
REQUEST FOR PROPOSALS

Issued by:

Higher Education Strategic Planning Commission



Strategic Plan for Utah Higher Education

RFP No. HESP 2018-01

May 23, 2018

I. DEFINITIONS

As used in this RFP:

1. “COMMISSION” means the Higher Education Strategic Planning Commission, created by Utah Code Section 63C-19-201.
2. “CONSULTANT” means the person whose proposal submitted in response to this RFP is selected for an award of a contract to provide CONSULTING SERVICES and who enters into a contract with the COMMISSION to provide CONSULTING SERVICES.
3. “CONSULTING SERVICES” means the services described in Section III of this RFP.
4. “LEGISLATURE” means:
 - a. the Utah Legislature, including the Utah House of Representatives and the Utah Senate;
 - b. the members, staff, and employees of the Utah Legislature, the Utah House of Representatives, or the Utah Senate; and
 - c. staff offices of the Utah Legislature, the Utah House of Representatives, or the Utah Senate, and employees of those staff offices.
5. "MDT" means Mountain Daylight Time.
6. “PUBLIC SYSTEMS OF POSTSECONDARY EDUCATION” means the Utah System of Higher Education and its institutions and the Utah System of Technical Colleges and its institutions, as identified in Utah Code Section 53B-1-102.
7. “RESPONDER” means a person who submits a proposal in response to this RFP and, in the case of the person who is awarded a contract pursuant to this RFP, includes the CONSULTANT.
8. “RESPONSIBLE” means being capable, in all respects, of:
 - a. meeting all the requirements of this RFP; and
 - b. fully performing all the requirements of the contract resulting from the RFP, including being financially solvent with sufficient financial resources to perform the contract.
9. “RESPONSIVE” means conforming in all material respects to the requirements of this RFP.

10. "RFP" means this request for proposals issued by the COMMISSION, No. HESP 2018-01.
11. "STRATEGIC PLAN" means the strategic plan described in Utah Code Section 63C-19-202.

II. REQUEST FOR PROPOSALS GENERAL INFORMATION

1. Under Utah Code Section 63C-19-202, the COMMISSION is charged with the responsibility of developing a STRATEGIC PLAN aimed at meeting the future needs of higher education in Utah. When this RFP refers to higher education, it refers to the education delivered by the PUBLIC SYSTEMS OF POSTSECONDARY EDUCATION, or to the PUBLIC SYSTEMS OF POSTSECONDARY EDUCATION themselves, or to both, depending on the context. The STRATEGIC PLAN should address:
 - a. providing quality, accessible, and innovative higher education that prepares Utahns for the twenty-first century;
 - b. cost-effective and affordable modes of higher education delivery;
 - c. the integration of prior learning and competency-based experiences to meet degree or certificate requirements;
 - d. maximizing the role of higher education in workforce and economic development;
 - e. a statewide campus and technology master plan that reflects regional differences in projected student enrollment growth in higher education;
 - f. the leveraging of the current physical facilities of higher education;
 - g. reducing and achieving greater efficiency in future investments into new facilities for higher education;
 - h. best practices for attracting and retaining top quality leadership and faculty for higher education;
 - i. governance of higher education, including studying best practices and recommending modifications; and
 - j. other issues related to higher education in Utah, as determined by the COMMISSION.
2. The purpose of this RFP is to solicit proposals from qualified individuals or firms in order to select and enter into a contract with a qualified individual or firm or group of individuals or firms to provide expertise to help guide the COMMISSION as it discharges its statutory responsibilities. The COMMISSION seeks a highly qualified consultant or team of highly qualified consultants with sufficient qualifications, experience, and expertise to provide CONSULTING SERVICES to help the COMMISSION effectively carry out the COMMISSION's responsibilities related to a strategic planning process and the development of a STRATEGIC

PLAN. The CONSULTANT will be expected to avoid duplicating the services provided by COMMISSION staff but to work in concert with staff to help the COMMISSION fulfill its responsibilities and achieve its goals.

3. With the help of the CONSULTANT, the COMMISSION intends to engage in a strategic planning process for higher education in Utah, including: data analysis of the current status of higher education in Utah and projections relating to the future of higher education; creating and evaluating alternative future scenarios for higher education; conducting regional meetings to gather stakeholder input; performing public outreach, feedback, and educational efforts; and developing a STRATEGIC PLAN to recommend to the Utah Legislature and the Governor of the State of Utah. The future needs of higher education that the COMMISSION anticipates the STRATEGIC PLAN to target is based on a roughly 20- to 30-year horizon, rather than a shorter-term horizon.
4. This RFP is designed to provide basic information sufficient to solicit proposals from qualified individuals or firms or groups of individuals or firms, but, except to the extent expressly provided otherwise, is not intended to limit a proposal's content or exclude any relevant, important, or essential information.

III. CONSULTING SERVICES – SCOPE OF WORK

The CONSULTANT who enters into a contract with the COMMISSION will be expected to work and coordinate regularly with the COMMISSION, whether directly with the COMMISSION or through its chairs, a subcommittee of the COMMISSION, or staff, to provide CONSULTING SERVICES that best meet the needs of the COMMISSION. The services to be provided by the CONSULTANT include:

1. identifying, collecting, and analyzing data related to the current and future projected conditions and costs of higher education in Utah, including:
 - a. relevant demographics and educational attainment;
 - b. educational pipeline including enrollment, retention, and completion;
 - c. the state's economy, including workforce supply and demand;
 - d. affordability, financing, and return on investment and other value metrics of higher education through tuition, state funding, and other sources;
 - e. institutional productivity and enrollment patterns;
 - f. economic development and innovation assets of PUBLIC SYSTEMS OF POSTSECONDARY EDUCATION, including research and research commercialization;
 - g. features of higher education that enable or impede the ability to attract and retain top quality leadership and faculty;
 - h. operational and capital facility efficiencies in higher education, including unnecessary redundancy in physical facilities or administrative services,

- leveraging current physical facilities, and reducing and achieving greater efficiency in future investments in new physical facilities;
- i. accountability measures to assess the performance of higher education; and
- j. any other data collection or analysis requested by the COMMISSION;
- 2. making comparisons between higher education in Utah and higher education in other states and countries, based on the data described in Section III. 1;
- 3. projecting the condition of higher education in the future under the state's current configuration based on the projected population, workforce needs, and funding requirements through tuition and state funding;
- 4. developing alternative higher education scenarios by modeling potential changes to:
 - a. industry and economic growth;
 - b. student enrollment patterns;
 - c. the portion of funding for higher education that comes from tuition and the portion of funding that comes from state funding;
 - d. institutional productivity;
 - e. alternative and innovative modes of educational delivery and competency assessment;
 - f. operational and administrative efficiencies;
 - g. investments and efficiencies in capital facilities or technology infrastructure;
 - h. the quality of leadership and faculty that can be attracted to and retained by higher education; and
 - i. investments in research and innovation capabilities;
- 5. recommending accountability or performance measures to assess the effectiveness of higher education institutions;
- 6. making recommendations for establishing, implementing, and monitoring future system-wide evaluation and planning efforts to ensure continuous assessment and improvement of performance;
- 7. recommending changes to the governance system of higher education in Utah that would facilitate implementation of the STRATEGIC PLAN;
- 8. assisting the COMMISSION to conduct regional meetings to share information with and gather input from a range of stakeholders during the process of formulating a STRATEGIC PLAN;
- 9. producing:
 - a. a draft report, including findings, observations, and strategic priorities; and
 - b. a final report, incorporating feedback from the COMMISSION on the draft report, regarding the future of higher education in Utah;
- 10. assisting the COMMISSION to accomplish the work of the COMMISSION and fulfill the COMMISSION's statutory duties, facilitate collaboration with stakeholders, and manage public outreach and feedback;
- 11. developing and making presentations as directed by the COMMISSION and attending a variety of community events;
- 12. advising the COMMISSION regarding media relations and other key activities;

13. facilitating and managing meetings, providing technical analysis, synthesizing information, and providing project management services;
14. providing all data, analyses, multi-media materials, master copies (hard and digital) of final products, and all other relevant documentation to the COMMISSION for project files; and
15. providing any other services requested by the COMMISSION, whether directly by the COMMISSION or through its chairs, a subcommittee of the COMMISSION, or staff, to assist the COMMISSION to complete its work and fulfill its statutory duties.

While not intended to be exhaustive, the preceding description of the work to be accomplished represents a general description of the minimum scope of the professional services the COMMISSION expects the CONSULTANT to provide under an agreement pursuant to this RFP to help the COMMISSION fulfill its responsibilities and duties.

The COMMISSION expects the CONSULTANT to work diligently and in a professional manner toward helping the COMMISSION fulfill its responsibilities. Because of the complexity and extent of the COMMISSION's work, it is not feasible to establish a timetable in this RFP for the work to be completed under an agreement resulting from the RFP. That timetable will be more fully defined by agreement between the COMMISSION and the CONSULTANT. This timetable will include meeting the requirement under Utah Code Section 63C-19-202(5)(a) for the COMMISSION to report on or before November 30, 2018 on the COMMISSION's progress, and the requirement under Utah Code Section 63C-19-202(5)(b) for the COMMISSION to provide a final report, including a STRATEGIC PLAN, on or before November 30, 2019.

In gathering and analyzing demographic and other data, the CONSULTANT will be expected to rely on and take advantage of already available resources, including, for example, data produced by the Kem C. Gardner Policy Institute at the University of Utah, the Office of the Legislative Fiscal Analyst, and the offices of institutions within the PUBLIC SYSTEMS OF POSTSECONDARY EDUCATION, in order to gather the best and most reliable information while minimizing costs and avoiding duplication of effort and cost. The COMMISSION assumes that these and other taxpayer-supported offices or agencies will provide their data at no cost to the CONSULTANT for the benefit of the COMMISSION, but the COMMISSION does not control these offices or agencies and cannot guarantee their cooperation. In the work to help formulate a STRATEGIC PLAN, the CONSULTANT will also be expected to consider any existing statewide higher education strategic plans prepared by any of the institutions within the PUBLIC SYSTEMS OF POSTSECONDARY EDUCATION.

IV. FEE FOR CONSULTING SERVICES

The amount of compensation to be paid to the CONSULTANT under the initial agreement between the COMMISSION and CONSULTANT will be no more than \$300,000, covering

all services provided by CONSULTANT and all costs and expenses incurred by CONSULTANT in providing the CONSULTING SERVICES. The COMMISSION anticipates that the agreement with CONSULTANT will define the nature and extent of services within the scope of work of CONSULTING SERVICES so that the COMMISSION receives the services that the COMMISSION considers to be the most needed to help it fulfill its duties and meet its goals within the allocated amount of money available to pay for the CONSULTING SERVICES. The COMMISSION may choose and direct the CONSULTANT to address some or all of the services described in Section III of this RFP, and may direct the CONSULTANT to address some of those services only superficially or briefly, while others in more depth and detail.

The COMMISSION expects the CONSULTANT to work with the COMMISSION, whether through the COMMISSION directly or through its chairs, a subcommittee of the COMMISSION, or staff, to define the breadth and depth of services provided to best meet the needs of the COMMISSION while keeping expenditures for those services within the budgeted amount. The COMMISSION reserves the right, in its sole discretion, to modify the nature and extent of services within the scope of work of CONSULTING SERVICES if the COMMISSION concludes that the breadth and depth of services provided by the CONSULTANT are such as to require an expenditure beyond the initial budgeted amount and if additional funds become available and a new compensation amount is successfully negotiated between the COMMISSION and the CONSULTANT. The COMMISSION cannot and does not make any representation, assurance, or guaranty whatsoever that any additional funds will be made available for this purpose or that the CONSULTANT will be asked to provide any services after the initial \$300,000 is expended.

V. TIMELINE OF RFP PROCESS

The following timeline (subject to change by addendum) will be followed with respect to this RFP:

1. RFP issuance date: May 23, 2018.
2. Deadline for submitting questions: 5:00 p.m. MDT on Friday, June 8, 2018.
3. Date by which the COMMISSION expects to issue an addendum or addenda to the RFP to answer questions submitted before the deadline described in Section V. 2 of this RFP: June 20, 2018.
4. Deadline for submitting a proposal in response to this RFP: 12:00 noon MDT on Friday, July 6, 2018.

5. After the deadline for submitting proposals, the evaluation committee will notify RESPONDERS of the timeline the evaluation committee anticipates following to evaluate proposals and recommend a proposal to the COMMISSION.

VI. REQUEST FOR PROPOSALS GUIDELINES

1. SUBMISSION TIME, PLACE, AND MANNER

An electronic copy in PDF format must be received by the RFP contact, Robert H. Rees, on or before 12:00 noon MDT on Friday, July 6, 2018. The electronic copy may be submitted by email to rrees@le.utah.gov (the email transmission, including attachments, is limited to 25MB per email; larger submissions must be broken into parts and submitted separately) or may be provided on a disk and delivered to the following address:

Attention: Robert H. Rees
Associate General Counsel
Office of Legislative Research and General Counsel
Utah State Capitol Complex, W210 House Building
PO Box 145210
Salt Lake City, Utah 84114-5210

The COMMISSION will not consider proposals received after 12:00 noon MDT on July 6, 2018.

2. RESPONDER INFORMATION

The first page of the proposal shall include the following information, in the following format:

- a. Title: "Proposal in Response to RFP for Consulting Services for Strategic Plan for Utah Higher Education, RFP No. HESP 2018-01"
- b. RESPONDER Summary Information:
 - Name:
 - Proposal Contact Person:
 - Address:
 - Telephone:
 - Fax:
 - Email:
 - Federal Tax ID Number:

3. EXECUTIVE SUMMARY

The second portion of the proposal shall contain a one- or two-page executive summary that briefly describes the RESPONDER's proposal. This summary shall serve to highlight the major features of the proposal. The reader should be able to determine the essence of the proposal by reading the executive summary.

The executive summary shall also describe any deviations or exceptions from the requirements, terms, and conditions of this RFP. In the absence of such a written description, the proposal shall be interpreted to agree to the requirements, terms, and conditions of this RFP and the RESPONDER shall be held liable for any deviations from the RFP. Deviations and exceptions claimed by a RESPONDER may result in rejection of a proposal on the grounds that the proposal is not RESPONSIVE to the RFP.

4. DETAILED DESCRIPTION

The third portion of the proposal constitutes the main portion of the response and shall include the following:

- a. a complete narrative of the RESPONDER's assessment of the work to be performed, the RESPONDER's ability and approach, and the resources necessary to fulfill the requirements. This narrative shall demonstrate the RESPONDER's understanding of the overall performance expectations and clearly indicate all options and alternatives proposed, including how and the degree to which RESPONDER will complete the scope of work of the CONSULTING SERVICES within the budgeted amount;
- b. the name, address, telephone number, and email address of each individual or firm that the RESPONDER anticipates subcontracting with to provide any of the services included in the CONSULTING SERVICES;
- c. a description of the qualifications, including experience, education, training, and knowledge, of each individual or firm that the RESPONDER will designate or subcontract with to provide the CONSULTING SERVICES;
- d. a list and description of previous projects completed by the RESPONDER that are similar in scope and scale to the CONSULTING SERVICES described in this RFP; and
- e. a certification indicating that neither the RESPONDER nor any of its principals are presently debarred, suspended, proposed for debarment or suspension, declared ineligible, or voluntarily excluded from participation in this transaction or contract by any governmental entity. If the RESPONDER cannot certify this statement, the RESPONDER shall attach a written explanation indicating why the RESPONDER cannot certify this statement.

5. FEES AND EXPENSES

The proposal shall include detailed information on the hourly rates of all individuals expected to provide service as part of the CONSULTING SERVICES with a budget of how many hours are expected to be spent in the various activities within the scope of work under CONSULTING SERVICES. The proposal shall also include an estimate of all costs and expenses the RESPONDER expects to incur in providing the CONSULTING SERVICES. This information shall be provided in a document that is separate from the main part of the proposal. This information will not be scored or evaluated, but will be used during contract negotiations with the RESPONDER with the highest total combined score. This information will not be given to the evaluation committee.

6. RFP COMPLIANCE

The COMMISSION reserves the right, by itself or through its evaluation committee, to:

- a. reject a proposal on the grounds that it is not RESPONSIVE;
- b. reject a proposal on the grounds that it is submitted by a RESPONDER that is not RESPONSIBLE;
- c. request additional financial information, including audited financial statements, from a RESPONDER in case of a doubt or concern about whether a RESPONDER has sufficient financial resources to perform the contract; and
- d. waive minor, immaterial informalities or minor, immaterial technical errors in a proposal.

7. PROPOSALS ARE BINDING

All proposals are required to be signed by a person in authority to bind the RESPONDER to the response, the response cost, and the terms and conditions of the proposals. Proposals may not be withdrawn for a period of 60 days after the RFP due date. By submitting a proposal, the RESPONDER certifies that all information provided by the RESPONDER is true, complete, and accurate; that the RESPONDER is willing and able to provide the CONSULTING SERVICES in the manner described in this RFP; that any costs or hourly rates quoted are correct; and that the costs quoted include all charges that will be required in relation to providing the CONSULTING SERVICES as described in this RFP.

8. RESPONDER'S RESPONSIBILITY

The successful RESPONDER is solely responsible for fulfilling the responsibilities under the terms and conditions of the contract resulting from this RFP.

VII. OTHER REQUIREMENTS

1. The RESPONDER's name must appear on each page of the response. Erasures, cross-outs, alterations, corrections, or other changes must be initialed by the person who signs the response. The response must contain evidence that the person who signs the proposal is authorized to bind the RESPONDER in relation to the response.
2. By submitting a proposal in response to this RFP, RESPONDER acknowledges that the requirements, scope of work, and evaluation process described in this RFP are fair, equitable, not unduly restrictive, understood, and agreed to. Any exceptions to the content of the RFP must be protested in writing before the RFP response submission deadline.
3. A proposal submitted in response to this RFP may not exceed 30 pages in length, including the executive summary.

VIII. EVALUATION AND CONTRACT

1. EVALUATION PROCESS

- a. Stage 1:
All proposals submitted by the deadline stated in Section V. 4 will be subjected to a technical review for compliance with RFP requirements and for a determination of whether the RESPONDER appears objectively to be RESPONSIBLE. Proposals that are not RESPONSIVE and proposals from RESPONDERS who have not adequately demonstrated that they are RESPONSIBLE will be eliminated from further consideration.
- b. Stage 2:
The evaluation committee will evaluate proposals that are not eliminated in Stage 1 in accordance with the following criteria:

Points	Criteria
55	The qualifications of RESPONDER to provide CONSULTING SERVICES; the demonstrated experience and expertise of RESPONDER in providing services similar to the CONSULTING SERVICES sought through this RFP, including the quality and history of any similar or equivalent services provided by RESPONDER, the extent to which RESPONDER's work was actually embraced and successfully implemented, and the experience with and

results from a project of a similar nature that the RESPONDER has been involved in; and the qualifications, experience, and expertise of all individuals and firms who will work with or for RESPONDER in providing CONSULTING SERVICES.

- 45 The quality of the proposal submitted by RESPONDER and the degree to which it is likely to be effective in helping the COMMISSION fulfill its duties and meet its goals -- in particular, the degree to which the proposal provides the best value to the COMMISSION and the State. Included in this criterion is the quality of RESPONDER's narrative of the assessment of the work to be performed, RESPONDER's ability and approach, and the degree to which RESPONDER demonstrates an understanding of the scope of the challenge and opportunity this project presents and demonstrates an understanding of the overall performance expectations, as well as how well the RESPONDER will complete the scope of work of the CONSULTING SERVICES within the amount identified in Section IV and the value provided for the amount identified.

Proposals that receive a score lower than 65 will be eliminated from further consideration. Unless there are more than five proposals that receive a score of 65 or higher, all proposals that receive a score of 65 or higher will advance to Stage 3 for further consideration. If there are more than five proposals that receive a score of 65 or higher, only the proposals with the five highest scores will advance to Stage 3 for further consideration. Proposals that receive a score of 65 or higher but lower than the five highest-scoring proposals will be eliminated from further consideration.

- c. Stage 3:
The evaluation committee will conduct interviews with each RESPONDER who submits a proposal that is not eliminated from further consideration in Stage 1 or Stage 2. In the sole discretion of the evaluation committee, an interview may be conducted remotely by electronic means. In advance of the interview, the evaluation committee may give RESPONDERS questions to respond to during the interview process. The proposal of a RESPONDER who is unable or unwilling to participate in an interview will be eliminated from further consideration.

The evaluation committee will evaluate proposals that are not eliminated in Stage 1 or Stage 2 in accordance with the following criteria:

Points	Criteria
40	The qualifications of RESPONDER to provide CONSULTING SERVICES; the demonstrated experience and expertise of RESPONDER in providing services similar to the CONSULTING SERVICES sought through this RFP, including the quality and history of any similar or equivalent services provided by RESPONDER, the extent to which RESPONDER's work was actually embraced and successfully implemented, and the experience with and results from a project of a similar nature that the RESPONDER has been involved in; and the qualifications, experience, and expertise of all individuals and firms who will work with or for RESPONDER in providing CONSULTING SERVICES.
35	The quality of the proposal submitted by RESPONDER and the degree to which it is likely to be effective in helping the COMMISSION fulfill its duties and meet its goals -- in particular, the degree to which the proposal provides the best value to the COMMISSION and the State. Included in this criterion is the quality of RESPONDER's narrative of the assessment of the work to be performed, RESPONDER's ability and approach, and the degree to which RESPONDER demonstrates an understanding of the scope of the challenge and opportunity this project presents and demonstrates an understanding of the overall performance expectations, as well as how well the RESPONDER will complete the scope of work of the CONSULTING SERVICES within the amount identified in Section IV and the value provided for the amount identified.
25	The quality of the RESPONDER's interview presentation, including, if applicable, responses to questions from the evaluation committee, with a focus on how the RESPONDER's proposal will provide the most effective service and the best value to the COMMISSION and the State for the amount identified in Section IV.

2. UTAH PROCUREMENT CODE

All proposals will be evaluated in accordance with the requirements of Utah Code, Title 63G, Chapter 6a, Utah Procurement Code.

3. CONTRACT

- a. The contract will be tentatively awarded (pending successful contract negotiations) to the RESPONDER whose proposal receives the highest score in Stage 3, taking into consideration evaluation factors described in this RFP.
- b. The contract shall include the provisions of this RFP, including the standard terms and conditions included in Attachment A.
- c. The COMMISSION reserves the right to refuse to negotiate on an exception if the COMMISSION determines that the exception is excessive or not in the interest of the COMMISSION or the state, or that negotiations could result in significant costs to the COMMISSION or the state or take a significant period of time.
- d. The COMMISSION reserves the right to review the contract on a regular basis in relation to performance and cost and may renegotiate terms relating to cost and service during the term of the contract.
- e. All pricing shall be guaranteed for the entire term of the contract, including any extensions or amendments.

IX. RFP CONTACT

The COMMISSION is the issuer of this RFP and any subsequent addenda to this RFP. Inquiries regarding this RFP should be directed, in writing by email, to:

Robert H. Rees
Associate General Counsel
Office of Legislative Research and General Counsel
Email: rrees@le.utah.gov

X. QUESTIONS

Questions about or requests for clarification of the RFP must be submitted by email to Robert H. Rees at rrees@le.utah.gov no later than 5:00 p.m. MDT on Friday, June 8, 2018. The COMMISSION will provide responses to substantive questions and responses to requests for clarification in the form of an addendum to this RFP.

XI. ADDENDA

1. All addenda to this RFP, including answers to questions provided by addendum, will be posted on the Utah Legislature's website at:

<http://le.utah.gov>

Click on the triple horizontal bar in the upper right-hand corner of the page, then on “Publications” and then on “Requests for Proposals and Legal Notices.”

2. Addenda and notifications of addenda are not required to be provided in any other manner. All RESPONDERS, potential RESPONDERS, and other interested persons are required to check the website on a regular basis in order to receive notice of or a copy of any addendum.
3. The COMMISSION may attempt, but is not required, to provide email notification of an addendum to any person who sends a request to receive notification to: rees@le.utah.gov

XII. PROTECTED INFORMATION

Protection or disclosure of information submitted in response to this RFP is governed by applicable provisions of the Utah Code, including Title 63G, Chapter 2, Government Records Access and Management Act. A RESPONDER who desires to request protected status of any information submitted in the response must specifically identify the information that the RESPONDER desires to protect and the reasons that the information should be afforded protected status under the law. In making this request, the RESPONDER shall comply with the requirements of Utah Code Section 63G-2-305, Utah Code Section 63G-2-309, and all other applicable requirements of law. The decision of the COMMISSION or its chairs regarding the protected status of information shall be final and binding on the RESPONDER. Each RESPONDER shall indemnify, defend, and hold forever harmless the COMMISSION and the LEGISLATURE from any and all liability relating to the disclosure of information included in the RESPONDER's response to this RFP, even if the RESPONDER requested protected or other confidential status for the information. Attempts to designate an entire proposal, or large portions of a proposal, as protected will not be honored. Attempts to protect information relating to cost will also not be honored.

XIII. MODIFICATIONS TO, OR WITHDRAWAL OF, RESPONSE

A RESPONDER may modify or withdraw the RESPONDER's proposal, at any time before the deadline for submitting a proposal, by providing a written modification or a written statement withdrawing the proposal to the RFP contact. Modifications or letters of withdrawal received by the RFP contact after the closing date and time for submitting a proposal will be rejected as invalid. The version of a proposal in response to this RFP, as it exists at the deadline for submitting a proposal, will be binding on the RESPONDER.

XIV. COST OF RESPONDING TO RFP AND CONTRACT NEGOTIATIONS

1. All expenses relating to responding to this RFP, including preparing, submitting, and presenting a proposal, attending meetings or interviews in relation to this RFP, discussions, and all travel, dining, lodging, and communication expenses will be borne by the RESPONDER. The COMMISSION assumes no liability for any costs incurred by a RESPONDER in responding to this RFP.
2. All expenses of the successful RESPONDER relating to conducting contract negotiations, including drafting, research, legal review, preparation, attending meetings, site visits, travel, dining, lodging, and communication expenses will be borne by the RESPONDER. The COMMISSION assumes no liability for any costs incurred by a RESPONDER relating to contract negotiations.
3. RESPONDER is not entitled to recover from the COMMISSION and will not bill the COMMISSION for any effort that was expended or expense that was incurred prior to the time that the contract is signed by all parties.

XV. MISCELLANEOUS RESERVATION OF RIGHTS

The COMMISSION reserves the right not to award a contract to any of the RESPONDERS who submit proposals in response to this RFP, to cancel this RFP at any time, or to issue a new RFP for the same or similar services.

XVI. RESTRICTIONS ON PUBLICITY

The RESPONDER who is awarded a contract pursuant to this RFP may not, without the prior written approval of the COMMISSION, do any of the following:

1. Make any announcement regarding the award of the contract relating to this RFP.
2. Refer to the COMMISSION or the LEGISLATURE, or use any data, pictures, or other representation of the COMMISSION or the LEGISLATURE in its advertising, marketing, or other promotional efforts.

XVII. GOVERNING LAW

This RFP is subject to and shall be construed and governed according to the laws of the state of Utah, including Utah Code Title 63G, Chapter 6a, Utah Procurement Code.

ATTACHMENT A

STANDARD TERMS AND CONDITIONS

In addition to the terms and conditions included in the RFP, the following terms and conditions will be included in the agreement between the CONSULTANT and the COMMISSION:

1. TERMINATION

- a. This AGREEMENT terminates upon the earlier of:
 - i. the completion of the CONSULTING SERVICES and payment for those CONSULTING SERVICES; and
 - ii. five years after the effective date of this AGREEMENT.
- b. As provided in this Section 1.b, the CONSULTANT may terminate this AGREEMENT for cause, including a COMMISSION breach of the AGREEMENT, a COMMISSION misrepresentation of or failure to disclose a material fact, or circumstances that make it unethical or unreasonably difficult for the CONSULTANT to continue performance of the AGREEMENT.
 - i. If the CONSULTANT believes that there is cause for terminating this AGREEMENT, the CONSULTANT shall give the COMMISSION written notice of intent to terminate the AGREEMENT, specifying the cause for which the CONSULTANT intends to terminate the AGREEMENT and, in the case of a claimed COMMISSION breach of the AGREEMENT, what the COMMISSION needs to do to cure the breach.
 - ii. If the cause cited by the CONSULTANT in the notice under Section 1.b.i is a claimed COMMISSION breach, the COMMISSION will have 30 working days after receiving the written notice described in Section 1.b.i to cure the breach.
 - iii. Upon the expiration of 30 working days after the CONSULTANT gives written notice under Section 1.b.i, the CONSULTANT may terminate the AGREEMENT by providing written notice of termination to the COMMISSION, unless the cause specified by the CONSULTANT in the notice under Section 1.b.i is a claimed COMMISSION breach of the AGREEMENT and the COMMISSION cures the breach within the 30-day period.
- c. The COMMISSION may terminate this AGREEMENT at any time when the COMMISSION is not satisfied with the CONSULTANT or the CONSULTING SERVICES provided. Except for the payment of unpaid fees, as provided in Section 1.d, the COMMISSION may not otherwise be held liable for any future commitments, penalties, or damages of any kind for the COMMISSION's termination of the AGREEMENT.

- d. Upon termination of this AGREEMENT, the COMMISSION shall pay CONSULTANT for all unpaid CONSULTING SERVICES the CONSULTANT has provided under the AGREEMENT through the date of termination.
- e. The following terms will survive termination of the AGREEMENT: (to be specified before the AGREEMENT is signed).

2. DEFAULT AND REMEDIES

If CONSULTANT breaches this AGREEMENT, the COMMISSION may do one or more of the following:

- a. Exercise any remedy provided by law; or
- b. Suspend CONSULTANT from receiving and submitting proposals in response to future solicitations.

3. INDEPENDENT CONTRACTOR RELATIONSHIP

- a. CONSULTANT is an independent contractor and, except as expressly authorized by this AGREEMENT or by the COMMISSION, is not authorized, expressly or by implication, to bind the LEGISLATURE, the State of Utah, or the COMMISSION, or any member, office, officer, department, agent, official, or employee of the LEGISLATURE, the State of Utah, or the COMMISSION to any agreement, settlement, liability, or understanding or to perform any act as agent for the LEGISLATURE, the State of Utah, or the COMMISSION, or any member, office, officer, department, agent, official, or employee of the LEGISLATURE, the State of Utah, or the COMMISSION.
- b. Except as otherwise expressly provided in this AGREEMENT, CONSULTANT is solely responsible to pay for all of CONSULTANT's expenses and to pay each employee or subcontractor of CONSULTANT all salary, wages, payments, expenses, fees, taxes, costs, insurance, and benefits of any kind relating to an employee or subcontractor of CONSULTANT.
- c. All work product of the CONSULTANT under this AGREEMENT is the exclusive property of the COMMISSION, whether or not the work for which the work product is created is executed. After termination of the AGREEMENT, CONSULTANT may use any final, publicly available work product for educational, outreach, promotional, or similar purposes, but otherwise may not use any work product for any purpose without the prior written consent of the COMMISSION. For purposes of this Section 3.c, work product includes all documents supplied to or produced by the CONSULTANT under this

AGREEMENT, whether in paper, electronic, or other format, including reports, summaries, charts, maps, analyses, comments, or other materials, and the information contained in them.

4. ASSIGNMENT PROHIBITED

CONSULTANT may not assign this AGREEMENT or any duty or benefit relating to this AGREEMENT without the prior written permission of the COMMISSION.

5. GOVERNING LAW

This AGREEMENT shall be construed in accordance with, and governed by, the laws of the State of Utah, without reference to principles governing choice or conflict of laws. The parties will submit to the jurisdiction of the courts of the State of Utah any dispute arising out of this AGREEMENT or the breach of this AGREEMENT. Venue shall be in Salt Lake City, Utah, in the Third Judicial District Court for Salt Lake County.

6. EQUAL OPPORTUNITY

CONSULTANT agrees to abide by the provisions of:

- a. Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. Sec. 2000e), which prohibit discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin;
- b. Utah Code Section 34A-5-106;
- c. Executive Order 11246, as amended, which prohibits discrimination on the basis of sex;
- d. 45 C.F.R. 90, which prohibits discrimination on the basis of age;
- e. Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, as applicable, which prohibit discrimination on the basis of disabilities; and
- f. Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace, and the Workplace Discrimination and Harassment Policy adopted by the Utah Senate and Utah House of Representatives.

7. INCORPORATION OF PROVISIONS OF RFP AND RESPONSE TO RFP

The provisions of the RFP, including all addenda to this RFP, and CONSULTANT's response to this RFP, are hereby incorporated into this AGREEMENT by reference. If any conflict exists between the RFP, CONSULTANT's response to this RFP, and this AGREEMENT, the terms and conditions of the following shall prevail in the following order of preference:

- a. this AGREEMENT;
- b. the RFP;
- c. CONSULTANT's response to the RFP.

8. LAWS AND REGULATIONS

CONSULTANT and CONSULTANT's subcontractors and all services proposed or furnished under this AGREEMENT shall comply fully with all applicable federal and state laws and regulations.

9. PATENTS, COPYRIGHTS, ETC.

CONSULTANT releases and shall protect, indemnify, and hold harmless the COMMISSION, the LEGISLATURE, and the State of Utah from liability of any kind or nature relating to CONSULTANT's use or provision of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in the performance of this AGREEMENT.

10. RECORDS ADMINISTRATION

CONSULTANT shall maintain, or supervise the maintenance of, all records necessary to properly account for the payments made to CONSULTANT for costs authorized by this AGREEMENT. CONSULTANT shall retain these records for at least four years after the AGREEMENT terminates. CONSULTANT agrees to allow state and federal auditors and legislative staff access to all the records relating to this AGREEMENT, for audit, for inspection, and for the monitoring of services. Such access will be during normal business hours, or by appointment.

11. CONFLICT OF INTEREST

CONSULTANT certifies that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer, employee, or staff of the COMMISSION or

the LEGISLATURE to secure favorable treatment with respect to being awarded this contract.

12. DEBARMENT

CONSULTANT certifies that neither CONSULTANT nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this AGREEMENT by any governmental department or agency. CONSULTANT will notify the COMMISSION within 30 days if debarred by any governmental entity during the term of this AGREEMENT.

13. INDEMNITY CLAUSE

CONSULTANT releases, protects, defends, indemnifies, and holds harmless the COMMISSION and the LEGISLATURE from and against any damage, cost, or liability, including reasonable attorney fees for any and all injuries to persons or property, or claims for money damages, arising from acts or omissions of the CONSULTANT and the CONSULTANT's employees, subcontractors, and volunteers.

14. NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this AGREEMENT, CONSULTANT acknowledges that the COMMISSION cannot contract for the payment of funds not yet appropriated. The COMMISSION may, without penalty or liability of any kind, terminate this AGREEMENT by providing 30 days' written notice to CONSULTANT that this AGREEMENT is terminated due to the non-appropriation of funds. If this AGREEMENT is terminated under this provision, the COMMISSION will pay all amounts due to CONSULTANT through the date of termination and will not be liable for any future commitments, penalties, or damages of any kind.

15. FORCE MAJEURE

Neither party to this contract will be held responsible for delay or default caused by a fire, riot, act of God, or war that is beyond that party's reasonable control. The COMMISSION may terminate this AGREEMENT after determining that such delay or default will prevent successful performance of the contract.

16. MERGER

This AGREEMENT constitutes the entire agreement between the parties with respect to the subject matter contained in this AGREEMENT. There are no covenants, terms, or conditions, express or implied, written or unwritten, that govern the subject matter of this AGREEMENT, except as expressly described in this AGREEMENT. This AGREEMENT

supersedes all prior agreements between the parties relating to all or part of the subject matter contained in this AGREEMENT.

17. MODIFICATION OF AGREEMENT

This AGREEMENT may be modified only in a written document signed by the COMMISSION chairs (or such other person certified as having the authority to bind the COMMISSION), on behalf of the COMMISSION, and CONSULTANT's agent (or such other person certified as having the authority to bind CONSULTANT), on behalf of CONSULTANT.

18. AUTHORITY TO BIND

CONSULTANT and the person who signs this AGREEMENT on behalf of CONSULTANT represent that the person who signs this AGREEMENT has the authority to bind CONSULTANT, and does, by signing this AGREEMENT, bind CONSULTANT to the terms and conditions of this AGREEMENT.

19. PUBLIC INFORMATION

This AGREEMENT and documents relating to this AGREEMENT are subject to release in accordance with Utah Code, Title 63G, Chapter 2, Government Records Access and Management Act.

20. SEVERABILITY

A declaration by any court, or any other binding legal source, that any provision of this AGREEMENT is illegal and void does not affect the legality and enforceability of any other provision of this AGREEMENT, unless the provisions are mutually dependent.