(s). Written notice to CPA's Criminal Investigation Division shall be submitted to cid.analysts@cpa.texas.gov.

Successful Respondent's exercise of due diligence in conducting the criminal background investigation shall include, at a minimum, the following: (1) compliance with Successful Respondent's published policies and procedures for background and criminal conviction checks and (2) a comprehensive search of the public information portion of Texas Department of Public Safety criminal conviction database located at: <https://records.txdps.state.tx.us/dpswebsite/>. If Successful Respondent asserts that a search of the Texas Department of Public Safety criminal conviction database is not appropriate for a particular Assigned Personnel, Successful Respondent must provide written notice via email to CPA's Criminal Investigation Division that explains the proposed alternate approach for conducting the criminal background investigation.

For purposes of this clause, "Assigned Personnel" includes, without limitation, all individuals provided by Successful Respondent under the Contract who will or may (1) be assigned as lead or key personnel, (2) provide Services on-site at CPA's premises, or (3) access CPA information resources i.e., the procedures, equipment, and software that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors. At CPA's written request, Successful Respondent shall replace Assigned Personnel that has any felony criminal conviction(s).

Within five (5) business days of receipt of a written request by CPA's Criminal Investigation Division during the contract term, Successful Respondent shall provide written notice to CPA's Criminal Investigation Division of any Assigned Personnel that have any felony criminal conviction(s).

(2) Criminal Background Investigation by CPA. At CPA's discretion, CPA may conduct a criminal background investigation on Successful Respondent's Assigned Personnel. Should any Assigned Personnel not be acceptable to CPA due to a finding of felony criminal conviction(s) as a result of the criminal background investigation, Successful Respondent shall replace such Assigned Personnel upon CPA's written request or CPA may terminate the Contract.

(3) Remedies. If CPA becomes aware that Successful Respondent provided false information, Successful Respondent fails to promptly notify CPA of changed information that related to felony criminal convictions, or Successful Respondents fails to replace Assigned Personnel as required by this Section, Successful Respondent shall be in breach of contract and CPA shall have the option to terminate the contract without further obligation to Successful Respondent as well as pursue all other remedies and rights available to CPA under contract, at law, or in equity.

41. WARRANTY OF PERFORMANCE: Successful Respondent represents and warrants that its performance under the Contract shall be conducted conscientiously in a professional and workmanlike manner to the full extent of Successful Respondent's talents and capabilities with due diligence, and in full compliance with the highest professional standards of practice in the industry applicable to the services performed.

42. PROPERTY RIGHTS: For purposes of this PR, the term "Work" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the Contract. CPA and Successful Respondent intend the Contract to be a contract for the services and each considers the Work and any and all documentation and results of the services to be rendered by Successful Respondent to be a work made for hire. Successful Respondent and Successful Respondent's employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of CPA. In submitting an Offer in response to this PR, Successful Respondent acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of CPA.

If for any reason the Work would not be considered a work-for-hire under applicable law, Successful Respondent does hereby sell, assign, and transfer to CPA, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright

applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Successful Respondent agrees to execute all papers and to perform such other property rights, as CPA may deem necessary to secure for CPA or its designee the rights herein assigned.

In the event that Successful Respondent has any rights in and to the Work that cannot be assigned to CPA, Successful Respondent hereby grants to CPA an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses.

No later than the first calendar day after the termination or expiration of the Contract or upon CPA's request, Successful Respondent shall deliver to CPA all completed, or partially completed, Work and any and all documentation or other products and results of the services. Failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of the agreement. Successful Respondent will not make or retain any copies of the Work or any and all documentation or other products and results of the services without the prior written consent of CPA.

43. NO CPA INDEMNIFICATION: Any requirement that CPA defend, indemnify, or hold harmless the Successful Respondent or other entity is hereby deleted from the Offer and Respondent Documents.

44. PRE-CONTRACT COSTS: Respondent is responsible for all expenses related to the preparation and submission of an Offer. CPA shall pay no costs or other amounts incurred by any entity in responding to this PR or incurred prior to the effective date of the Contract.

45. ORIGINAL OFFER: In the event there are inconsistencies between any paper and electronic versions of the Offer, CPA will rely on the original submitted Offer signed by Respondent.

46. SURVIVAL OF TERMS: Termination of the Contract for any reason shall not release Successful Respondent 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 the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice, and fees verification.

47. INCORPORATION OF ENTIRE PR: Except as otherwise provided in the negotiated terms and conditions, if any, that are expressly identified as such in the Contract, this entire PR applies to and becomes part of the Contract.

48. INCORPORATION OF DIR CONTRACT: The terms and conditions of Successful Respondent's DIR contract will apply. Any additional terms and conditions, including the terms and conditions of this PR, may be included so long as they do not weaken or conflict with Successful Respondent's DIR Contract.

49. CONTRACT BETWEEN CPA & SUCCESSFUL RESPONDENT: The entire Contract between CPA and Successful Respondent shall consist of the following documents: (1) The PO and PO Change Notices, if any; (2) the formal signed agreement, if any; (3) this PR; (4) Successful Respondent's Offer; and (5) Successful Respondent's DIR contract. Except as otherwise provided in the negotiated terms and conditions, if any, that are expressly identified as such in the formal signed agreement or PO resulting from this PR, in the event of conflicting terms or provisions, the order of priority of the documents comprising the Contract is: 1) the PO and the PO Change Notices, if any; (2) Successful Respondent's DIR contract; (3) the formal, signed agreement, if any; (4) this PR; and (5) the Offer.

50. ATTACHMENTS: CPA will not consider any terms and conditions or other documents attached to an Offer as part of the Offer unless the Respondent specifically and prominently refers to each of them in its Offer. CPA reserves the right, in its sole discretion, to reject any Respondent terms and conditions or other documents or attachments as part of Respondent's Offer.

**SECTION IV
NONDISCLOSURE AGREEMENT**

This attachment is prepared exclusively for PR# 304-22-1489PS (“solicitation”).

In consideration of Texas Comptroller of Public Accounts (“CPA”) communicating with the undersigned Respondent regarding a potential contract resulting from the referenced solicitation and because of the sensitivity of certain information provided to Respondent, both parties agree that all information regarding CPA or gathered, produced, collected or derived from or related to the potential contract, or provided to Respondent under a resulting contract (“Confidential Information”) must remain confidential subject to release only upon prior written approval of CPA, and more specifically agree as follows:

1. The Confidential Information may be used by Respondent only to assist Respondent in connection with the business relationship contemplated in the solicitation or performance of a contract with CPA resulting from the solicitation.
2. Respondent shall not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as proposed consultant or independent contractor to CPA.
3. Unless otherwise provided in the solicitation or resulting contract, Respondent agrees to maintain the confidentiality of all Confidential Information in the same manner that it protects the confidentiality of its own materials of like kind, but in no event less than reasonable care. Respondent shall take reasonable precautions to protect the Confidential Information including, but not limited to, not disclosing Confidential Information in any manner to any person, firm, or entity, except for authorized employees, agents, or contractors of Respondent with a need to know who are bound by confidentiality obligations at least as stringent as those contained in this agreement prior to any disclosure of such Confidential Information.
4. The Confidential Information may not be copied, reproduced, disclosed, distributed, or otherwise divulged without CPA's prior written approval. Confidential Information and any copies thereof shall be CPA’s exclusive property.
5. All Confidential Information made available to Respondent, including copies thereof, must be returned to CPA upon the first to occur of (a) expiration or termination of any contract resulting from the solicitation, or (b) request by CPA.
6. The foregoing does not prohibit or limit Respondent’s use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, provided such prior knowledge was not subject to a confidentiality obligation, (b) independently developed by it, (c) acquired by it from a third-party under no obligation of confidentiality to CPA, (d) which is or becomes part of the public domain through no breach by Respondent of this nondisclosure agreement or other contractual obligations to CPA, or (e) approved by CPA in writing for unrestricted disclosure.
7. If Respondent is required by applicable law, regulation, or legal process to disclose any Confidential Information, then Respondent shall provide CPA with prompt notice of any such requirement prior to delivery of the Confidential Information to allow CPA a reasonable opportunity to seek a protective order or equivalent.
8. This nondisclosure agreement shall become effective as of the date Confidential Information is first made available to Respondent and shall survive the expiration or termination of any contract resulting from the solicitation and be a continuing requirement.
9. The breach of this nondisclosure agreement by Respondent shall entitle CPA to immediately terminate any contract with Respondent resulting from the solicitation upon written notice to Respondent for such breach. The parties acknowledge that the measure of damages in the event of a breach of this nondisclosure agreement may be difficult or impossible to calculate, depending on the nature of the breach. Regardless of whether CPA elects to terminate any contract with Respondent resulting from the solicitation upon the breach hereof, CPA may require Respondent to pay to CPA the sum of \$5,000 for each breach as liquidated damages. This amount is not intended to be in the nature of a penalty, but is intended to be a reasonable estimate of the amount of damages to CPA in the event of a breach hereof by Respondent of this nondisclosure agreement. CPA does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this nondisclosure agreement.
10. This nondisclosure agreement is governed by and construed under the laws of the State of Texas. Any and all obligations of this agreement are due in Travis County, Texas and venue is proper in only such county.

Signature of Authorized Representative

Date Signed

Printed Name & Title of Authorized Representative

Entity Name (“Respondent”)

SECTION V
CONFIDENTIAL TREATMENT OF INFORMATION ACKNOWLEDGEMENT



Comptroller
of Public
Accounts
FORM
70-223
(Rev.10-14/11)

Texas Comptroller of Public Accounts
Confidential Treatment of Information Acknowledgement (CTIA)

I have read and understand the Comptroller's Summary Public Information Disclosure Manual, a copy of which has been made available to me. I understand that confidential information made available to me by the Comptroller's office may include the Comptroller's own information and information held by the Comptroller's office from other entities. I understand that confidential information is to be held in strictest confidence, and I will act in accordance with applicable federal and state laws, regulations and Comptroller policy with regard to the safekeeping and disclosure of confidential information. I understand that I am not to use such information to the detriment of the Comptroller's office or the State of Texas.

I understand that it is my responsibility to consult with the Comptroller's office and obtain approval to disclose confidential information made available to me, and to ensure that any and all disclosures I make are made to people or entities authorized to receive such information.

I understand that I shall either return to the Comptroller's office or destroy any confidential information in my possession according to Comptroller guidelines, when I no longer require such information for authorized purposes.

I understand that computer system password(s) I receive or devise to access computer systems, which may be made available to me for my use by the Comptroller's office, are confidential. I will not disclose to any unauthorized person any password(s) which I am given or devise, and I will not write such password(s) or post them where they may be viewed by unauthorized people. I understand that I am responsible for any computer transactions performed as a result of access authorized by use of my password(s). I understand that use of a password not issued specifically to me, or to a group of which I am a member, is expressly prohibited.

I understand that criminal and/or civil penalties and/or civil damages may apply if I obtain unauthorized access to, or make an unauthorized disclosure or inspection of, certain types of confidential information (e.g., IRS Federal Taxpayer Information, Protected Health Information, Sensitive Personal Information). Such penalties and/or damages may include, but are not limited to, the following:

- a misdemeanor, punishable by up to 1 year in jail and/or up to a \$4,000 fine (Texas Labor Code §301.085);
- a misdemeanor, punishable by up to 1 year in jail and/or up to a \$1,000 fine (Texas Tax Code §171.361);
- a misdemeanor, punishable by up to 180 days in jail and/or up to a \$2,000 fine (Texas Tax Code §22.27(c));
- a felony, punishable by up to 5 years in prison and/or a fine of up to \$5,000 (26 USC. §7213);
- a misdemeanor, punishable by up to 1 year in jail and/or up to a \$1,000 fine (26 USC §7213A);
- civil damages equal to sum of the greater of \$1,000 for each unauthorized inspection/disclosure or sum of actual damages sustained plus punitive damages for gross negligence, and the cost of action (26 USC §7431); and
- civil and criminal penalties related to criminal justice information (28 CFR §20.25).

I understand that an attempt to circumvent any computer security system or other security control by any means is a violation of Comptroller policy. I also understand that failure to observe these restrictions may constitute a "Breach of Computer Security" as defined in Texas Penal Code, Section 33.02(b), and that such an offense constitutes a Class B misdemeanor, a state jail felony, or a felony of the first, second or third degree.

I understand that any copyrighted material including, but not limited to, commercial computer software, which may be made available to me for my use by the Comptroller's office, is protected by copyright laws and is not to be copied for any reason without permission from the copyright owner. I understand that the violation of copyright laws, including computer software, may result in fines and/or imprisonment.

By my signature hereon, I acknowledge my understanding of the contents of this form and the continued applicability of these provisions after my access to confidential information and computer systems has been terminated.

Printed name of person requesting access		Name of employer	
Signature of person requesting access 		Date	
Work phone (Area code and number)		Work email address	

For general questions regarding this form, contact the Comptroller's Information Security Office by calling 512-936-5671. Under Ch. 559, Government Code, you are entitled to review, request and correct information we have on file about you, with limited exceptions in accordance with Ch. 552, Government Code. To request information for review or to request error correction, contact us at 1-800-531-5441, ext. 6-6057.

SECTION VI
CONFLICT OF INTEREST/DISCLOSURE STATEMENT

A. Disclosures. Provide the requested information in the space provided; indicate “N/A” as appropriate.

1. Respondent must disclose any proposed personnel who are current or recent former employees of CPA or the State of Texas.

2. Respondent must disclose the following:

a. any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to Respondent’s and its proposed subcontractors’ submission of an Offer, possible selection as Successful Respondent, or its performance of the contract.

b. all past and present contractual, business, financial or personal relationships between Respondent and CPA and between Respondent’s proposed subcontractors, if any, and CPA.

For each item, Respondent must also provide a detailed explanation of why Respondent does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to Respondent’s submission of an Offer, possible selection as the Successful Respondent, or its performance of the contract.

B. Defined Terms. For purposes of the disclosure statements required by this solicitation, the terms below are defined as follows:

- “past” is defined as within the two (2) calendar years prior to the deadline for submission of offers in response to this solicitation.
- “CPA” is defined as the statewide elected official who heads the agency as well as the agency’s employees or recent former employees.
- “recent former employees” are defined as those CPA employees who have terminated agency employment within the two (2) calendar years prior to the deadline for submission of offers in response to this solicitation.
- “personal relationship” is defined as a current or past connection other than a clearly contractual, business, financial or similar relationship and includes family relationships or other connections outside simply providing a response to this solicitation. For this purpose, “family relationship” means a relationship within the third degree of consanguinity or second degree of affinity; see Chapter 573 of the Texas Government Code, which defines these degrees of consanguinity and affinity. Connections other than such family relationships fall within this definition and must be disclosed if:
 - (a) a reasonable person could expect the connection to diminish Respondent’s independence of judgment or effectiveness in the performance of the Respondent’s responsibilities to CPA or the State under the contract;
 - (b) a reasonable person could expect the connection, within the overall context of Respondent’s submission of an Offer, possible selection as Successful Respondent or its performance of the contract, to create an issue for the agency’s consideration relative to a potential appearance of impropriety or conflict of interest; or
 - (c) the relationship is with a CPA or other State of Texas employee with authority to make decisions or recommendations on state contracting or procurement or this solicitation. For purposes of this provision, those persons with authority to make decisions or recommendations are those persons who fall within the definition of “purchasing personnel” in Section 2262.004(a)(2) of the Texas Government Code.

C. Continuing Duty to Disclose. If circumstances change or additional information is obtained subsequent to submission of the Offer, Successful Respondent’s duty to disclose under these provisions continues under the term of the contract and does not end with submission of an Offer or receipt of contract award.

D. Disclosures under these provisions are information that will be evaluated by CPA; however, all information provided will not necessarily lead to a restriction or disqualification. Issues will be considered on a case by case basis in the best interests of the State of Texas. If Respondent is in doubt about whether information should be disclosed, Respondent should consult with its legal counsel. Failure to disclose any required information under these provisions may be cause for offer disqualification or termination of the contract resulting from this solicitation. CPA reserves the right, in its sole discretion, to determine if an issue should result in offer disqualification or termination of the contract.

Signature of Authorized Representative

Date Signed

Printed Name & Title of Authorized Representative

Entity Name (“Respondent”)

**SECTION VII
CERTIFICATION REGARDING PUBLIC NATURE OF THE OFFER**

The Legislative Budget Board (LBB) has established a database of state agency contracts pursuant to Section 322.020 of the Texas Government Code. See the LBB website at www.lbb.state.tx.us. Following the contract award resulting from this solicitation, CPA plans to upload to the LBB contracts database the complete contract, except for information that is not subject to disclosure under Chapter 552 of the Texas Government Code. Information that is not subject to disclosure under Chapter 552 of the Texas Government Code must be referenced in an appendix that generally describes the information without disclosing the specific content of the information. In submitting an Offer in response to this solicitation, Respondent acknowledges that it understands and accepts this requirement.

Respondent **must initial below EITHER Item 1 or Item 2, as appropriate. DO NOT INITIAL BOTH ITEMS.**

By signature hereon, Respondent certifies the following:

1. _____ Respondent does not assert that any portion of its Offer is confidential.

OR

2. _____ Respondent has stamped in bold red letters the term “**CONFIDENTIAL**” on the specific part or page of the Offer considered to be confidential by Respondent. In the table below or as an attachment to this form submitted with the Offer, Respondent has identified by page number(s) the location of all information in the Offer asserted to be confidential by Respondent as well as provided an explanation, including any relevant legal authority, for why Respondent reasonably considers the identified portion(s) of its Offer to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code.

Page No. of Offer	General description of the designated information	Explanation, including relevant legal authority, in support of the confidential treatment of the designated portion(s) of the Offer.

Signature of Authorized Representative

Date Signed

Printed Name & Title of Authorized Representative

Entity Name (“Respondent”)

Appendix A: Hardware Specifications / Bill of Materials

In its Offer, Respondent must submit detailed Hardware specifications lists or bill of materials in the format prescribed in this Appendix A for the following:

- a. IP Based Primary Storage Array Hardware (Refer to Section I, Part D.2.1 of the PR);
- b. Data Protection Backup Storage Array Hardware (Refer to Section I, Part D.2.3 of the PR);

Appendix A Hardware Specifications Bill of Materials Descriptions should be meaningful. Please minimize use of acronyms and abbreviations.			
Example:			
Quantity	Manufacturer Part#	Manufacturer Brand	Product Name and/or Model Number
3	70A4003AU	Lenovo	<i>Lenovo ThinkServer TS140 70A4 - Xeon E3-1226V3 3.3 GHz - 4 GB - 0 GB</i>
Product configuration and or description:			<i>Tower Server - 1x 280 Watt Power Supply - 1 x Xeon E3-1226V3 / 3.3 GHz - RAM 4 GB - no Hard Drives - ThinkServer RAID 100 - DVD-Writer - HD Graphics P4600 - Gigabit Ethernet - no Operating System</i>
Included length and terms of OEM warranty:			<u>12 months, Next Business Day Warranty https://lenovopress.com/lp0034-lenovo-thinkserver-ts140#warranty</u>
Quantity	Manufacturer Part#	Manufacturer Brand	Product Name and/or Model Number
Product configuration and or description			
Included length and terms of OEM warranty			
Product configuration and or description			
Included length and terms of OEM warranty			
Appendix A Hardware Specifications Bill of Materials Descriptions should be meaningful. Please minimize use of acronyms and abbreviations.			
Quantity	Manufacturer Part#	Manufacturer Brand	Product Name and/or Model Number
Product configuration and or description			
Included length and terms of OEM warranty			
Product configuration and or description			
Included length and terms of OEM warranty			

Product configuration and or description			
Included length and terms of OEM warranty			
Product configuration and or description			
Included length and terms of OEM warranty			

**Respondent may insert additional pages as needed.*