



June 11, 2014

Honorable Dianne Wilson
Fort Bend County Clerk
301 Jackson Street
Richmond, TX 77469

RE: Phase I for the Preservation of Miscellaneous Records and Case Files

Dear Hon. Dianne Wilson,

Per your request, please find our quote for the preservation of the Fort Bend County Clerk's Historical Records. This document includes pricing for Phase I (41 volumes, 1 CD, 5 boxes of case files; 38,653 pages). Please reference TXMAS Contract number TXMAS-13-36010, Kofile Preservation, Inc., when processing your order. Prices are good for 90 days.

PROJECT UNDERSTANDING

Preservation will minimize the chemical and physical deterioration of the page. Its goal is to prolong the existence and useful life of the original format. Oftentimes, this includes preserving and removing the original from public access, and creating a security copy.

Preservation incorporates any combination of conservation, treatment, stabilization, preventative care, or digitization—or any maintenance or repair of the existing resource to protect or stabilize.

Kofile presents a complete solution. Quoted services can include preservation, rehousing in new binders, imaging, and indexing, as well as the re-creation of two volumes from CD and loose leaf sheets.

Archival rehousing services include encapsulation and loose leaf binding into Heritage Recorder Binders or *Disaster Safe County Binders*TM.



A historical volume from Titus County, Texas, before and after service.

6300 CEDAR SPRINGS ROAD
DALLAS, TEXAS 75235
214-351-4800

ONE ALLEN MARTIN DRIVE
ESSEX, VERMONT 05452
800-639-3027

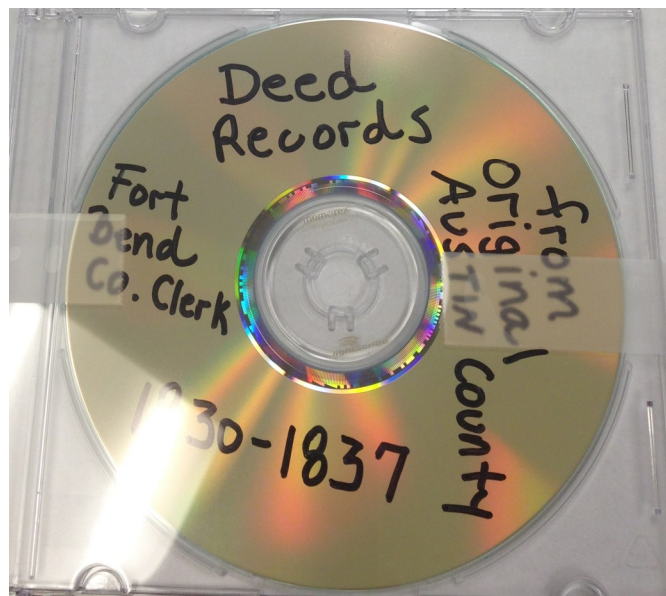
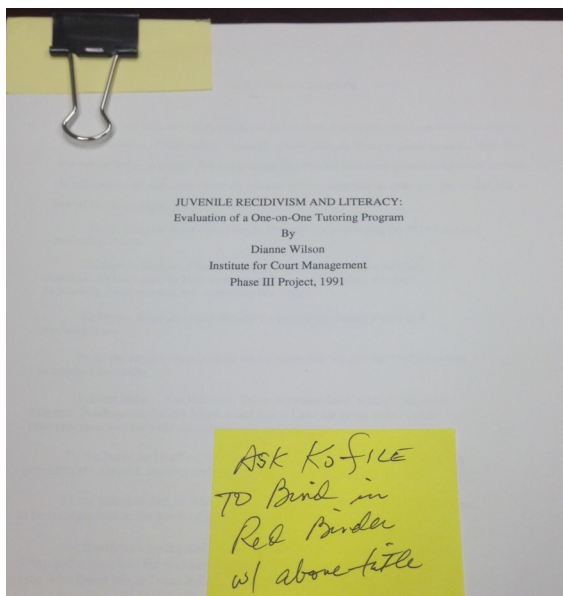
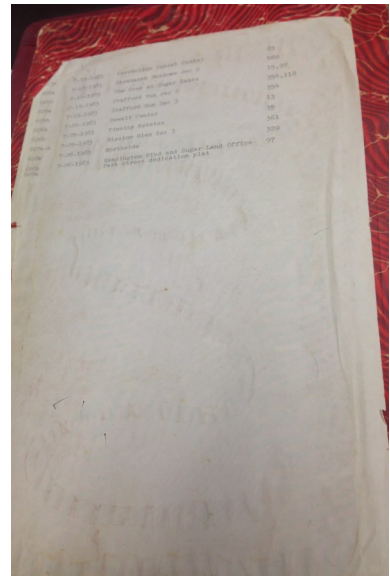
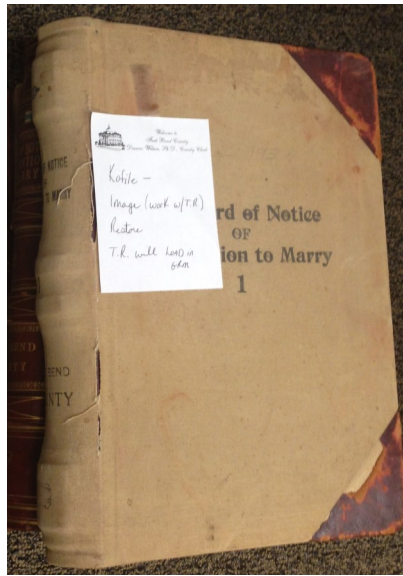
2211 MOUTON DRIVE, STE A
CARSON CITY, NEVADA 89706
855-767-8697

CONDITION ASSESSMENT

Due to their historical nature, these records maintain a PERMANENT retention schedule according to Local Schedule CC, Texas State Library and Archives Commission, August 2011.

This collection is in fair to poor condition. It contains manuscript or handwritten sheets, as well as typescript (typed) sheets. Some of the cases are tri-folded, which deteriorates the sheet at the folds. Deterioration and browning of the sheets are also the direct results of use, natural aging, lack of environmental controls, and exposure to UV light. Many of the 41 volumes have damaged binding. One volume will be re-created from a CD, and one volume will be re-created from loose leaf paper.

PHOTOGRAPHIC DOCUMENTATION



SCOPE OF SERVICES

Preservation (PRV)

- Create permanent log (noting condition, page order, characteristics, and treatments).
- Dismantle by hand. Surface clean sheets to remove deposits.
- Remove non-archival repairs or fasteners, such as residual glues. *All tape and previous mends to be removed to the extent possible without causing damage to paper and inks.*
- Mend tears with Japanese tissue. All materials are acid free and reversible.
- Deacidify sheets after careful testing. Magnesium oxide neutralizes by providing an alkalize reserve. Random testing ensures an 8.5 pH with a deviation of no more than $\pm .5$.
- Encapsulate each sheet in a *Lay Flat Archival Polyester Pocket™*.
- Rebind in a custom-fitted and stamped Heritage Recorder binder or a *Disaster Safe County Binder™*. A volume may return as two, depending on page count. Index tabs are repaired/replaced as necessary. A dedication and treatment report is included.

Pre-Preservation (PRE-PRV)

- Minor conservation treatments and document preparation include removal of fasteners, flattening, and humidification.
- Image sheets per the specifications below (IM).
- Place sheets in archival acid free folders and house in Coroplast™ archival boxes.

Archival Imaging (IM)

- Capture images at a minimum of 300 dpi at 256 gray levels, ensuring the highest quality for poor contrast and readability. Gray-scale ensures optimum resolution for each page. Digitized images are accumulated as Group IV bi-tonal images in a standard TIFF format.
- IMAGE PERFECT application software uses custom processing and clean up features:
 - Zonal Enhancements
 - Border Removal
 - Deskew
 - Page Validation
 - Despeckle
 - Image Splitting
- Annotations are electronically added on the re-created image to assist in record keeping.
- Certify all images. Each and every image is checked during Quality Control. We verify effectiveness and minimum legibility through rigorous and systematic quality control.
- One MASTER and one COPY is returned to the County upon project completion. Kofile will retain a security copy for safe keeping upon request. Kofile does *not sell, distribute, or grant unauthorized access to County records.*

Indexing (ID)

- Create a pipe-delimited index file. Key and re-key verify documents.
- For Tri-Folded Case Files, index fields include case number, date, plaintiff, and defendant.

Re-Creation (RC)

- Print on 24 lb. Bond Acid-Free and Pre-Punched Paper.
- Bind in an Enduro® *Indestructo Binder* with poly index tabs.

INVENTORY & ITEMIZED PRICING

FORT BEND COUNTY CLERK PROJECT I					
RECORDS SERIES TITLE	VOL.	PAGE COUNT	NOTES	LEVEL OF SERVICE	PRICE QUOTE
Deed Records (Original Austin County)	1830-37	801	<i>A CD record.</i>	RC	\$507.61
Juvenile Recidivism & Literacy		75	<i>Loose leaf.</i>	RC	\$203.05
Application of Purchase and Survey of Land		180		PRV	\$845.41
Application and Obligation to Purchase as an Actual Settler		13		PRV	\$167.24
Index to Public Roads		288		PRV	\$1,283.99
Record of Estates	1866-68	975		PRV	\$4,073.84
Judgment Record	A	242		PRV	\$1,097.19
Index to Plats		400		PRV	\$1,738.81
Index to Commissioner Court Minutes	1	320	<i>Contains blanks.</i>	PRV	\$1,413.94
Index to Commissioner Court Minutes	2	320	<i>Contains blanks.</i>	PRV	\$1,413.94
Index to Commissioner Court Minutes	3	320	<i>Contains blanks.</i>	PRV	\$1,413.94
Index to Commissioner Court Minutes	4	320	<i>Contains blanks.</i>	PRV	\$1,413.94
Index to Commissioner Court Minutes	5	320	<i>Contains blanks.</i>	PRV	\$1,413.94
Index to Commissioner Court Minutes	6	500	<i>Contains blanks.</i>	PRV	\$2,144.91
Index to Commissioner Court Minutes	7	270	<i>Contains blanks.</i>	PRV	\$1,210.90
Index to Commissioner Court Minutes	8	270	<i>Contains blanks.</i>	PRV	\$1,210.91
Criminal Court Minute Book	K	358		PRV	\$1,568.26
Execution Docket Book	A	230		PRV	\$1,048.46
Execution Docket Book	B	200		PRV	\$926.63
Civil Minutes	A	630		IM	\$479.43
Civil Minutes	B	630		IM	\$479.43
Civil Minutes	C	630		IM	\$479.43
Civil Minutes	D	630		IM	\$479.43
Civil Minutes	E	630		IM	\$479.43
Civil Minutes	F	644	<i>Contains Photostats.</i>	IM	\$490.08
Civil Minutes	G	660		IM	\$502.26
Civil Minutes	H	648		IM	\$493.13

FORT BEND COUNTY CLERK PROJECT I					
RECORDS SERIES TITLE	VOL.	PAGE COUNT	NOTES	LEVEL OF SERVICE	PRICE QUOTE
Civil Minutes	I	842		IM	\$640.76
Civil Minutes	J	884		IM	\$672.72
Civil Minutes	K	914		IM	\$695.55
Civil Minutes	L	886		IM	\$674.25
Civil Minutes	M	794		IM	\$604.23
Index to County Court Civil Minutes	A	25		IM	\$27.75
Index to County Court Civil Minutes	E	50		IM	\$51.50
Index to County Court Civil Minutes	1	320		IM	\$329.60
Index to County Court Civil Minutes	2	320		IM	\$329.60
Index to County Court Civil Minutes	3	320		IM	\$329.60
Index to County Court Civil Minutes	4	320		IM	\$329.60
Case Files ^{*†}	1	5,000	<i>Box of tri-folds.</i>	PRE-PRV/ IM/ID	\$6,967.24
Case Files ^{*†}	2	5,000	<i>Box of tri-folds.</i>	PRE-PRV/ IM/ID	\$6,967.24
Case Files ^{*†}	3	5,000	<i>Box of tri-folds.</i>	PRE-PRV/ IM/ID	\$6,967.24
Case Files ^{**†}	4	1,000	<i>Box of tri-folds.</i>	PRE-PRV/ IM/ID	\$1,484.96
Civil Dockets	2685-4413	1,729	<i>Boxed sheets.</i>	IM/ID	\$5,551.82
Civil Dockets	4414-6102	1,689	<i>Boxed sheets.</i>	IM/ID	\$5,423.38
TOTAL (42 Volumes (41 books and 1 CD); 6 Boxes; 39,235 Pages)					\$67,024.57

**Box contains approx. 100 Cases (page count is based on the average of 50 pages/Case).*

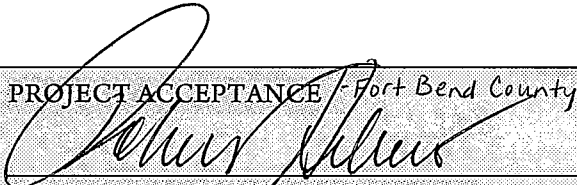
***Box contains approx. 20 Cases (page count is based on the average of 50 pages/Case).*

†Indexing is included in the imaging pricing and include: Case, Date, Plaintiff, and Defendant.

PROJECT PRICE QUOTE

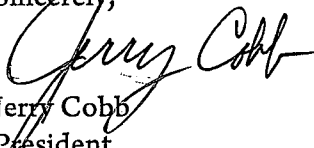
Please reference TXMAS Contract number **TXMAS-13-36010**, KOFIL Preservation, Inc., when processing your order. Prices are good for 90 days from the date of the quote.

FORT BEND COUNTY CLERK TXMAS LINE ITEMS: PROJECT I						
TXMAS PART NO.	NIGP CODE	TXMAS PART NO. DESCRIPTION	UNIT PRICE	UNIT OF MEASURE	QTY.	PRICE
PRV004	96272	Additional Paper Conservation	\$144.28	Hour	232.9978	\$33,616.92
BRC001	92030	Book Re-creation of Unbound Positive Record	\$0.81	Page	876	\$710.66
IMGP002	92030	Imaging of Unbound Positive/ Manuscript Record	\$0.761	Page	28,840	\$21,947.24
IMGP003	92030	Imaging of Bound Positive/ Typescript or Manuscript Record	\$1.03	Page	1,355	\$1,395.65
IND005	92021	Indexing of Tri-Folded Case Files	\$2.45	Document	3,818	\$9,354.10
TOTAL						\$67,024.57

PROJECT ACCEPTANCE *Fort Bend County*

 (Signature of Authorized Official & Title)
 Robert E. Hebert, County Judge
 July 22, 2014
 (Date)

All work is held to the highest possible standard of workmanship and quality. Please do not hesitate to contact me with any questions.

Sincerely,


 Jerry Cobb
 President

Kofile Preservation

cec



Texas Multiple Award Schedule (TXMAS) Program

INFORMATION PACKET

for Fort Bend County

Prepared 7/3/2014 by:

TXMAS CONTRACT NUMBER TXMAS-13-36010

KOFILE  **PRESERVATION**

TXMAS Program Overview

> www.window.state.tx.us/procurement/prog/txmas/



Window on State Government

Susan Combs Texas Comptroller of Public Accounts

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State Purchasing

Resources

[TXMAS Contracts by Schedule](#)
[Offer Packet E-Docs](#)
[NIGP Commodity Book](#)

TXMAS Program

[State Purchasing Programs](#)

The Texas Procurement and Support Services (TPASS) has established, as an alternative purchasing method, the use of Texas multiple award schedule (TXMAS) contracts that have been developed from contracts awarded by the federal government or any other governmental entity of any state.

As the responsible federal entity, the General Services Administration's (GSA) Federal Supply Service awards Federal Supply Schedule contracts by competitive procurement procedures for more than 50 schedules that cover multiple commodities and services. The prices reflected on GSA schedule contracts are the most favored customer (MFC) prices and the maximum price allowable.

TXMAS contracts take advantage of the MFC pricing and under certain circumstances, an agency or local government entity, may negotiate a lower price for the goods or services offered on a schedule contract. A "best value" purchase can be made by following the TXMAS purchasing procedures.

For State Agencies and Qualified State of Texas CO-OP Purchasing Entities

[TXMAS Purchasing Procedures \(PDF\)](#)

[TXMAS Contracts by Schedule](#)

Search TXMAS Contracts

For Vendors

Setting up a TXMAS Contract:

Vendors with a current GSA Federal Supply Service Contract may download the offer packet documents to initiate contract set-up.

- [Offer Packet E-Docs](#)
- [NIGP Commodity Book](#) (for completion of contract materials)
- [Contractor Landing Page HTML Requirements](#)

Who Purchases from TXMAS Contracts:

- [State Agency Numbers and Addresses](#)
- [State of Texas CO-OP Members' Numbers and Addresses](#)

Contact Information:

For more information, please email TXMAS, call 512-463-3421, or fax to 512-475-0708.

Required Plug-ins [[Adobe Reader](#)]

[Texas.gov](#) | [Statewide Search from the Texas State Library](#) | [State Link Policy](#) | [Texas Homeland Security](#) | [Texas Transparency](#) | [Report Fraud](#)

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See Exhibit A

See Exhibit B

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EXHIBIT A: TXMAS Purchasing Procedures

2.8.1

Texas Multiple Award Schedule Contracts PCC X

Introduction

The Texas Multiple Award Schedule (TXMAS) Program adapts existing competitively awarded government contracts to the procurement needs of the state of Texas. Unlike some other purchasing methods, purchases made from TXMAS contracts do not require delegated authority from TPASS to make purchases over \$25,000 for commodities and \$100,000 for services. To be considered for the TXMAS Program, an existing contract must be:

- Awarded by the federal government or any other governmental entity in any state.
- Awarded using a competitive process.
- Adaptable to the laws of the state of Texas

Each TXMAS contractor is required to provide a TXMAS product catalog. Catalogs must contain the following information:

- Item specifications.
- Ordering procedures.
- Invoicing procedures.
- Contact information for making purchases and for customer service.

Terms and Conditions: If any information is needed in reference to the Terms and Conditions, please contact the contract holder or the TXMAS Coordinator at (512) 463-3421.

TXMAS contractor catalogs are available on the [TXMAS Contracts By Schedule](#).

General Services Administration Federal Supply Service Contracts

The vast majority of TXMAS contracts are adapted from General Services Administration Federal Supply Service (GSA) contracts. For this reason, it is common for a contractor's TXMAS catalog to be nearly identical to its GSA catalog. For contracts adapted from GSA contracts, the TXMAS prices must be identical to those on the GSA Schedule. These are the "Most Favored Customer" (MFC) prices and are the maximum prices allowed. To learn about negotiating lower prices for TXMAS contract items, please see the section entitled "**Negotiating Price with TXMAS Vendors**" below.

Purchasing from TXMAS Contracts

Prior to purchasing the product or service from a TXMAS contract, follow applicable statutes, as required, for purchasing from the CCG, TIBH, TCI, the TxSmartBuy term or Managed term contracts.

To purchase outside an established TPASS term contract, conduct a search of all TPASS term and TXMAS contracts for the product or service required. It is recommended that a comparison be conducted between the contracts for best value and be based upon the exact product's functional specifications or service requirements.

Purchase Orders against TXMAS Contracts must be entered through the TxSmartBuy on-line ordering system.

Best Value Comparison Documentation:

Price cannot be a factor to *not* purchase TIBH products. If the product desired is available through TIBH, the purchase order must be issued through the TxSmartBuy ordering system. Products available from TCI should be purchased when meeting the functional specifications of the required product. Purchases for services or products available through CCG contracts must be processed through those contracts.

1. For products or services other than those available through CCG, TIBH or TCI, record the following information in the procurement file:
 - a. Description of the product or service
 - b. TPASS term contract number(s) and the TXMAS contract number(s) searched.
NOTE: If searching a new TXMAS contractor that does not have a listing or link to their catalog on the [TXMAS Contracts Web Page](#), request a catalog from that contractor with a copy of their TXMAS award notice.
 - c. Product manufacturer/brand and model/product number
 - d. Pricing printed from the TPASS Term Contracts including any additional charges as applicable (freight, inside delivery).
 - e. Include pricing from TXMAS contractors that provide the product or service from the on-line catalogs or quotations. If the quoted price is less than the price listed in the contractor's TXMAS on-line catalog, make note that the lower pricing was confirmed and list the representative's name. If the quoted price is higher than the price listed on the contractor's TXMAS on-line catalog, request that the contractor provide a new quote with the published price.

Issuing the Best Value Purchase Order

- Document the basis for the best value determination in the procurement file.
- If the TPASS term contract(s) provide the best value, the purchase order must be processed through the TxSmartBuy ordering system, or if available from a Managed Term Contract, issue an internal purchase order directly to the contractor.

- If the TXMAS contract provides the best value, issue a purchase order to the contractor through the TxSmartBuy ordering system or, if to a contractor's dealer, issue an internal purchase order directly to the dealer. The dealer must be listed on the TXMAS contractor's contract page. A TXMAS contractor is not required to accept orders below the minimum order limit shown on its contract page. Orders between the minimum and maximum order limits listed on the contract page are subject to TXMAS catalog pricing. For orders above the maximum limit, you are entitled to negotiate lower prices than those listed in the TXMAS catalog.

TXMAS Purchases for Products or Services *NOT* Available through TPASS established contracts:

TXMAS Procurements of \$5,000 and Below

- Prior to purchasing the product or service from a TXMAS contract, follow applicable statutes, as required, for purchasing from the TIBH, TCI, the TxSmartBuy term or Managed term contracts. See Section 2.5, "Set-aside Purchases."
- Agencies are required to obtain the "best value" for expenditures of agency funds by obtaining multiple quotes (at least three) where possible and document their efforts in the procurement file. The quotes may be obtained via telephone or by electronic transmission
- The agency shall issue a purchase order to the selected "best value" TXMAS contractor through the TxSmartBuy ordering system or, for contractor's dealers, issue an internal purchase order using internal agency procedures and policies for purchases of \$5,000 and below.

TXMAS Procurements over \$5,000

- Prior to purchasing the product or service from a TXMAS contract, follow applicable statutes, as required, for purchasing from the CCG, TIBH, TCI, the TxSmartBuy term or Managed term contracts. See Section 2.5, "Set-aside Purchases."
- Research the on-line catalog pricing and/or obtain a price quote from as many TXMAS contractors as necessary to provide best value to the state. Document all price quotes in the procurement file. If the TXMAS contractor's website is not shown on the [TXMAS Contracts Web Page](#), the contractor must include a copy of the TXMAS contract award notice with its price quote.
- For all TXMAS purchase orders that exceed \$25,000, the agency must post the Award Notice on the ESBD (Electronic State Business Daily).
- A TXMAS contractor is not required to accept orders below the minimum order limit shown on its contract page. Orders between the minimum and maximum order limits listed on the contract page are subject to TXMAS catalog pricing. For orders above the maximum limit, the purchaser is entitled to negotiate lower prices than those listed in the TXMAS catalog.

- Proprietary TXMAS procurements:

If the proprietary product or service is available through a TXMAS Contract, prepare documentation (letter or memo to the file) justifying the proprietary purchase in accordance with Government Code 2155.067 and obtain the authorized signature of the appropriate agency's personnel as identified in the agency's Procurement Plan. Retain this document in the procurement file.

- Prices for the following may be negotiated with a TXMAS contractor:
 1. Incidental, off-schedule items and services, installations, set up or inside delivery if necessary for product warranty, system integration or product completeness as required to facilitate TXMAS contract purchases.
 2. TXMAS contract goods and services that the contractor is offering through a promotional program.
 3. TXMAS contract goods and services in an amount that exceeds the contract's Maximum Order.

Incidental, off-schedule items and services, installation or inside delivery and set up, may be purchased as "best value, open market" items provided that they are necessary for product warranty, system integration or product completeness. An agency is responsible for ensuring that the quoted price for such incidental items is fair and reasonable. These incidental items and services may be added to the purchase order if they are clearly labeled as "open market, best value" items on the contractor's quote.

- Purchase orders must be processed through TxSmartBuy.
- Some TXMAS contract items are loaded into the TxSmartBuy system for purchasing directly from a contractor. Contract items can be searched and added to a shopping cart to complete the purchase order through the system.
- TXMAS contracts provide items for purchase through a quote process. These orders are processed through the system as a single line item for the total amount of the quote. The quote document can be attached to the purchase order in the system and will be sent to the contractor with the purchase order.
- Internal purchase orders following agency policies and procedures can be issued to TXMAS contractor dealers. The dealer must be listed on the TXMAS Contractor's contract page.

The dealer will process the order and is to be paid directly by the customer. These orders must contain the following documentation:

- TXMAS Contract number
- NIGP Code (Class and Item) for each purchased line item
- Agency number
- Best Value Determination
- Identification of any incidental, off-schedule items and services, installation, set up or inside delivery charges.

Proposing New TXMAS Contracts

IF	THEN	AND
You have a requirement that could be met by a competitively awarded government contract	Verify that the requested contract is not already available as a TXMAS Contract	<ul style="list-style-type: none">• Awarded by the federal government or any other state governmental entity• Awarded using a competitive process• Adaptable to the laws of the state of Texas
The potential contract meets the above criteria	contact the TXMAS Program at (512) 463-3421 to begin the process for a TXMAS contract award consideration	

Texas Government Code §§ [2155.062](#), [2155.502](#), [2155.504](#), 2155.504(b) and Local Government Code §[271.101](#)

EXHIBIT B: County's CO-OP Listing

> www.window.state.tx.us/procurement/stpurch/coop_list/c0790.html

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State of Texas CO-OP Listing for
FORT BEND COUNTY

[CO-OP Members List](#)

Search CO-OP Members

CO-OP #	C0790
Contact	GILBERT JALOMO
Address	301 JACKSON RICHMOND TX, 77469
Phone #	281/341-8640
Fax #	281/341-8642
E-mail	jalomgil@co.fort-bend.tx.us
Travel Eligible	Y
Expiration Date	19-FEB-2015

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EXHIBIT C: TXMAS Award Letter to Kofile Preservation, Inc.

S U S A N

C O M B S

TEXAS COMPTROLLER *of* PUBLIC ACCOUNTS

WWW.WINDOW.STATE.TX.US



Texas Comptroller of Public Accounts

November 29, 2012

Richard Don Faulkenberry
Kofile Preservation, Inc.
6300 Cedar Springs Road
Dallas, TX 75235

RE: Contract No. TXMAS-13-36010
Contract Period 11/29/12 through 09/19/17

Dear Mr. Faulkenberry:

Your company has been awarded a contract under the Texas Multiple Award Schedule (TXMAS) program. The period of the contract is shown above and will coincide with the contract period of your contract, GS-03F-0169Y with the General Services Administration (GSA). As stated in your contract with the State of Texas, Terms and Conditions, you are responsible for notifying the Texas Comptroller of Public Accounts (CPA) within thirty (30) calendar days of any change in the status of your contract with GSA or amendments to the Federal Schedule Contract.

All terms and conditions set forth in the document that you signed as a part of your offer to the State are made a part of this TXMAS contract. Please note that any payment 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. Additionally, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the CPA and the contractor to attempt to resolve all disputes arising under this contract.

As set forth in Section 8 of the Contract Terms and Conditions, a Monthly Sales Report is required under this contract. The reporting requirement will commence for the period November 2012.


Kofile Preservation, Inc.

November 29, 2012

Page 2

In order to facilitate catalog access to TXMAS contractor catalogs, the CPA will maintain a web page exclusive to your TXMAS contract. In addition to user instructions and informational details relating to the contractor, a universal resource locator (URL) address is required for the contractor's catalog. The catalog may be the same as the catalog used for the GSA Advantage e-procurement program, but it must have a TXMAS identifying cover and a URL, exclusive to the TXMAS program. It is requested that your catalog web address be established within fourteen (14) calendar days and provided by e-mail to the TXMAS Program Unit at txmas@CPA.state.tx.us. If you have any questions regarding this or any of the other requirements relating to the TXMAS program, please contact Richard San Jose at 512-463-3421.

Respectfully,



Martin A. Hubert
Deputy Comptroller

STATE OF TEXAS
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
TEXAS MULTIPLE AWARD SCHEDULE (TXMAS)

THIS CONTRACT is by and between the STATE OF TEXAS ("State") acting through the TEXAS COMPTROLLER OF PUBLIC ACCOUNTS ("CPA"), with offices in the LBJ State Office Building, 111 E. 17th Street, Austin, Texas 78774 and Koffle Preservation, Inc. ("Contractor") with offices at 6300 Cedar Springs Road Dallas, Texas 75235-5809.

1. BACKGROUND:

The Contractor has entered into a contract with the Federal Government under the Federal Government's Supply Schedule Contract Program administered by the General Services Administration ("GSA"). That program allows a contractor and the GSA to negotiate in advance of actual purchases the terms and conditions under which a contractor will supply goods or services to the Federal Government. Such a Federal schedule contract is not a commitment to purchase any goods or services; it is only a convenient way to do so should a Federal agency so choose during the contract's term.

The Texas Comptroller of Public Accounts has also determined that the Contractor's Federal schedule contract offers goods or services that may be of interest to various state agencies and has therefore decided to use the Contractor's Federal contract as a basis for a state multiple award schedule contract with the Contractor. This state multiple award schedule contract (the "Contract") establishes terms and conditions under which a state agency may acquire the Contractor's goods or services, but it in no manner obligates any state agency to do so.

TERMS & CONDITIONS

2. COMPOSITION OF CONTRACT:

- (a) This Contract consists of the terms of the Contractor's Federal Schedule Contract, Number GS-03F-0169Y (the "Federal Schedule Contract" or "Schedule Contract"), as amended by this Contract (*see Paragraph 36 "ENTIRE AGREEMENT"*). The Contractor's Schedule Contract consists of all the documents and materials incorporated in that agreement with the Federal Government. Those documents include, among possible others, the Federal Government's original solicitation, the Contractor's offer to the Federal Government, with amendments, the Contractor's best and final offer letter, the final award, and the Contractor's most current version of its Authorized Schedule Price List.
- (b) Additionally, all representations, clarifications, and certifications submitted by the Contractor as a part of that contracting process are also included. And it includes any laws, regulations, documents, guidelines, and other materials incorporated by reference in the Contractor's Schedule Contract, including all Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation (DFAR), Federal Information Processing Standards Publication (FIPS PUB), Federal Standards (FED-STD) and

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United States Code (USC) provisions, among others. By way of example, such would include all cited FAR and DFAR provisions relating to warranties, liabilities, and rights in data, and the GSA's Price Reduction Clause, among others.

- (c) It is recognized that prices reflected on GSA schedule contracts are most favored customer prices and are maximum prices. A State Agency or Local Government may negotiate a lower price for goods and services listed on a schedule contract. CPA operates an online ordering system. A 1.5% administrative fee is charged on all orders. The contractor is authorized to charge up to 1.5228% to recover this charge. The Contractor shall remit this administrative fee to the TexasOnline vendor on a monthly basis, as invoiced.

3. CERTIFICATION OF ACCURACY:

The Contractor hereby certifies that all copies of the Contractor's Authorized Schedule Price List that were submitted to the State as part of the negotiation of this Contract are true, correct, current, and complete copies of that Price List. The Contractor further represents and warrants that all future Price Lists submitted to revise this Contract will also be true, correct, current, and complete copies of the then-current Price List under the Contractor's then-current Federal Contract.

4. FEDERAL REPRESENTATIONS:

The Contractor warrants that all certifications and representations made to the Federal Government as a basis for obtaining or as a part of its GSA Schedule Contract were and still are true and accurate. The Contractor further agrees that such representations are a basis for the State entering into this Contract and that such representation and certifications inure to the State's benefit.

5. FUTURE NOTICE:

The Contractor acknowledges that any continuing obligation to notify the Federal Government of changes affecting its GSA Schedule Contract, including by way of example, notices required under the price reduction provisions of its Schedule Contract, must be provided in the same manner to the State. The State's rights under those notices will be the same as the rights of the Federal Government. Additionally, the Contractor agrees to notify the State within thirty (30) calendar days of all changes in the status of or amendments to its Federal Schedule Contract.

6. PARTIES TO THE CONTRACT:

- (a) For purposes of this Contract, all references to "Government," "Federal Government," "GSA," or similar terms meaning the Federal Government in the Contractor's Schedule Contract will mean the "State." And references to the "Contracting Officer" will mean the State representative, or their successor or designee, who signed this Contract on

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behalf of the State. Additionally, for purposes of this Contract, all rights and obligations of the Contractor and the Federal Government under the Contractor's Schedule Contract, except to the extent that such would create an absurdity, or are otherwise clearly inappropriate, or would violate state or federal law, will be rights and obligations between the Contractor and the State.

- (b) This Contract may be relied on by any "State Agency" as defined under §2251.001(8), Texas Government Code and any "Local Government" as defined under §271.101, Texas Local Government Code. Whenever a Local Government relies upon this Contract to issue a purchase order, the Local Government will step into the shoes of the State under this Contract. Any order placed by a Local Government under this contract will be between the Contractor and the Local Government. The Contractor will look solely to the Local Government for performance, including but not limited to payment, and will hold the State harmless with regard to such orders. The State, however, will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Local Government.
- (c) Nothing in this Contract requires the Contractor to accept an order from a Local Government where the Contractor reasonably believes that the Local Government is or will be unable to perform its obligations in relation to that order.
- (d) Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under this Contract. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees of the State. Should Contractor subcontract any of the services required in this Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), the State is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Contract.

7. SPECIFIC CHANGES TO PROVISIONS INCLUDED IN THE CONTRACTOR'S SCHEDULE CONTRACT:

The State and the Contractor agree to the following changes to specific provisions of the Contractor's Federal Schedule Contract, notwithstanding anything to the contrary contained in the Contractor's Federal Contract:

- (a) All equipment will be new and all replacement parts will be new.
- (b) The ordering and payment addresses under this Contract will be those contained in the Contractor's offer letter to the State.

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- (c) Payments and invoicing will be in accordance with the terms discussed under Paragraph 12 "PAYMENT; TRAVEL EXPENSES" and Paragraph 13 "INVOICE REQUIREMENTS", below.
- (d) All shipping of equipment under warranty for repairs will be at the Contractor's expense.
- (e) All references to hours of the day will be deemed to be references to Central Standard/Daylight Time.
- (f) The State will not purchase goods or services for overseas delivery, or provide the Contractor with overseas support.
- (g) The Contractor will not offer to the State any products that are not Year 2000 compliant. All such items listed in the Contractor's Authorized Price List are deleted for purposes of the State.
- (h) As this Contract refers to a GSA schedule contract for convenience, orders under this Contract are not orders under the GSA schedule program. Therefore, the federal supply schedules for blanket purchase agreements, contractor team arrangements are not applicable to this contract. However, for administrative convenience and to satisfy a total best value procurement requirement, a purchasing entity may, if the quoted price is determined to be fair and reasonable, purchase incidental items that are not on the GSA contract schedule. The purchase of incidental, off schedule items will be treated as an open market purchase and clearly labeled on the schedule purchase order as open market items.
- (i) Those terms and conditions of the Contractor's offering documentation not specifically referenced by the Amendments delineated under this heading shall remain unchanged.
- (j) The Contractor will provide a Universal Resource Locator (URL) address that is exclusive to the Contractor's TXMAS contract and catalog. The "hot link" must allow users access to the Contractor's TXMAS catalog from the CPA website.

8. CONTRACTOR MONTHLY SALES REPORT:

- (a) The Contractor shall report to the State the monthly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales under this Contract. The dollar value of the sale shall be the price paid by the schedule user for the products and services on a schedule contract task or delivery order, as recorded by the Contractor.
- (b) The Contractor shall report the monthly dollar value of sales electronically in the on-line format provided by CPA (See Paragraph 8(e), below). If no sales occur, the

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Contractor shall report "NO" sales. The report shall be submitted within ten (10) calendar days following the end of the calendar month.

- (c) The Contractor shall remit to the State of Texas a sales rebate which will not exceed the GSA Industrial Funding Fee (IFF) that is in effect at the time of the submission. The sales rebate shall be remitted on a quarterly basis, using the State of Texas Fiscal Calendar, which starts on September 1 and ends on August 31 of each year. The sales rebate will be for the amount of sales under the Contract for the previous quarter.
- (d) The Sales Rebate remittance should be identified as "TXMAS Sales Rebate" and made payable to CPA. The remittance address is: Texas Comptroller of Public Accounts, TPASS, Attn: Accounts Payable, P.O. Box 13186, Austin, TX 78711-3186.
- (e) The Contractor shall also submit a final closeout report within one hundred and twenty (120) calendar days after the expiration or termination of this Contract. The contract shall expire upon the physical completion of the last outstanding task or delivery the final order under the Contract. The closeout report shall include all sales not shown in the final or most recent quarterly report and shall reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor shall report "zero" sales in the closeout report.
- (f) The Monthly Sales Report shall be submitted electronically online at:
<http://portal.cpa.state.tx.us/txmas/vendor/>, (see Attachment A).
- (g) If the Contractor fails to submit sales reports, falsifies sales reports, or fails to submit sales reports in a timely manner, the State may terminate or cancel this Contract in accordance with Paragraph 19 "TERMINATION; SURVIVAL".

9. DEALERS/DISTRIBUTORS:

- (a) Upon approval of CPA, the Contractor may designate one or more dealers or distributors to provide services under this Contract on behalf of the Contractor. To designate a dealer or distributor, the Contractor must provide a Letter of Authorization. The Contractor shall provide a separate Letter of Authorization for each designated dealer or distributor.
- (b) The Letter of Authorization must be submitted on the Contractor's official letterhead, signed by an authorized representative, and addressed to the attention of the Director of the Texas Procurement and Support Services Division at the address set forth in Paragraph 30 (Notices) of this Contract. The Letter of Authorization must include a Letter of Acceptance from the dealer/distributor and all supporting documentation. By submitting a Letter of Authorization, the Contractor represents and warrants the following:

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- (1) The dealer/distributor has been given a copy of this Contract, a duly authorized representative of the dealer/distributor has agreed in writing to be bound by the terms and conditions of this Contract, and that such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
 - (2) The Contractor agrees to remain liable under this Contract for any failure of the dealer/distributor to perform and for any breach of the dealer/distributor under this Contract.
 - (3) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due the Contractor once the State has paid the dealer.
 - (4) To the extent that there is any liability to the State arising from doing business with a dealer or distributor that has not signed the Letter of Acceptance required under this section with the Contractor, the Contractor will indemnify the State for such liability.
 - (5) The Contractor's Letter of Authorization shall remain effective until CPA receives written notification from the Contractor that the authorization to a dealer or distributor is withdrawn.
- (c) The Letter of Acceptance must be submitted on the dealer/distributor's official letterhead, signed by an authorized representative of the dealer/distributor, and addressed to the attention of the Contractor. In the Letter of Acceptance, the dealer or distributor must represent and warrant that it has been given a copy of this Contract, it agrees to be bound by the terms and conditions of this Contract, and such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
- (1) For a dealer, the Letter of Acceptance must also include the following information:
 - i. the dealer's name and address,
 - ii. the dealer's point of contact name, telephone number, fax number, and email address,
 - iii. the dealer's purchase order, invoice, and payment address(es),
 - iv. the dealer's Federal Employer's Identification number (FEI),
 - v. the dealer's Dun and Bradstreet (DUNS) number, if available,
 - vi. the dealer's completed W9, and
 - vii. the dealer's HUB Certificate, if dealer is a Texas HUB.
 - (2) For a distributor, the Letter of Acceptance must also include the following information:
 - i. the distributor's name and address,
 - ii. the distributor's point of contact name, telephone number, fax number, and email address,
 - iii. the distributor's purchase order, invoice, and payment address(es),
 - iv. the distributor's Federal Employer's Identification number (FEI),
 - v. the distributor's Dun and Bradstreet (DUNS) number, if available, and

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- vi. the distributor's HUB Certificate, if distributor is a Texas HUB.
- (d) Prior to CPA's approval of the Contractor's designated dealer or distributor, CPA will review the Letter of Authorization and the required documentation for compliance with this section and applicable state laws and regulations. If the Letter of Authorization is incomplete, e.g. does not include the Letter of Acceptance or other required documentation, then CPA reserves the right to reject the Letter of Authorization and require re-submission by the Contractor of the Letter of Authorization and all required documentation.

10. POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS):

- (a) In accordance with §§2161.181-2161.182, Texas Government Code and 34 Texas Administrative Code (TAC) §20.11, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction, services, including professional and consulting services and commodities contracts. The Texas Comptroller of Public Accounts (CPA) HUB Rules, 34 TAC §§20.11-20.28 encourages the use of HUBs by implementing these policies through race-ethnic-and gender-neutral means.
- (b) The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study:
 - (1) 11.9% for heavy construction other than building contracts;
 - (2) 26.1% for all building construction, including general contractors and operative builders contracts;
 - (3) 57.2% for all special trade construction contracts;
 - (4) 20% for professional services contracts;
 - (5) 33% for all other services contracts; and
 - (6) 12.6% for commodities contracts.
- (c) Each state agency shall make a good faith effort to meet or exceed these goals and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year.
- (d) Contractors are urged to utilize Texas Certified HUBs as dealers or distributors whenever possible to promote full and equal business opportunities and assist state agencies in meeting the goals listed above. Instructions for generating a list of Certified Texas HUB Vendors that are registered on the Texas Centralized Master Bidder List (CMBL) for the commodities included in the contract schedule are attached (see Attachment B). Contractors are also strongly encouraged to make a good faith effort within the basic terms of the GSA contract and consider engaging the service of a HUB to meet the contractual obligation in Texas. *The attached TXMAS HUB Good Faith*

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Effort Certification must be completed and returned with this document (see Attachment C).

11. LIMITATION OF LIABILITY:

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE PARTIES AGREE THAT IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

12. PAYMENT; TRAVEL EXPENSES:

- (a) Payment shall be made in accordance with Chapter 2251, Texas Government Code.
- (b) Except as provided for in §2251.021(b), Texas Government Code payment by a State Agency or Local Government is due within thirty (30) calendar days after the later of:
 - (1) the date the State Agency or Local Government receives the goods under the contract;
 - (2) the date the State Agency or Local Government receives a proper invoice (*see Paragraph 13 "INVOICE REQUIREMENTS"*) for the goods or services; or
 - (3) the date the performance of the service under the contract is completed
- (c) Except as provided for in §2251.021(b), Texas Government Code, a payment will begin to accrue interest at a rate of one percent a month on the 31st day after the later event described by subsections (b)(1) through (3) above. Interest stops accruing on the date the State Agency or Local Government mails (postmark) or electronically transmits the payment.
- (d) Any travel or per diem required by the Contractor to perform its obligations under this Contract will be at the Contractor's expense. All travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with State of Texas Travel Allowance Guide.

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13. INVOICE REQUIREMENTS:

- (a) In order to receive payment, the Contractor must submit an original invoice to the office designated in the purchase order as the "Bill To" address. To be a proper invoice, the invoice must include the following information and/or attachments:
 - (1) Name and address of the Contractor as designated in this Contract.
 - (2) The Contractor's Texas Identification Number (TIN) as designated in this Contract.
 - (3) The Contractor's invoice remittance address as designated in this Contract.
 - (4) The purchase order number authorizing the delivery of products or services.
 - (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).
- (b) If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.
- (c) If an invoice does not meet this section's requirements or if the Contractor fails to give proper notice of a price increase (*see Paragraph 15 "NOTIFICATION OF PRICE INCREASE"*), the State will send the Contractor written notice with the improper invoice to the address designated for receipt of purchase orders within twenty-one (21) calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice.

14. AUDIT REQUIREMENTS:

In addition to and without limitation on the other audit provisions of this Contract, pursuant to §2262.003, Texas Government Code, the state auditor may conduct an audit or investigation of the Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by the Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor 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. This Contract may be amended unilaterally by CPA to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.003, Texas Government Code. The Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

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15. NOTIFICATION OF PRICE INCREASES:

For price increases authorized under this contract, notification of such must be given to the CPA and to the purchase order "bill to" address contained in the applicable purchase order(s) for any orders affected by the increase (e.g., existing leases, licenses, or annual maintenance programs). The Contractor must give these notices no later than thirty (30) calendar days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

16. NON-APPROPRIATION OF FUNDS:

This Contract and any order resulting from this Contract is subject to termination or cancellation, without penalty to the State, either in whole or in part, subject to the availability of state funds. If the Texas Legislature fails to continue funding for the payments due under a Purchase Order under this Contract, the Purchase Order will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, the State will not be liable to Contractor for any damages, which are caused or associated with such termination, or cancellation and the State will not be required to give prior notice.

17. PUBLIC INFORMATION; SEARCH ENGINE KEYWORDS:

- (a) Notwithstanding any provisions of this Contract to the contrary, Contractor understands that the State will comply with the Texas Public Information Act (Chapter 552, Texas Government Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation and other material in connection with this Contract may be subject to public disclosure pursuant to the Texas Public Information Act.
- (b) The CPA maintains a TXMAS-only search engine on the TXMAS Web site. This search engine allows State Agencies and participating Local Government to search TXMAS contractor catalogs. The Contractor may submit to the CPA a list of keywords that directly relate to the Contractor's catalog items/services. The Contractor may update this list of keywords at its discretion during the term of this Contract.

The CPA, at its sole discretion, may review the keywords submitted by the Contractor. If the CPA determines that the keywords submitted do not directly relate to the Contractor's catalog items/services, the CPA may terminate this Contract in accordance with Paragraph 19, TERMINATION; SURVIVAL.

18. TAX EXEMPTION:

The State is exempt from State Sales tax and Federal Excise tax. Ordering entities will furnish Tax Exemption Certificate(s) to the Contractor upon request.

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19. TERMINATION; SURVIVAL:

The State or the Contractor may cancel this Contract, in whole or in part, without cause on thirty (30) calendar day's written notice. The Contract shall terminate upon later to occur of (1) the expiration of the Contractor's Federal Schedule Contract or (2) the physical completion of the last outstanding task or delivery of the final order under the Contract. All applicable service agreements that were entered into between the Contractor and the ordering entity under the terms and conditions of the Contract shall survive the cancellation or termination of the Contract.

20. AUTOMATIC RENEWAL:

This contract is automatically renewed on the date that GSA exercises the renewal option. All State of Texas terms and conditions will continue and apply to all renewal periods unless modified by mutual agreement.

21. DELIVERIES:

Unless stated otherwise in the Contractor's Federal Schedule Contract, all deliveries will be F.O.B. Destination.

22. EQUAL EMPLOYMENT OPPORTUNITY:

The Contractor shall comply with all Federal and Texas laws regarding equal employment opportunity.

23. DRUG FREE WORKPLACE:

The Contractor shall make a good faith effort to ensure that none of its employees are under the influence of or possess illegal drugs or alcohol or abuse prescription drugs while they are on State property.

24. AMERICANS WITH DISABILITIES ACT:

The Contractor shall comply with the requirements of the Americans with Disabilities Act.

25. IMMIGRATION:

The Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this Contract.

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26. CONTRACTOR AFFIRMATIONS:

- (a) The Contractor certifies that it 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 contract.
- (b) The Contractor certifies that, pursuant to 15 U.S.C. Sec. 1, *et seq.* and Tex. Bus. & Comm. Code Sec. 15.01, *et seq.*, neither the Contractor nor the firm, corporation, partnership, or institution represented by the Contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. The Contractor hereby assigns to the ordering entity any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States 15 U.S.C.A. §1, *et seq.* (1973) as amended, and the Texas Free Enterprise and Antitrust Act of 1983, Tex. Bus. & Comm. Code Sec. 15.01, *et seq.* (1983).
- (c) The Contractor certifies that the Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that the Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that the Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
- (d) Pursuant to §231.006(d), Texas Family Code, regarding child support, the Contractor certifies that the individuals or business entity named in this Contract are not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if the certification is inaccurate. Furthermore, any Contractor subject to §231.006, Texas Government Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.
- (e) Pursuant to §2155.004(a), Texas Government Code, the Contractor certifies that neither it nor any person or entity which will participate financially in the Contract has received compensation for participation in the preparation of specifications for this Contract. Under §2155.004, Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and/or payment withheld if this certification is inaccurate.
- (f) **THE CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES,**

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AND CPA, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF THE CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. THE CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY CPA. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE THE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OF TEXAS OR CPA FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CPA OR ITS EMPLOYEES.

- (g) The Contractor acknowledges and agrees that, to the extent the Contractor owes any debt, including but not limited to delinquent taxes or child support to the State of Texas, any payments or other amounts the Contractor is otherwise owed under or related to any order resulting from this Contract may be applied by CPA toward any debt the Contractor owes the State of Texas until the debt is paid in full. These provisions are effective at any time the Contractor owes any such debt or delinquency. The Contractor shall comply with rules adopted by CPA under §§403.055, 403.0551, and 2252.903, Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- (h) The Contractor certifies that this Contract is in compliance with §669.003, Texas Government Code, relating to contracting with executive head of a state agency. If §669.003, Texas Government Code applies, the Contractor will complete the following information in order for the offer to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with the Contractor: _____

Date of Employment with the Contractor: _____

- (i) To the extent applicable, in accordance with §2155.4441, Texas Government Code, the Contractor 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 this state.

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- (j) The Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into the Contract, and that the Contractor entering into such Contract will not reasonably create an appearance of impropriety.
- (k) The Contractor certifies that payment to the Contractor and the Contractor's receipt of appropriated or other funds under this Contract are not prohibited by §556.005 or §556.008, Texas Government Code.
- (l) Under §2155.006(b), Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by §39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by §39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under §2155.006, Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract and any order resulting from this Contract may be terminated and payment withheld if this certification is inaccurate.
- (m) The Contractor agrees that each of the above referenced affirmations apply to and is for the benefit of the ordering entities. Furthermore, the Contractor agrees that by accepting an order under this Contract the Contractor certifies to the ordering entity that the above listed affirmations are true and correct with respect to the specific ordering entity.

27. PUBLICITY:

The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.

28. TRAINING REQUIREMENTS:

The Contractor will send at least one corporate representative and at least one dealer/distributor representative from each authorized dealer/distributor which is new to TXMAS, for training on TXMAS procedures upon receiving award of a TXMAS contract. The TXMAS Program in Austin, Texas will provide training. Training dates, location and times will be coordinated with the TXMAS Program.

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29. ASSIGNMENT:

The Contractor will not assign this Contract without the written consent of the State.

30. NOTICES:

Any written notices required under this Contract shall be sent to the party at the respective address indicated below:

- (a) The address for the Contractor shall be the address specified on Page 1 of this Contract.
- (b) The address for CPA shall be as follows:

for hand delivery:

Texas Comptroller of Public Accounts
Attn: Director of Texas Procurement and Support Services Division
1711 San Jacinto Blvd., Room 104
Austin, TX 78701

for U.S. mail:

Texas Comptroller of Public Accounts
Attn: Director of Texas Procurement and Support Services Division
P.O. Box 13186
Austin, TX 78711-3186

Notices will be by either hand delivery or by U.S. Mail, certified, return receipt requested, addressed to the appropriate foregoing address. Notice will be effective on receipt by the affected party. The Contractor and CPA agree that either party may change the designated notice address in this Paragraph by written notification to the other party.

31. DISPUTE RESOLUTION:

- (a) Chapter 2260, Texas Government Code ("Chapter 2260") prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, CPA has adopted rules under Chapter 2260 for CPA's Texas Procurement and Support Services Division, codified at 34 Texas Administrative Code §20.384, and may adopt revisions to these rules throughout the term of this Contract, including any extensions. The Contractor and CPA shall comply with such rules.

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- (b) Disputes arising between an ordering entity and the Contractor shall be resolved in accordance with the dispute resolution process of the ordering entity that is not inconsistent with Chapter 2260. CPA shall not be a party to any such dispute unless CPA, the ordering entity, and the Contractor agree in writing.

32. AMENDMENT:

- (a) This Contract may be amended only upon written agreement between CPA and the Contractor, but in no case shall this Contract be amended so as to make it conflict with the laws of the State of Texas.
- (b) No additional term or condition in a purchase order issued by an ordering entity may weaken a term or condition of this Contract. However, additional terms and conditions that do not weaken the terms or conditions of this Contract and are acceptable to the Contractor may be added to the purchase order and given effect.

33. NO WAIVER:

No provision of the Contract will constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the Contract or otherwise available to the State by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

34. HEADINGS:

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

35. ORDER OF PRIORITY:

If there is any inconsistency or conflict between this document and any provision of any document incorporated by reference, this document will prevail.

36. ENTIRE AGREEMENT:

This Contract consists of the Contractor's Schedule Contract (*see Paragraph 2 "COMPOSITION OF CONTRACT"*), this Contract document together with Attachments A, B, and C (which are incorporated herein by this reference), the Contractor's State Offer Letter, and, if applicable, the Contractor's letter(s) designating dealers and/or distributors, and any price lists or catalogs specifically mentioned elsewhere in this Contract. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing.

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37. GOVERNING LAW, VENUE:

This Contract is governed by and will be construed under and in accordance with the laws of the State of Texas, and venue for any dispute will be in a court of competent jurisdiction in Travis County, Texas.

38. SEVERABILITY:

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

TO SHOW THEIR AGREEMENT, the parties have caused this Contract to be executed by their undersigned, duly authorized representatives on the date(s) below and this Contract is effective as of the date of signature by the State.

**State of Texas,
Texas Comptroller of Public Accounts**

BY 

NAME Martin A. Hubert

TITLE Deputy Comptroller

DATE 11/29/12

Contractor

BY 

NAME Richard Don Faulkenberry

TITLE Vice President

DATE 10/5/12

To: Prospective Texas Multiple Award Schedule (TXMAS) Vendors

Subject: Historically Underutilized Business (HUB)
Good Faith Effort Certification

As addressed in the basic Contract Terms and Conditions, contractors are strongly encouraged to engage the services of Texas Certified HUBs as distributors or dealers whenever possible to promote full and equal business opportunities and to assist state agencies in meeting the goals specified in the State of Texas Disparity Study. The decision to utilize the services of a currently Certified Texas HUB must be based on a good faith effort and as a potential contractor you are required to show documented evidence that an active participatory role for a HUB entity was considered. Should you elect to use the services of a Minority Business Enterprise (MBE) or Disadvantaged Business Enterprise (DBE) that may be eligible for Texas HUB certification, arrangements can be made to expedite the application process.

Please answer the following questions by selecting the response that applies to your good faith effort decision. Check the appropriate response(s).

- | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|-------------------------------------|
| 1. Are the services of a Certified Texas HUB being utilized to perform the contract referred to in the Terms and Conditions? ** | YES <input type="radio"/> | NO <input checked="" type="radio"/> |
| 2. Are the services of a MBE/DBE or equivalent that may be eligible for Texas HUB certification being utilized to perform the contract referred to in the Terms and Conditions? | YES <input type="radio"/> | NO <input checked="" type="radio"/> |
| 3. Will a Small Business, as defined by regulations of the Small Business Administration (SBA) in 13 C.F.R., Section 121.201, perform the basic contract as awarded by the General Services Administration (GSA)? | YES <input checked="" type="radio"/> | NO <input type="radio"/> |
| 4. Will the contract be performed by a company, under existing agreements approved by GSA, that includes Small Business/MBE/DBE/HUB participation? | YES <input checked="" type="radio"/> | NO <input type="radio"/> |

Note: This document will become an attachment to the Contract Terms and Conditions and is affirmed by the signature on the Contract Terms and Conditions.

** The attached randomly selected list of Certified Texas HUBs dealing in the goods and services included in this multiple award schedule contract opportunity should be considered in the selection/decision process.