



**REQUEST FOR PROPOSAL**

RFP Number: RFP-731-17-009-CJ

**REQUEST FOR PROPOSALS FOR DEVELOPERS TO DESIGN, BUILD, FINANCE, OPERATE, AND MAINTAIN STUDENT HOUSING AND OTHER CAMPUS FACILITIES**

**PROPOSALS MUST BE RECEIVED BEFORE:  
November 15, 2016, 2:00 CT**

**NOTE:** Proposal must be submitted to  
**Texas Woman's University Procurement and Contract Services**  
before the hour and date specified for receipt of proposal.

Sealed proposals will be received until the date and time established for receipt. After receipt, only the names of Proposers will be made public. Proposal details will only be divulged after the award of a Contract, if one is made.

**MAIL RESPONSES TO:**

Chelle Jezek  
Texas Woman's University  
Procurement and Contract Services  
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## SECTION 1 GENERAL INFORMATION

### 1.1 Introduction

Texas Woman's University ("TWU") is seeking competitive responses to a Request for Proposal ("RFP") for developers to design, build, finance, operate, and maintain new student housing and other campus facilities through a public-private partnership ("Project").

This RFP will be implemented in the following three phases:

- Phase 1: Qualifications Based Conceptual Stage
- Phase 2: Detailed Stage
- Phase 3: Proposal Refinement Stage

Each phase will have its own evaluation process that TWU will use to establish a shortlist. Up to five proposers will be invited to participate in Phase 2 and at least two proposers will be invited to participate in Phase 3. The phases are described in more detail in subsequent sections of this RFP.

This RFP provides sufficient information for interested parties ("Proposers") to prepare and submit Phase 1 proposals for consideration by TWU. Additional information will be provided to shortlisted proposers during Phase 2 and Phase 3.

Each Phase 1 proposal should be prepared simply and economically, providing a straightforward, concise description of the Proposer's ability to meet the requirements of this RFP. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of TWU's needs.

Each Proposer certifies that it understands that all costs relating to preparing and responding to this RFP will be the sole responsibility of the Proposer. If selected by TWU, the Private Entity will notify TWU immediately of any material change in any matters with regard to which the Private Entity has made a statement or representation or provided information in Section 8 of this RFP.

*Proposers are cautioned to read the information contained in this Request for Proposal (RFP) carefully and to submit a complete response to all requirements and questions as directed.*

### 1.2 Information about Texas Woman's University

[Texas Woman's University](#) — created in 1901 by the 27th Texas State Legislature — holds a distinctive position in the Lone Star State and the nation today: *it is America's largest public university primarily for women.*

Since its founding more than a century ago, Texas Woman's has become known for its contributions and leadership in the fields of education, nutrition, the arts and sciences, nursing and the health care professions. TWU's main campus is in the booming North Texas college town of Denton just 40 miles from the Dallas-Fort Worth metropolis and consistently named one of Texas' and the nation's best college towns. It also has health sciences centers in Dallas' prestigious Southwestern Medical District and Houston's world-renowned Texas Medical Center.

The University has more than 15,000 students on these three campuses and offers more than 60 programs of study with a total of 110 undergraduate and graduate degrees (bachelor's: 43, master's: 47 and doctoral: 20) in traditional, online and hybrid formats.

TWU offers the student support, class sizes and campus aesthetics more typically found at a

private university. TWU believes in a quality education that is affordable and accessible, which is why it offers more than \$15 million in scholarships annually.

### 1.3 Mission Statement

Texas Woman's University builds on its long tradition as a public institution primarily for women by educating a diverse community of students to lead personally and professionally fulfilling lives. TWU prepares women and men for leadership and service through high quality undergraduate, graduate and professional programs on campus and at a distance. A TWU education ignites potential, purpose and a pioneering spirit.

### 1.4 Enrollment

Over the past ten years, TWU has experienced significant growth in enrollment, nearly doubling its student population. The University was recognized by the Chronicle of Higher Education in 2013 as the 2nd fastest-growing public doctoral university in the United States.

TWU's fall 2016 Denton campus enrollment consisted of 6,102 full-time undergraduate students and 1,304 full-time graduate students for a total of 7,406 full-time students. TWU projects that its enrollment will continue to grow, particularly at the undergraduate level.

Full-Time Denton Enrollment by Class	Fall 2015	Fall 2016
First Year	1,546	1,648
Sophomore	1,288	1,266
Junior	1,508	1,551
Senior	1,678	1,637
Grad	1,261	1,304
Total	7,281	7,406

Total Enrollment by Level	Fall 2011	Fall 2012	Fall 2013	Fall 2014	Fall 2015
Undergraduate	8,324	8,774	8,849	9,021	9,488
Graduate	6,394	6,394	6,302	6,049	5,798

### 1.5 Project Team

#### 1.5.1 Texas Woman's University

Texas Woman's University is a public university governed by a Board of Regents comprised of nine individuals, at least four of whom are required to be women, appointed by the governor.

#### 1.5.2 Project Committee

The Project will be steered by a Project Committee ("Committee"), consisting of five (5) members appointed by TWU. The Committee will be responsible for making final recommendations to the Chancellor regarding all contracts, designs, and other issues relating to the Project.

### 1.5.3 Development Advisor

TWU has engaged Brailsford & Dunlavey, Inc. to serve as the Development Advisor and Program Manager (“Development Advisor”) for the Project. The Development Advisor will help TWU engage and monitor the development partnership.

## 1.6 TWU’s Right to Reject

This RFP does not commit TWU to select a Proposer or to award a Contract to any Proposer. TWU reserves the right to accept or reject, in whole or in part, any proposal it receives pursuant to this RFP. Proposals which are qualified with conditional clauses or alterations or items not specified in the RFP documents, or irregularities of any kind, are subject to disqualification by TWU at its option. If TWU receives fewer than three proposals, TWU has the right to reissue this RFP in order to gain additional competitive proposals.

## 1.7 Historically Underutilized Business (“HUB”) Firms

TWU endeavors to promote full and equal opportunity for businesses to supply TWU with goods and/or services that are necessary to support TWU’s educational mission. In this regard, TWU commits to select Proposers in accordance with (i) TWU needs, (ii) TWU resources, (iii) HUB goals and guidelines established by the Texas legislature and Texas Procurement and Support Services (TPASS), and (iv) TWU policies and procedures for contracting with HUBs, specifically Policy 4.03 Historically Underutilized Businesses. Private Entity shall allow TWU full access to documentation relating to its HUB program and any HUB Participation plans. Failure to comply with any provision of the state or University’s HUB regulations may result in immediate cancellation of any Contract.

## 1.8 Definitions/Glossary of Terms

**Addendum**—an addition or supplement to a solicitation document. Addenda are issued prior to the proposal opening date.

**Contract**—a written document referring to promises for which the law establishes enforceable duties and remedies between a minimum of two (2) parties.

**Award**—the act of accepting a bid, proposal or offer; thereby resulting in one or more Contract(s) between TWU and a Private Entity.

**Escalation Clause**—Provision in an Contract that allows for increasing or decreasing the contracted price for goods or services in step with market prices, an agreed-upon benchmark such as the consumer price index, or when maintenance and operating costs go up or down.

**Fiscal Year (FY)**—the 12-month period covered by the State of Texas’s yearly budget, September 1 through August 31.

**Private Entity**—any individual person, corporation, general partnership, Limited Liability Company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity. A private entity includes a “Proposer” that submits a proposal in response to a solicitation.

**Proposal**—an offer submitted by a private entity in response to an RFP intended to be used as a basis to negotiate a Contract.

**Proposer**—the supplier of goods and/or services who submits a proposal in response to the RFP. Note: The terms “Proposer” and “private entity” may be used interchangeably in the RFP depending on the stage in which the supplier of goods and/or services is with regard to doing business with TWU.

**Purchase Order**—a signed written acceptance of an offer from a private entity. A purchase order may serve as the legal and binding Contract between parties.

**Request for Proposal (RFP)** – a written request for qualifying project or services issued by TWU, soliciting responses including but not limited to: business plans, expressions of interest, ideas, offers, proposals, qualifications, or any combination thereof.

**Vendor**—a supplier of goods and/or services that is awarded and contracts with TWU.

## SECTION 2 TWU UNIVERSITY HOUSING & RESIDENCE LIFE

### 2.1 University Housing & Residence Life Vision Statement

"The Department of University Housing & Residence Life will enrich the student experience by creating a stimulating environment that encourages civility, well-being, and academic success. Residents, when fully engaged in the community, will acquire skills and knowledge which result in becoming successful leaders in the world."

### 2.2 University Housing & Residence Life Mission Statement

"The mission of the Department of University Housing & Residence Life is to create a safe, dynamic and compassionate community in support of students' academic success, personal development, campus and community engagement."

### 2.3 Existing Housing Inventory

TWU currently owns five residential properties that house 1,737 students in traditional, semi-suite, and apartment style units. The University also has a master lease agreement with eight apartment properties (referred to as TWU Select) near campus, housing an additional 265 students. Starting Fall 2015, TWU also contracted with local hotels to accommodate overflow demand.

General Building Information						
Building Name	Mary Gibbs Jones ("Jones")	Nelda Stark Hall ("Stark")	John Guinn Hall ("Guinn")	Lowry Woods Community	Grove Street	Master Leased Apartments
Year Built	1961	1967	1969	2005	1963	N/A
Unit Types	traditional	semi-suite	semi-suite	apartments	apartments	apartments
Capacity Information (# of beds)						
Traditional	120	-	-	-	-	-
Semi-suites	-	594	684	-	-	-
Apartments	-	-	-	331	8	265
<b>Total Capacity</b>	<b>120</b>	<b>594</b>	<b>684</b>	<b>331</b>	<b>8</b>	<b>265</b>

### 2.4 Occupancy

TWU has been over capacity the past several years leading to forced triples and quads and ultimately the initiation of a master lease agreement with off-campus apartment properties and contracts with local hotels to accommodate demand. TWU experienced a 112% on-campus occupancy rate for the fall 2016 semester including the master-leased apartments.

The chart below shows occupancy rates for the fall 2016 semester.

Residence Hall	Fall 2016 Occupancy
Mary Gibbs Jones ("Jones")	118%
Nelda Stark Hall ("Stark")	114%
John Guinn Hall ("Guinn")	105%
Lowry Woods Community	92%
Grove Street	100%
Master Leased Apartments	265 beds
Hotel	50 beds
<b>Total (with master lease inventory)</b>	<b>112%</b>
<b>Total (w/out master lease inventory)</b>	<b>125%</b>

The chart below shows capture rates for the fall 2015 semester.

Class	Full-Time Enrollment	Living in TWU Housing	Capture Rate
First Year	1,546	1,190	77%
Sophomore	1,288	567	44%
Junior	1,508	193	13%
Senior	1,678	98	6%
Grad	1,261	9	1%

Texas Woman's University engaged Brailsford & Dunlavey to conduct a market assessment that will be made available to Proposers invited to participate in Phase 2. Please note that TWU does not make any representations or assumptions regarding future occupancy and capacity levels.

## 2.5 Live-On Requirement

TWU currently requires all full-time single undergraduate students who have not completed 60 credit hours to live in University residential communities unless they are 21 years of age or older, active duty military or veterans of military service, living with parents or legal guardians within the commuting distance, or with children. Due to the recent overflow, TWU implemented an additional exception for students who have completed 48 credit hours with a cumulative GPA of 3.0. Upon opening new campus housing, TWU intends to remove this exception.

## 2.6 Rental Rates

Demonstrated below are the per-student, per-semester rental rates for the 2016-17 academic year.

Name	Traditional		Semi-Suite		Apartment				
	Double	Triple/Quad	Double	Triple/Quad	1BR Private	1BR Shared	2BR Private	2BR Shared	3 BR Private
Jones	\$1,860	\$1,300	-	-	-	-	-	-	-
Stark	-	-	\$2,070	\$1,455	-	-	-	-	-
Guinn	-	-	\$2,070	\$1,455	-	-	-	-	-
Lowry Woods	-	-	-	-	-	-	\$3,500	-	\$3,175
Grove Street	-	-	-	-	-	-	\$2,985	-	-
TWU Select	-	-	-	-	\$4,990	\$2,800	\$3,825	\$2,700	-

## SECTION 3 PROJECT DETAILS

### 3.1 Project Objectives

TWU is seeking proposals from Proposers to design, build, finance, operate, and maintain new student housing and other campus facilities in accordance with the requirements/conditions set forth in the Sealed Proposal Request No. RFP-731-17-009-CJ. The Project includes the mandatory development of student housing and associated dining facilities. The Project also includes the option to develop other campus facilities or refinance existing campus facilities if the addition of those components generates additional value to TWU. Future phases of student housing may also be considered through this RFP.

The Project includes housing units and dining space on the northeast side of TWU's Denton campus, adjacent to N Bell Avenue, just north of Pioneer Hall, and extending towards the existing golf course. Preliminary plans for the Project include 800 student housing beds, residential dining space, and associated parking.

The following represents the overall strategic objectives that will serve as a framework for the Project.

- The development of student community is critical to the TWU culture. Student housing should be safe, proximate to other campus life facilities, and organized into residential communities.
- In addition to providing beds for students, residential communities must include dining, places to study, and places to informally gather to create an "atmosphere" that breeds a unique experience for all TWU students.
- TWU's competitive advantage is the campus experience within the residential communities. TWU prefers a balanced approach that responds to the importance of accessibility to this experience while maintaining the standards for institutional quality. TWU will not reduce quality to drive pricing down. TWU will provide amenities to the extent that they generate positive developmental outcomes and support the campus experience. TWU will not increase rental rates in order to add unnecessary amenities.

### 3.2 University Housing & Residence Life Program

TWU, along with Brailsford & Dunlavey, has completed market and financial research to create market responsive programs and to confirm the feasibility of the Project. The Project's competitive advantage is the campus experience within the residential communities. **A detailed program will be provided to Proposers invited to participate in the Phase 2 process.**

Current plans for the Project are to provide approximately 800 beds of student housing focused on sophomore students on the northeast side of the Denton campus. **Market research conducted by the Development Advisor will be provided to Proposers invited to participate in the Phase 2 process.**

### 3.3 Non-Housing Program

To enhance the student experience within the community, TWU is seeking to provide additional facilities such as parking, dining, and associated infrastructure. The additional components are to be delivered as part of the Project and will be further defined for the Proposers invited to participate in the Phase 2 process.

**Parking:** An appropriate amount of parking, as specified by TWU, is expected to be provided by the Private Entity. Parking will be inclusive of replacement of any displaced parking due to the development of the Project.

**Dining:** A new residential dining facility to support the TWU residential population is expected to be

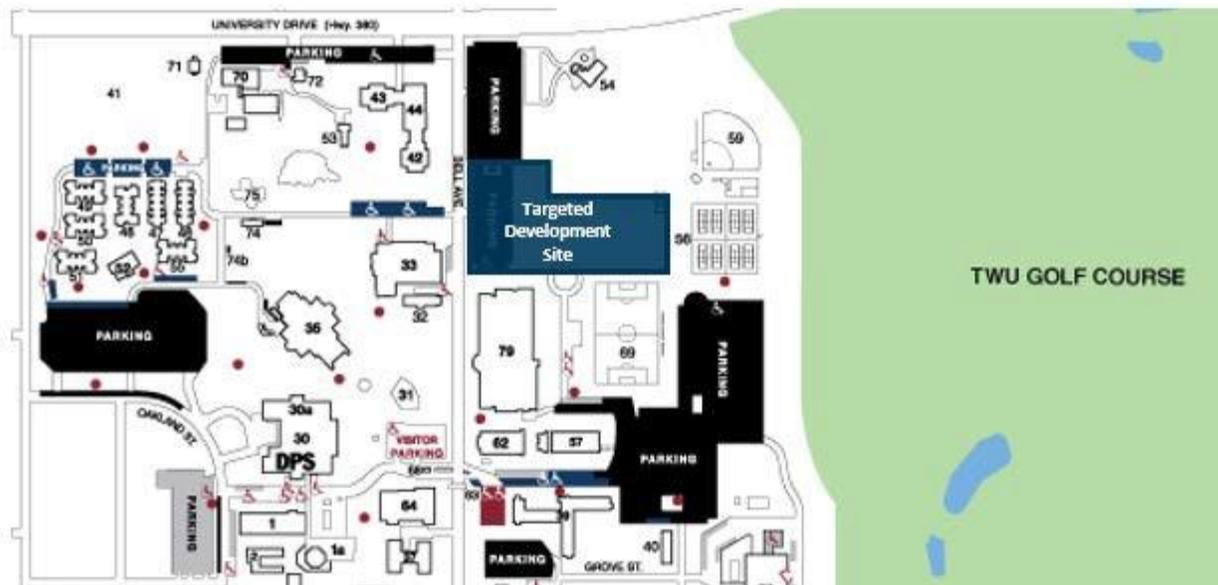
provided by the Private Entity. It is anticipated that funding for the dining facility will be supported by dining program revenues.

Infrastructure: The Private Entity is expected to provide the infrastructure required to support the new development.

### 3.4 Site Description

The Project site is situated on the northeast quadrant of the Denton campus. The site is bounded by Bell Avenue on the west, Pioneer Hall on the South, campus tennis courts and softball field on the East, and a portion of the existing surface parking lot on the north. The site is owned by Texas Woman's University.

There is currently a parking lot and wooded area on the site that will be removed by the Private Entity as part of the Project. Topographic and utility site surveys will be provided to the Proposers that are invited to participate in the Phase 2 process.



### 3.5 Design Objectives

The expectation is that this Project will demonstrate the design tenants adopted by the Association of College and University Housing Officers – International (ACUHO-I) 21st Century Project focused on sustainability, flexibility, community, and technology. The Project should be configured in a “village-style” concept incorporating Collegiate Georgian Architecture themes and materials throughout each building and in outdoor common areas. The village-style concept will be realized with vibrant, centrally located community spaces that will serve as hubs of residential and campus life. In keeping with optimal community design and institutional criteria from ACUHO-I 21st Century Project standards, the buildings will likely be a mid-rise development with no more than 4-stories with ample green space and pedestrian connections.

The Project will be expected to be designed in accordance with TWU's design standards which will be provided during Phase 2 of the RFP process. TWU's design standards are intended to be guidelines for development, but unless expressed as requirements, the design standards are not intended to be prescriptive. Provided that TWU's objectives are satisfied, the Proposers will have some design flexibility towards programming the amended master site plan and its buildings. **The selected Private Entity should recognize that the Project's final designs will be negotiated with TWU through a plan review process.**

### **3.6 Timeline**

The Project is scheduled to be completed and opened by the Fall of 2019. However, due to the increasing strain on existing campus housing facilities, TWU is interested in exploring the opportunity for a phased opening starting in January of 2019.

### **3.7 Maintenance & Operations Objectives**

In alignment with the stated objectives, the delivery of operations and maintenance for the Project must be consistent with services currently provided on campus. There are four (4) options that TWU will consider from Proposers for the delivery of operations and maintenance:

1. TWU will maintain and operate the Project and will be reimbursed for all costs by the Private Entity;
2. Private Entity will self-operate the development in alignment with TWU standards;
3. Private Entity will outsource to a third-party operator at the sole cost of the Private Entity. The third-party operator will provide a level of service consistent with TWU standards; or
4. A combination of any two (2) options listed above.

If maintenance and operations are to be delivered by the Private Entity or third-party operator, TWU will work with the Private Entity to develop an agreement that delineates the standards for the operations and maintenance responsibilities within and around the Project. Additional coordination will be required to ensure that the delivery of services is consistent with TWU's vision for the Project.

It is important to note, however, that TWU seeks to retain the responsibility for residence life and programming, marketing, student billings, collections and room assignments for the Project through TWU's University Housing and Residence Life division. Therefore, these duties will not be included in the operations delivery approach provided by the Private Entity in response to this RFP.

### **3.8 Balance Sheet & Credit Impact Objectives**

Respondents to this RFP should understand that the University's credit ratings and credit condition are important to TWU. TWU expects that any agreement for the development of the Project will be structured with the priority of minimizing and ideally eliminating any credit and balance sheet impact to TWU.

## SECTION 4 PROPOSAL PROCESS AND PROCEDURES

### 4.1 Proposal Process

The purpose of the RFP is to identify interested parties that demonstrate the best qualifications, experience, and financial capacity necessary to assume the responsibilities of the Private Entity. The RFP will entail three primary phases as described below.

#### 4.1.1 Phase 1: Qualifications Based Conceptual Stage

All proposals submitted in response to this RFP will be evaluated based on the criteria identified in Section 6.3. Following a review of Phase 1 proposals, TWU will establish a shortlist of up to five of the most qualified Proposers for invitation to participate in the second phase of this RFP process. A response to this RFP is a prerequisite to participate in subsequent stages.

#### 4.1.2 Phase 2: Detailed Stage

The Phase 2 stage will require the development of a detailed proposal including one or more proposed deal structures and associated deal terms, a project budget, a detailed pro forma, preliminary design concepts, among other components required to evaluate the partnership. Proposers short-listed during the Phase 1 stage will be invited to participate in the Phase 2 stage and will be provided with additional information concerning the proposed development including a detailed program, TWU design and construction standards, and additional site information. Following a review of the detailed proposals submitted through the Phase 2 Stage, TWU will establish another shortlist of at least two of the most qualified Proposers for invitation to participate in the Phase 3 stage.

#### 4.1.3 Phase 3: Proposal Refinement Stage

Proposers short-listed during the Phase 2 stage will be invited to participate in the Phase 3 stage. The Phase 3 stage will require the submission of a revised proposal based on additional information and criteria as well as meetings with representatives from TWU. Following a review of the revised proposals submitted through the Phase 3 Stage, one Private Entity may be selected as the preferred candidate to enter into detailed negotiations with TWU to design, build, finance, operate, and maintain the Project.

### 4.2 Schedule of Events

TWU will make a good faith effort to follow the timeline below\* for evaluating, negotiating and issuing an award:

Distribution of RFP.....	10/25/2016
Deadline for Submission/Delivery of Phase 1 Proposals....	11/15/2016 2:00PM CT
Phase 1 Short-List Announced.....	TBD
Phase 2 Short-List Announced.....	TBD
Phase 3 Preferred Candidate Notification .....	TBD

\* All dates are tentative and subject to change

### 4.3 Questions by Proposers

Questions may be submitted in writing to the purchaser listed below. The questions, written TWU response, and addenda related to the RFP, if any, will be posted on the Texas Woman's University website <http://www.twu.edu/procurement/purchasing.asp> as well as the State of Texas Electronic State Business Daily (ESBD) website <http://esbd.cpa.state.tx.us/>. Only those replies to inquiries which are made by formal written addenda shall be binding. Oral and other interpretations or clarification will be without legal effect. If TWU determines a question has been sufficiently answered in the RFP, the inquiring Proposer will be referred to the relevant section of the RFP.

**Note: It is the responsibility of the Proposer to check the TWU website or the ESBD website for any and all addenda posted for this RFP.**

Questions must be emailed to the following purchaser:

Chelle Jezek  
sjezek@twu.edu  
Texas Woman's University  
Procurement and Contract Services

#### 4.4 Communications with TWU Personnel

**Except as provided in this RFP and as otherwise necessary for the conduct of ongoing TWU business operations, Proposers are expressly and absolutely prohibited from engaging in communications with university personnel who are involved in any manner in the review and/or evaluation of the proposals, selection of a Proposer, and/or negotiation or formalization of a Contract.** If any Proposer engages in conduct or communications that TWU determines is contrary to the prohibitions set forth in this section, TWU may, at its sole discretion, disqualify the Proposer and withdraw the Proposer's proposal from consideration.

Any notice under this Contract shall be in writing and delivered to the party to be notified. Notice will be effective upon delivery or four (4) business days after the date of mailing. The name and address of the person who may be contacted on behalf of TWU for purposes of notice is the purchaser indicated in section 4.3.

#### 4.5 Submittal Instructions for Proposals

- 4.5.1 Proposals must be signed by the responding company's official authorized to commit such proposals. **Failure to sign the Execution of Offer will be basis for proposal disqualification.**
- 4.5.2 Proposer must submit one (1) original hard copy response plus seven (7) additional hard copy responses AND a copy of the original response on a USB drive to the address listed on page 1.
- 4.5.3 All proposals must be submitted/or received no later than the date and time indicated in the section entitled "Schedule of Events."
- 4.5.4 Proposers must verify that all components referenced in 5.1 have been attached and submitted. **Failure to do so will result in disqualification.**

#### 4.6 HUB Participation Plan

The procedures for the HUB Subcontracting Plan (HSP) requirements of this RFP are a two-step process as follows; 1) Initial HSP to be submitted with this RFP, and 2) Complete HSP to be submitted within thirty (30) days of award. These two steps are defined below.

- 1) The following items must be submitted with your RFP response to meet the HSP requirements.
  - a. State of Texas HSP: Complete the HSP form by submitting Sections 1, Section 2-a. & b. and Section 4 ONLY. HSP forms can be found at <http://www.twu.edu/procurement/Forms.asp>. Additional information about the State of Texas HUB requirements is available on the Texas Comptroller's website under the "Historically Underutilized Business (HUB) Program" link <http://www.window.state.tx.us/procurement/prog/hub/>.
  - b. Participation Plan: Explain how the Proposer intends to make a good faith effort for each subcontracting opportunity they identify in Section 2 of the State of Texas HSP Form. This

plan shall include the following:

- The Proposer shall state whether it is a Texas certified HUB.
- The Proposer shall state that it intends to meet or exceed the state TWU HUB goal.
- The Proposer shall provide a sample solicitation notice letter that will be sent to HUB vendors for the subcontracting opportunities. The notice shall, in all instances, include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person.
- The Proposer shall provide a sample solicitation letter that will be sent to trade organizations or development centers for the subcontracting opportunities. The notice shall, in all instances, include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person.
- The Proposer shall provide a list of the trade organizations or development centers that they intend to work with in their outreach efforts.
- The Proposer shall provide documentation that describes how they intend to locate the HUB vendors for solicitation – Will you use the CMBL listings? Will you advertise in trade organization newsletters or newspapers? Etc.

2) A complete HSP must be submitted within thirty (30) calendar days from the date of contract award. The following items must be submitted with this revised HSP to meet the full HSP requirements.

a. complete Section 1, page 1 of the HSP form.

b. complete Section 2a through d. Any changes to 2b shall not be noted accordingly.

Note that Method B is required so “No” should not be checked on both 2c and d.

c. complete Section 4. This section requires a signature.

d. complete Method B attachment for each opportunity listed in Section 2b. Reminder that all supporting documentation listed in Section B-3 shall be provided as part of this attachment. The following are additional items of note as part of the good faith effort required:

- The Proposer shall provide potential HUB subcontractors reasonable time to respond to the Proposer’s notice. “Reasonable time to respond” in this context is no less than seven (7) working days from receipt of notice, unless circumstances require a different time period, which is determined by the agency and documented in the contract file.
- The Proposer shall use the State of Texas Centralized Master Bidders List (CMBL), HUB Directory, internet resources, and/or other directories as identified by the State of Texas HUB Program when searching for HUB subcontractors.

**NOTE: A complete list of all certified HUBs may be electronically accessed through the Internet at: <https://mycpa.cpa.state.tx.us/tpasscmbllsearch/index.jsp>**

- The Proposer shall provide the notice described in this section to **three (3) or more** HUBS for **each** subcontracting opportunity as stated in Section B3a. TWU encourages Proposers to seek and find a “Diverse Group” of Historically Underutilized Businesses in each category in which a subcontract or service is solicited.
- The Proposer shall provide notice to trade organizations or development centers that assist in identifying HUBs by disseminating opportunities to their membership/participants.
- The Proposer shall negotiate in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder.
- Provide written justification of the selection process if a non-HUB subcontractor is selected in Section B-4c.

#### 4.7 Right to Modify, Rescind, or Revoke the RFP

TWU reserves the rights to modify, rescind, or revoke this RFP in whole or in part at any time prior to the date on which the authorized representative of TWU executes a Contract with the selected Proposer.

#### **4.8 Signature and Certification of Proposer**

The proposal must be signed and dated by a representative of the Proposer who is authorized to bind the proposing private entity to the terms and conditions contained in this RFP and to comply with the information submitted in the proposal. Each Proposer submitting a proposal certifies to both (a) the completeness and accuracy of the information provided in the proposal and (b) the authority of the individual whose signature appears on the proposal to bind the Proposer to the terms and conditions set forth in this RFP. Proposals submitted without the required signature shall be disqualified.

#### **4.9 Compliance with Applicable Laws, Regulations, Ordinances, Board of Regents Policies, TWU Policies and Procedures**

By submitting a proposal, the Proposer agrees to and shall comply with all applicable local, state, and federal laws and regulations, as well as with all applicable policies and procedures of Texas Woman's University.

#### **4.10 Compliance with RFP Requirements**

By submitting a proposal and by signing Section 8 of this RFP, a Proposer agrees to be bound by the requirements set forth in this RFP and also agrees to be bound by Section 7, Terms and Conditions, which will govern any contract awarded by TWU. TWU, at its sole discretion, may disqualify a proposal from consideration if TWU determines a proposal is non-responsive and/or non-compliant in whole or in part with the requirements set forth in this RFP.

#### **4.11 Use and Disclosure of Information**

Proposers acknowledge that TWU is an agency of the State of Texas and is therefore required to comply with the Texas Public Information Act Texas Gov't Code Ch. 552. If a proposal includes proprietary data, trade secrets, or information the Proposer wishes to except from public disclosure, then the Proposer must specifically label such data, secrets, or information as follows: "PRIVILEGED AND CONFIDENTIAL – PROPRIETARY INFORMATION." To the extent permitted by law, information labeled by the Proposer as proprietary will be used by TWU only for purposes related to or arising out of the (a) evaluation of proposals, (b) selection of a Proposer pursuant to the RFP process, and (c) negotiation and execution of a Contract, if any, with the Proposer selected.

If the Proposer marks the whole Proposal or substantive portions of the Proposal as confidential, TWU in its sole discretion may declare the proposal non-responsive.

By submitting a Proposal, Proposer hereby grants a limited license to reproduce the Proposal to comply with any legal requirement including but not limited to the Texas Public Information Act and legislative budget board requirements.

#### **4.12 Validity Period**

Proposals are to be valid for TWU's acceptance for a minimum of 270 days from the submittal deadline date to allow time for evaluation, selection, and any unforeseen delays.

#### **4.13 Risk of Loss, Damage, Delay**

Proposer acknowledges and agrees to release and hold harmless TWU, its campus components, Board of Regents, officers, employees, agents and personnel, from and against any and all claims, liability, damages and costs, including court costs and attorneys' fees, arising out of or pursuant to submission or delivery of the proposal or failure to submit or deliver the proposal to Procurement and Contract Services at Texas Woman's University, as designated in the submittal instruction sections of this RFP.

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#### **4.14 Proposal Opening**

Proposals will be opened at Texas Woman's University after the deadline. The proposal opening process is open to the public. For convenience, Proposers wanting a list of proposals submitted can email the TWU contact person listed in section 4.3 after the opening requesting a list of proposals received. All submitted proposals become the property of TWU after the RFP submittal deadline/opening date and will not be returned.

## SECTION 5 PROPOSAL CONTENTS AND REQUIREMENTS

The following constitutes the submittal requirements for TWU to evaluate the proposals. The proposal must follow the order provided below to facilitate evaluation of the responses. In addition, the proposal must provide tabs correlating to each of the following criteria numbers below. It is critical that proposals are consistent in order to ensure accuracy in TWU's review process.

### 5.1 Phase 1 Proposal Formatting and Presentation Requirements

The proposal itself must contain all the components in the following order:

- Cover Page
- Cover Letter
- Table of Contents
- Tab 1: Prime Development Partner Information
- Tab 2: Team Structure
- Tab 3: Relevant Experience
- Tab 4: Development Approach
- Signed HUB participation plan
- Signed "Execution of Offer and Affirmations"

A description of Tabs 1, 2, 3, and 4 is included below in further detail.

Proposals shall be a MAXIMUM OF THIRTY (30) SINGLE-SIDED PRINTED PAGES. The cover page, cover letter, table of contents, divider tabs, HUB participation plan and "Execution of Offer and Affirmations" do not count as printed pages. Appendices count toward the 30 page limit. All pages are to be typed on 8 ½ x 11-inch paper and numbered sequentially.

#### 5.1.1 Cover Letter

The cover letter must contain the following information:

- Statement of interest in the Project
- Name, address, telephone, e-mail, and website for the prime development partner
- Identification of a single point of contact for this RFP process, including telephone number and e-mail address
- Signature of a duly authorized principal

#### 5.1.2 Tab 1 – Prime Development Partner Information

Provide the following:

- Number of years in the industry
- Number of full-time employees by the following disciplines:
  - o Development
  - o Architecture / engineering
  - o Construction
  - o Management / operations
  - o Capital markets
- Experience in Texas with public colleges / universities, college- / university-affiliated entities, and / or not-for-profit entities. Experience nationwide with colleges / universities and / or college- / university-affiliated entities
- Description and approximate value of real estate developed and currently under control
- Financial condition of the prime development partner as evidenced within the following

requested documents. If audited documents are not available, provide documents reviewed or compiled by an independent accountant. One (1) hard copy of financial information may be sent in a separate package and will not be included within the page limit.

- Income statement
- Balance sheet
- Statement of cash flows
- Statement of retained earnings (or member basis if an LLC) for at least the previous three (3) years, through the previous five (5) years is preferred
- Specific information demonstrating capacity of the prime development partner to raise debt and equity in the current capital market for the Project
- Involvement in ongoing litigation. If applicable, provide an explanation and why it should not be a factor in this procurement.
- Previous litigation related to real estate development or management
- Bankruptcy filings
- Liquidated damages
- License revocations, suspensions and/or other disciplinary actions
- Prior debarments or suspensions by a governmental agency
- Safety past performance data, including fatality incidents
- Alleged violations of any federal, state or local civil law
- Alleged violations of any federal, state or local criminal law
- Legal claims filed by or against the Proposer

#### 5.1.3 Tab 2 – Team Structure

Identify the advisors and team members specific to the following roles\*. For each discipline provide a firm profile and identify the lead personnel for this Project.

- Architecture & Engineering
- Construction
- Financing
- Operations & Maintenance
- Legal
- Other

#### 5.1.4 Tab 3 – Relevant Experience

Provide descriptions of up to five (5) comparable projects that include public-private partnerships in which the proposing Private Entities have participated. Evaluation priority will be given to projects completed within the last seven (7) years, include at least 600 beds in a single phase, include a dining component, are developed in a village style concept, represent Georgian Architecture, and include multiple phases. For each project, provide the following information in a clear and consistent format.

- Project name
- Client name and contact information (identify if the institution is public or private)
- Project status (in progress or complete)
- Key team members and / or partner firms
- Location (city, state)
- Relevance to TWU
- Project images

- Project detail
  - o Construction type (masonry, steel, wood, or hybrid)
  - o Number of beds
  - o Unit type / configuration
  - o Size (net assignable and gross square footages)
  - o Funding source(s), i.e. bonds, private equity, traditional debt, etc.
  - o Total hard costs
  - o Total soft costs
  - o Original project schedule and actual completed project schedule
  - o Management of student housing (college / university, third party, development team)

#### 5.1.5 Tab 4 – Development Approach

Describe the Private Entities' general experience and approach in the following areas including a summary of the approach to engaging TWU through the process.

- Design: Description of how the Proposer would interact with TWU to provide a Project that embraces TWU's mission. Share thoughts on how the Proposer has worked with institutions to fulfill their program goals and objectives while providing creative and value driven building and design solutions.
- Schedule Management: Description of how the Proposer would interact with internal and external team members to manage key schedule milestones. Share thoughts on the opportunity and challenges of a phased opening starting in January 2019.
- Creative Funding & Partnership Structures: Description of how the Proposer would engage with TWU to develop custom and creative funding and public-private partnership structures. Identify the strengths and challenges related to various mechanisms.
- Preferred Structure: Identify the preferred funding mechanism and transaction structure for the proposed Project.

#### 5.1.6 Failure to include or not comply with any of the above requirements will result in disqualification.

### 5.2 Phase 2 & Phase 3 Proposal Requirements

Proposers invited to participate in the Phase 2 and Phase 3 stages will be provided additional information regarding supplemental proposal requirements.

### 5.3 Required Submittals

It is the Proposer's sole responsibility to submit information in fulfillment of the requirements of this RFP. If pertinent information or required submittals are not included within your submittal, it may cause your submittal to be rejected or have an adverse impact on evaluation.

## SECTION 6 EVALUATION AND AWARD PROCESS

### 6.1 Evaluation Process

TWU's evaluation of each proposal will be based upon the information provided, additional information requested by TWU, information obtained from references and independent sources, and formal presentations, if requested.

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

### 6.2 Proposer's Acceptance of Evaluation Methodology

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

### 6.3 Evaluation Criteria and Weights

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

6.3.1 The Phase 1 evaluation will be based on the following system:

Criteria	Points
Respondent's Prime Firm & Team Structure Information	30
Respondent's Development Approach	30
Respondent's Relevant Experience	40
Total	100

6.3.2 The Phase 2 and Phase 3 evaluation criteria will be provided to the Proposers invited to participate in the Phase 2 and Phase 3 stages.

### 6.4 Proposer/Private Entity Protest

Any actual or prospective Proposer or private entity who is aggrieved in connection with the solicitation, evaluation or award of a Contract may formally protest to the Assistant Vice President of Procurement and Contract Services. You may access the Texas Woman's University Open Records Request process on the Office of General Counsel website at <http://www.twu.edu/general-counsel/public-information.asp>.

## SECTION 7 GENERAL TERMS AND CONDITIONS

These General Terms and Conditions or ones that are substantially similar will be contained in any resulting Contract or purchase orders arising out of this RFP. If the Proposer takes exception to any of the following General Terms and Conditions set forth, the Proposer must submit a list of the exceptions as part of its proposal. The Proposer's exceptions will be reviewed by TWU and may result in disqualification of the Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then TWU may consider Proposer's exceptions when TWU evaluates the Proposer's proposal.

### 7.1 Publicity

Private entity agrees that it shall not publicize a Contract or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of TWU's name or protected marks in connection with any sales promotion or publicity event without the prior express written approval of TWU.

### 7.2 Independent Private Entity Status

Private Entity agrees that Private Entity and Private Entity's employees and agents have no employer-employee relationship with TWU. TWU shall not be responsible for the Federal Insurance Contribution Act (FICA) payments, federal or state unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will TWU furnish any medical or retirement benefits or any paid vacation or sick leave. Private Entity is responsible for conduct of business operation, including employee salaries, travel, etc.

### 7.3 Subcontractors

Subcontractors providing services under the Contract shall meet the same requirements and level of experience required of the Proposer. No subcontractor under the Contract shall relieve the Proposer of the responsibility for ensuring the requested services are provided. Proposers planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors in their submitted proposals. If selected by TWU, Private Entity will not delegate any of its duties or responsibilities under this RFP or the Contract to any subcontractor, except as expressly provided in the Contract.

### 7.4 Insurance Requirements

7.4.1 The Private Entity agrees to furnish, **if requested**, insurance certificates reflecting the following coverage:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers Compensation	Statutory
Employer's Liability	\$1,000,000
Commercial General Liability, including Products and Completed Operations	
a. Per Occurrence	\$1,000,000
b. Aggregate	\$3,000,000
Professional Liability	\$1,000,000
Automobile Liability	
Combined Single Limit	\$1,000,000

*NOTE: An umbrella policy may be used to reach required limits.*

7.4.2 Additional Insured, Subrogation

All policies must include a waiver of subrogation favoring TWU. With the exception of the

Workers' Compensation and Professional Liability policies, TWU shall be an additional insured on all policies.

#### 7.4.3 Certificates of Coverage

At least thirty (30) days prior to the effective date of the Contract and at least thirty (30) days prior to the commencement of any renewal term of the Contract, the Private Entity shall furnish Procurement and Contract Services with certificates of insurance in a form acceptable to TWU's Risk Manager, certifying that the Private Entity carries the required insurance policies and coverage. The certificates shall be sent to Procurement and Contract Services, to the purchaser listed in section 4.3.

#### 7.4.4 Notification of Cancellation

The Private Entity will endeavor to notify TWU's Office of Procurement and Contract Services 30 days before any material change or cancellation of any insurance policy. In the event the Private Entity receives notice of modification or cancellation of any of the policies required under the Contract, then prior to the effective date of modification or cancellation of the policy, the Private Entity shall obtain a policy of insurance affording the required coverage from an insurance carrier acceptable to TWU's Risk Manager. If the Private Entity fails to obtain such an insurance policy, TWU may immediately terminate the Contract without further notice to the Private Entity.

### 7.5 Acceptance of Products and Services

All products furnished and all services performed under the Contract shall be to the satisfaction of TWU and in accordance with the specifications, terms and conditions of this Contract. TWU reserves the right to inspect the products furnished or the services performed and to determine the quality, acceptability and fitness of such products or services.

### 7.6 Infringement of Patents and Copyrights

The Private Entity agrees to protect TWU from claims involving infringement of patents or copyrights. If applicable to any awarded Contract, Private Entity will defend, at its expense, any proceeding against TWU ("Claim") to the extent such Claim is based upon an allegation that Private Entity's product, as of its delivery date under the Contract, infringes a valid United States patent or copyright or misappropriates a third party's trade secret. Private Entity will indemnify TWU for any judgments, settlements and reasonable attorney fees resulting from a Claim.

### 7.7 Taxes

7.7.1 TWU, as an agency of the State of Texas, qualifies for exemption from state and local sales and use taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Private Entity may claim exemption from payment of applicable state taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts.

7.7.2 The Private Entity shall collect and pay all taxes imposed upon the sale of items included in the Contract, as required by federal, state or local law. The Private Entity shall be responsible for and pay all social security, unemployment insurance, old age retirement and other federal and state taxes that are measured by the wages, salaries, or other remuneration paid to persons employed by the Private Entity.

### 7.8 Technology Access

The Private Entity expressly acknowledges that state funds may not be expended in connection with the purchase of electronic and information resources (EIR) unless that EIR meets certain statutory requirements relating to accessibility as required by Texas Administrative Code (TAC) 206 and 213. Accordingly the Private Entity represents and warrants to TWU that the EIR provided to TWU

complies with the accessibility requirements as outlined in 1 TAC 206 and 213 by providing (1) a completed Voluntary Product Accessibility Template (VPAT) attesting to the EIR's accessible features and capabilities or (2) providing a similarly formatted document as the VPAT attesting to the EIR's accessible features and capabilities.

## **7.9 Federal Funding**

7.9.1 This Contract may be funded wholly or partially with federal funds. The Proposer shall comply with all applicable provisions of federal law. TWU utilizes <http://www.whitehouse.gov/omb/circulars/index.html> and <http://www.gsa.gov> for all federal guidelines.

## **7.10 Time of Performance**

Time is of the essence in the rendering of services and delivery of products under a Contract. Private Entity agrees to perform all obligations and render services on the schedules set forth in this proposal.

## **7.11 Default**

In the event that the Private Entity fails to carry out or comply with any of the terms and conditions of the Contract, TWU may notify the Private Entity of such failure or default in writing and demand that the failure or default be remedied within ten (10) days; and in the event that the Private Entity fails to remedy such failure or default within the ten (10) day period, TWU shall have the right to cancel the Contract upon thirty (30) days written notice.

The cancellation of the Contract, under any circumstances whatsoever, shall not effect or relieve Private Entity from any obligation or liability that may have been incurred or will be incurred pursuant to the Contract and such cancellation by TWU shall not limit any other right or remedy available to TWU at law or in equity.

## **7.12 Termination**

7.12.1 Upon award, the Contract may be terminated, without penalty, by TWU or the Private Entity with or without cause by giving at least thirty (30) days written notice of such termination.

7.12.2 Upon award, the Contract is subject to termination, without penalty, in whole or in part, if funds are not appropriated by the legislature of the State of Texas.

7.12.3 The Contract may be terminated by either the Private Entity or by TWU upon thirty (30) days written notice to the other, if the other party fails to perform or comply with any of the material terms, covenants, Contracts or conditions hereof, and such failure is not cured during such thirty (30) day period.

7.12.4 TWU may terminate the Contract immediately without further notice if the Private Entity (i) petitions for reorganization under the Bankruptcy Code or is adjudged bankrupt; (ii) becomes insolvent or a receiver is appointed due to the insolvency; or (iii) makes a general assignments or sale of its assets or business for the benefit of creditors.

7.12.5 In no event shall such termination by TWU as provided for under this section give rise to any liability on the part of TWU including, but not limited to, claims of Private Entity for compensation for anticipated profits, unabsorbed overhead, or interest on borrowing. TWU's sole obligation hereunder is to pay Private Entity for products or services received prior to the date of termination.

## **7.13 Contractual Requirements**

7.13.1 Contract administration will be by TWU Procurement and Contract Services. No modification or amendment to any awarded Contract shall become valid unless agreed to by TWU in writing

and signed by both parties. All correspondence regarding modifications or amendments to an awarded Contract must be forwarded to the TWU Procurement and Contract Services Department for prior review and approval. Only the Assistant Vice President of Procurement and Contract Services or his/her designee will be authorized to process changes or amendments. All amendments must be signed by the same person who signed the original Contract or a person with institutional approval authority.

7.13.2 Proposer(s) shall reference the applicable TWU contract number on all quotes and invoices.

7.13.3 Proposer(s) shall accept a purchase order. Purchase orders will be submitted by fax or email depending on the Proposer(s) preference. No work shall commence at any time unless a valid purchase order has been received by the Proposer. TWU is not liable to pay any order that is not submitted on a TWU purchase order.

7.13.4 All changes must be supported by a written Purchase Order Change Notice prepared and processed by TWU Procurement and Contract Services. Other TWU personnel do not have the authority to issue changes, oral or written, to the resulting purchase order.

#### **7.14 Access to Documents**

The Private Entity shall maintain records generated pursuant to this Contract for a period of at least four (4) years after submission of the last accounting report date on which services were rendered, or until final resolution of any proceedings arising out of the Contract, whichever date is later in time. To the extent applicable to this Contract, in accordance with Section 1861(v)(1)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Private Entity will allow, during and for a period of not less than four (4) years after the expiration or termination of this Contract, access to this Contract and its books, documents, and records; and Contracts between Private Entity and its subcontractors or related organizations, including books, documents and records relating to same, by TWU.

#### **7.15 Right to Audit**

7.15.1 The Private Entity understands that acceptance of funds under any Contract awarded from this RFP acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. The Private Entity further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. The Private Entity will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Private Entity and the requirement to cooperate is included in any subcontract awards.

7.15.2 TWU shall have the right, at its sole cost, to either use its own employees or engage an independent third party to audit the financial records of a Private Entity pertaining to any awarded Contract for the preceding forty eight (48) month period. Such audit shall be completed by TWU or its representatives at the Private Entity's office, on reasonable advance notice, and on dates and times mutually agreed to by the parties. In the event such audit reveals any underpayment to or overpayment by TWU, the Private Entity shall promptly pay the amount to TWU. If such audit reveals any overpayment to or underpayment by TWU, TWU shall promptly pay the amount to the Private Entity.

#### **7.16 Non-Disclosure**

Private Entity and TWU acknowledge that they or their employees may, in the performance of the resultant Contract come into the possession of proprietary or confidential information owned by or in the possession of the other. Neither party shall use any such information for its own benefit or make such information available to any person, firm, corporation, or other organizations, whether or not directly or

indirectly affiliated with Private Entity or TWU unless required by law.

In the course of providing services during the term of the Contract, Private Entity may have access to student education records that are subject to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, *et seq.* and the regulations promulgated there under. Such information is considered confidential and is therefore protected. To the extent that Private Entity has access to "education records" under the Contract, it is deemed a "school official," as each of these terms are defined under FERPA. Private Entity agrees that it shall not use education records for any purpose other than in the performance of the Contract. Except as required by law, Private Entity shall not disclose or share education records with any third party unless permitted by the terms of the Contract or to subcontractors who have agreed to maintain the confidentiality of the education records to the same extent required of Private Entity under the Contract.

Private Entity ***shall not make available information on any student, faculty, or staff member for marketing purposes.***

#### **7.17 Severability**

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

#### **7.18 Non-Waiver of Defaults**

Any failure of TWU at any time to enforce or require the strict keeping and performance of any of the terms and conditions of this Contract shall not constitute a waiver of such terms, conditions, or rights, and shall not affect or impair it or the right of TWU at any time to avail itself of same.

#### **7.19 Assignment**

Neither this Contract, nor any rights or obligations of monies due hereunder are assignable or transferable (as security for advances or otherwise) unless agreed to in writing by TWU. Private Entity shall not subcontract any portion of services encompassed by the Contract without TWU's prior written approval. TWU shall not be required to recognize any assignment or subcontract made without its prior written approval, and any such assignment by Private Entity shall be wholly void and ineffective for all purposes unless made in conformity with this section.

#### **7.20 Texas Public Information Act**

All information, documentation and other material submitted by Private Entity under this proposal is subject to public disclosure under the Texas Public Information Act (the "Act") (Texas Government Code, Chapter 552). Private Entity is hereby notified that TWU strictly adheres to this statute and the interpretations thereof rendered by the Courts and Texas Attorney General.

TWU will use its best efforts to maintain the confidentiality of all Private Entity s' submitted information except where TWU is required to disclose it under the Act. The Texas Attorney General will ultimately decide whether a Private Entity's proprietary information (such as financial information, client lists, etc.) is released to the public, however TWU will give a Private Entity notice of all requests for its proprietary information in accordance with the Act. TWU cannot represent Private Entity interests to the Texas Attorney General and Private Entities as seeking to protect their proprietary information will be required to submit a letter, brief, or memorandum to the Attorney General with reasons in support of withholding their information. Please note that in general, Private Entity pricing information will be disclosed under the Public Information Act. If Private Entity has further questions regarding the Public Information Act, they should seek appropriate legal counsel.

## 7.21 Registration of Sex Offenders

All sex offenders required to register with local law enforcement authorities under Chapter 62.151 of the Texas Code Of Criminal Procedure who intend to work on any campus of TWU for a consecutive period exceeding fourteen (14) days or for an aggregate period exceeding thirty (30) days in a calendar year are required to register with the TWU Department of Public Safety (DPS) within 7 days of beginning work on any campus of TWU. In addition, such sex offenders are required to notify DPS within seven (7) days of terminating work on any campus. Therefore, if employees and/or agents of Private Entity and subcontractors will be performing work on any TWU campus, it is the Private Entity's responsibility to comply with this requirement. For additional information, please contact DPS at Hubbard Hall Lower Level, 301 Administration Drive, Denton, TX 76201 940-898-2911, or <http://www.twu.edu/dps/>.

## 7.22 Indemnification

The Private Entity agrees to and shall indemnify and hold harmless TWU, its Board of Regents, officers, agents, employees, and personnel, against any and all liability, claims, suits, losses, costs and legal fees caused by, arising out of, or resulting from any negligent act or omission of the Private Entity in the performance and/or failure to perform within the Contract including the negligent acts or omission of any subcontractor or any direct or indirect employees of the Private Entity or subcontractors. The indemnification obligations set forth in the Contract shall survive termination or expiration of the Contract.

## 7.23 Governing Law

Denton County, Texas shall be the proper place of venue for suit on or in respect of this Contract. The Contract and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

## 7.24 Declaration of Public Purpose

TWU is undertaking this project under the authority provided in the Texas Government Code Chapter 2267.

## 7.25 Dispute Resolution

The dispute resolution process provided for in the Texas Government Code, Chapter 2260 shall be used, as further described herein, by TWU and the contracting party in an attempt to resolve any unresolved claim for breach of contract arising under the Contract and made by the contracting party.

- (a) A contracting party's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Government Code, Chapter 2260, Subchapter B. To initiate the process, the contracting party shall submit written notice, as required by Subchapter B, to the Assistant Vice President of Procurement and Contract Services. Said notice specifically states that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of TWU and the contracting party that are otherwise entitled to notice under this Contract. Compliance by the contracting party with Subchapter B is a condition precedent to the filing of a contested case proceeding under Government Code, Chapter 2260, Subchapter C.
- (b) The contested case process provided in Government Code Chapter 2260, Subchapter C, shall be the contracting party's sole and exclusive process for seeking a remedy for an alleged breach of contract by TWU if the parties are unable to resolve their disputes in the ordinary course of business

or under Chapter 2260, Subchapter B, unless, after considering the recommendation of the Administrative Law Judge, the Legislature grants the contracting party consent to sue under Chapter 107 of the civil Practices and Remedies Code.

- (c) Neither the execution of this contract by TWU nor any other conduct of any representative of TWU relating to the contract shall be considered a waiver of TWU's sovereign immunity to suit.
- (d) The dispute resolution process provided for in Government Code Chapter 2260 will not, at any time, affect TWU's right of ability to bring suit against the contracting party for disputes arising under this Contract, nor will it affect TWU's ability to assert all claims and defenses in a lawsuit.
- (e) Pursuant to Chapter 2260, the submission, processing and resolution of the contracting party's claim is governed by the published rules adopted by the Texas Attorney General's Office, as currently effective, hereafter enacted or subsequently amended.
- (f) Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by TWU the contracting party shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the contracting party may suspend performance during the pendency of such claim or dispute if the contracting party has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

**SECTION 8  
EXECUTION OF OFFER AND AFFIRMATIONS**

Signing this proposal with a false statement is a material breach of Contract and shall void the submitted proposal or any resulting Contracts, and the Proposer may be removed from all proposal lists. By signature hereon affixed, the Proposer hereby certifies that:

- 8.1 The Proposer is not currently delinquent in the payment of any debt or taxes owed the State of Texas.
- 8.2 Proposer agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.
- 8.3 Proposer certifies as follows: "Pursuant to Section 231.006, Family Code, re: child support, the Proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate."

Furthermore, any Proposer subject to Section 231.006, Family Code, must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the proposal. This information must be provided prior to award. Enter the name and social security numbers for each person below. Proposers that have pre-registered this information on the Texas Comptroller of Public Accounts Centralized Master Bidders' List will be deemed to have satisfied this requirement.

Name:	SS#
Name:	SS#:
Name:	SS#:

- 8.4 The Proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal.
- 8.5 The Proposer has not received compensation for participation in the preparation of the specifications for this RFP.
- 8.6 Neither the Proposer nor the firm, corporation, partnership or institution represented by the Proposer, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal Antitrust Laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 8.7 The Proposer certifies that the Private Entity and/or principals are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency, and have not within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and are not presently indicted for, or otherwise criminally or civilly charged by a government entity with commission of any of these offenses.
- 8.8 Under Section 2155.006(b) of the Texas Government Code, a state university may not accept a proposal or award a Contract, including a Contract for which purchasing authority is delegated to a state university, that includes a proposed financial participation by a person who, during the five-year period preceding the date of the proposal or award, has been: (i) convicted of violating a federal law in connection with a Contract awarded by the federal government for relief, recovery, or reconstruction

efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (ii) assessed a penalty in a federal civil or administrative enforcement action in connection with a Contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

- 8.9 Proposer agrees to comply with Government Code 2155.4441, pertaining to service Contract use of products produced in the State of Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
- 8.10 Proposer certifies that they are in compliance with section 669.003 of the Government Code, relating to contracting with executive head of a State agency. If section 669.003 applies, Proposer will complete the following information in order for the proposal to be evaluated:
- Name of Former Executive: \_\_\_\_\_
- Name of State Agency: \_\_\_\_\_
- Date of Separation from State Agency: \_\_\_\_\_
- Position with Proposer: \_\_\_\_\_
- Date of Employment with Proposer: \_\_\_\_\_

8.11 Conflict of Interest

8.11.1 The Private Entity certifies that (i) no relationship, whether by blood, marriage, business association, capital funding Contract or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint ventures of any Proposer that is a joint venture or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any component of TWU, on the other hand, other than the relationships which have been previously disclosed to TWU in writing and (ii) Proposer has not been an employee of TWU within the immediate twelve (12) months prior to the submittal deadline. All disclosures by Proposer in connection with this affirmation will be subject to administrative review and approval before TWU enters into a Contract with Proposer. Any violation of this conflict of interest policy shall result in immediate cancellation of any resulting Contract in addition to a potential debarment of the Private Entity from doing business with the State of Texas.

8.11.2 An employee may not be in any dual employment positions that would result in a conflict of interest in relation to his/her position at TWU. If such circumstance arises, the employee shall remove himself/herself from the process and disclose the relationship to his/her direct supervisor and to the Assistant Vice President Procurement and Contract Services. A TWU department may not hire a Private Entity if a current TWU employee of such department is also employed by such Private Entity; a current employee of such department has a direct or indirect ownership interest in such Private Entity; and/or the hiring of such Private Entity would result in the furtherance of any private interest or gain for a current employee of such department. If the owner of any such Private Entity who provides services to TWU is a TWU employee, compliant payment to any Private Entity classified as a sole proprietorship or an individual shall be made through the Payroll Services department.

**Proposer Information and Signature**

Proposer certifies that the individual signing this document and the documents made a part of this RFP is authorized to sign such documents on behalf of Proposer and to bind Proposer under any Contract that may result from the submission of Proposer's proposal.

By signing the proposal, the Private Entity certifies that if a Texas address is shown as the address of the Private Entity, the Private Entity qualifies as a Texas Resident Bidder, as defined in 34 TAC sec. 20.38.

Payee Identification Number (PIN): \_\_\_\_\_

Sole Proprietor should also enter social security No.: \_\_\_\_\_

Proposer/Company: \_\_\_\_\_

Name (Typed/Printed): \_\_\_\_\_

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

Street: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Signature (INK):** \_\_\_\_\_

**Other Preferences** as defined in 34 TAC sec. 20.38 (check any that are applicable)

- Supplies, materials, equipment, or services produced in TX/ offered by TX bidders
- Agricultural products produced or grown in TX
- Agricultural products and services offered by TX bidders
- USA produced supplies, materials, or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy efficient products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas

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