

Health and Human Services Commission

Purchase Order

Dispatch via Print

Payment Terms Net 30	Freight Terms Prepaid & Allow	Ship Via BEST WAY	Purchase Order HHSTX-1-0000236774
If advertised by informal bid, Invitation for Offer, or Request for Proposal; all specifications, terms, and conditions set forth in the advertisement and vendor's conforming responses become a part of this numbered purchase order. Contractor guarantees goods or services delivered meet or exceed numbered purchase order requirements.			Date 09/01/20
All shipments, shipping papers, invoices, and correspondence must be identified with our Purchase Order Number.			Revision Page 1
			Ship To: 4549 - San Antonio:6711 S New Brau HEALTH & HUMAN SERVICES COMMISSION 6711 S New Braunfels Ste 100 San Antonio TX 78223 United States

Vendor: 1260609849 4
YS ORTHOPEDICS PLLC
1650 LOCKHILL SELMA RD
SAN ANTONIO TX 782131929
United States

Bill To: Invoice-DSHS Accounts Payable
HEALTH & HUMAN SERVICES COMMISSION
6711 S New Braunfels
Ste 100
San Antonio TX 78223
United States

Fax: 210/531-7883
Email: SAHAccounting@dshs.texas.gov

Purchaser: Ender,Katrinia 512/406-2428

Line-Sch	Inventory Item ID - Line Description	Class/Item	Quantity	UOM	PO Price	Extended Amt	Due Date
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Terms and Conditions are attached.

Purchase Order Term: 09/01/2020 to 08/31/2021; with no renewal options.

This purchase order is issued in accordance with Texas Government Code, Section 2156.063 Phone Bids.

The purchase order amount is not to exceed \$25,000.00.

This order issued in accordance with phone bid HHS-1-0000119144. Services are to be performed in accordance to agency scope of work which has been provided to vendor.

Description of Service: Provide Orthopedic Services for San Antonio State Hospital patients.

Rates: Current Medicaid/Medicare approved rates and/or negotiated rates per individual basis.

HHSC or the agency does not commit to ordering specific quantities of service/goods or dollar amounts with respect to this purchase order. The agency shall be obligated to pay for only those services actually ordered and received by the agency. Any funds not utilized are automatically cancelled.

This contract is contingent upon the continued availability of lawful appropriations by the Texas Legislature.

Client Purchase; PCC OM/Q Requisition # 0000119144

Vendor Contact: YS Orthopedic PLLC
Phone: (210) 224-8100
Email: alex.lara@ysorthopedics.com

HHSC Purchasing Contact: Katrinia Ender
Phone: (512) 406-2428
Email: katrinia.ender@hhsc.state.tx.us

Contract Manager Contact: Shawn Hancock
Phone: (210) 531-7356
Email: shawn.hancock@hhsc.state.tx.us

1-1	FY2021 Orthopedic Services for Patients at San Antonio State Hospital	952-59	1.00	LOT	24999.00000	\$24,999.00	09/01/2020
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Schedule Total \$24,999.00

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All shipments, shipping papers, invoices, and correspondence must be identified with our Purchase Order Number.			Revision Page 2
			Ship To: 4549 - San Antonio:6711 S New Brau HEALTH & HUMAN SERVICES COMMISSION 6711 S New Braunfels Ste 100 San Antonio TX 78223 United States

Vendor: 1260609849 4
YS ORTHOPEDICS PLLC
1650 LOCKHILL SELMA RD
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Bill To: Invoice-DSHS Accounts Payable
HEALTH & HUMAN SERVICES COMMISSION
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Item Total for Line 1 \$24,999.00

Total PO Amount \$24,999.00

No substitutions or cancellations are permitted without prior approval by Health & Human Services Commission. If contractor fails to deliver by promised delivery date (or reasonable time thereafter) or fails to meet requirements, Health & Human Services Commission reserves the right to purchase elsewhere and charge an increased cost and handling to contractor.

Over shipments will not be accepted unless authorized by Buyer prior to shipment. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the Health & Human Services Commission and Contractor to attempt to resolve all disputes arising under the contract.

Performance under this purchase order is acceptance of the attached affirmations and terms and conditions.

Authorized By <i>Katrinia Ender, CPM</i>	07/21/2020
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HHS PROCUREMENT AND CONTRACTING SERVICES
TERMS AND CONDITIONS BELOW APPLY TO THIS CONTRACT

1. RESPONSE REQUIREMENTS:

- 1.1. Respondent must show price per unit. Facsimile (fax) submissions will NOT be accepted. Electronic submissions of Responses may be sent by e-mail. All e-mailed Responses must be sent to the HHSC PCS Bids e-mail account at: PCSBids@hhsc.state.tx.us. Submission to any other e-mail address will not be accepted. Do NOT copy the purchaser on the e-mailed Response. The State shall not be responsible for failure of electronic equipment or operator error. Response must be submitted on form provided and returned to the location indicated and received by the due date and time specified in the solicitation. Person signing response must have the authority to bind the firm in a contract.
- 1.2. Quote F.O.B. destination, freight prepaid and allowed. Otherwise, show exact delivery cost and terms.
- 1.3. Response must include Texas Identification Number (TIN), or Federal Employer's Identification Number (FEIN), full firm name, and address of respondent on the response.
- 1.4. Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.

2. SPECIFICATION:

- 2.1. Catalog, brand names, or manufacturer's references are descriptive only. Response must include the brand name and model number for exact product that is being offered. Any manufacturers' names, trade names, brand names, or catalog numbers used in the specifications are there for the purpose of establishing and describing style, general performance, and quality levels. Such references are not intended to be restrictive, and bids are invited on these and comparable brands or products of any manufacturer.
- 2.2. No substitutions permitted without written approval of the HHS agency.
- 2.3. All electrical items must meet all applicable federal Occupational Safety and Health Administration (OSHA) standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.
- 2.4. Respondent shall comply with Texas Government Code, Title 10, Subtitle D, Section 2155.4441, relating to use of products produced in the State of Texas when performing services under this contract.
- 2.5. Prior to the response submission deadline, a respondent may:
 - 2.5.1. (a) withdraw its response by submitting a written request to the HHS agency Point of Contact; or
 - 2.5.2. (b) Modify its proposal by submitting a written amendment to the HHS agency Point of Contact. The HHS agency may request proposal modifications at any time.

3. SAFETY STANDARDS:

- 3.1. All electrical items shall meet applicable OSHA safety standards. By signature on the response the respondent certifies that item or item(s) offered meet these standards.
- 3.2. Vendor, its employees and agents shall observe all safety measures and proper operating procedures at HHS agency sites at all times.
- 3.3. Vendor shall direct its employees and agents to immediately report to HHSC any defect or unsafe condition encountered while on HHSC premises.

4. REQUIRED AFFIRMATIONS: By signing this response the respondent affirms the following:

- 4.1. The respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this solicitation.
- 4.2. Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004(a), the respondent has not received compensation for participation in the preparation of specifications for this solicitation. Under Gov't Code § 2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent's Proposal. If Respondent is not eligible, then any contract resulting from this RFP shall be immediately terminated. Furthermore, under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 4.3. Antitrust - Pursuant to 15 U.S.C.A. § 1, et seq. and Tex. Bus. & Com. Code Ann. § 15.01, et seq. neither the respondent nor the firm, corporation, partnership, or institution represented by the respondent, 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 response made to any competitor or any other person engaged in such line of business. Respondent hereby assigns to ordering agency any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States, 15 U.S.C.A. § 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code Ann. § 15.01, et seq.
- 4.4. Under Section 2155.006(b) of the 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 Section 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 Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005." Under Section 2155.006, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 4.5. Under Section 231.006, Family Code, the respondent certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any respondent subject to Section 231.006, regarding child support, must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the response. This information must be provided prior to award.
- 4.6. That none of the funds paid under this contract will be used to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress or the state legislature for obtaining any federal or state contract, grant, loan, or cooperative agreement.

5. FALSE STATEMENTS: Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted response and any resulting contract.

6. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION: By signing this solicitation response, Respondent certifies to the best of its knowledge and belief that:

- 6.1. It is not ineligible for participation in federal or state assistance programs under Executive Order 12549, Debarment and Suspension. Vendor/Respondent shall not contract with a subrecipient nor procure goods or services from a subcontractor, at any tier, that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549.
- 6.2. Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this solicitation by any federal department or agency.
- 6.3. It is not delinquent on any payments owed to any federal or state agency.
- 6.4. It is not subject to an outstanding judgment in a suit against vendor for collection of the balance of a debt.
- 6.5. Where vendor/Respondent is unable to certify to any of the statements in this article, vendor/Respondent shall attach an explanation.

7. COMPLIANCE:

- 7.1. Federal, State, and Local Laws: Respondent shall comply with any and all applicable federal, state, and local laws, including, but not limited to: all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368),

Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15); and mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

- 7.2. Immigration Reform: Respondent represents and warrants that it will comply with all requirements of the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 (8 U.S.C. §1101, et seq.) and all subsequent immigration laws and amendments regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this agreement.
- 7.3. Former Executive Head of a State Agency Affirmation: Under Section 669.003 of the Texas Government Code, Respondent certifies that it does not employ any former executive head of a state agency. If Respondent does employ a former executive head of a state agency it must provide the following in order for the response to be evaluated:
 - 7.3.1. Name of Former Executive;
 - 7.3.2. Name of State Agency;
 - 7.3.3. Date of Separation from State Agency; and
 - 7.3.4. Position and Date of Employment with Respondent.
- 7.4. Conflict of Interest: Respondent represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- 7.5. Permits, Certifications, and Licenses: Respondent represents and warrants that it has obtained all licenses, certifications, permits, and authorizations necessary to perform the services under this agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Respondent's performance of this agreement. Respondent will maintain all required certifications, licenses, permits, and authorizations during the term of this agreement.
- 7.6. Independent Contractor: It is understood and agreed that the awarded contractor is an independent contractor and that neither party is, nor shall be considered to be, an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.
- 7.7. Texas Bidder Affirmation: Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c)(2) of the Texas Government Code.

8. HHS Uniform EIR Accessibility Clause: Contractors that are required to procure or develop Electronic and Information Resources (EIR) are required to comply with the HHS Uniform EIR Accessibility Clause, set out below.

- (a) Applicability. This section applies if the contract requires the CONTRACTOR to procure or develop Electronic and Information Resources (EIR) for [HHS AGENCY], or to change any of [HHS AGENCY's] EIR. This section also applies if the contract requires the CONTRACTOR to perform a service or supply goods that include EIR that:
 - (i) [HHS AGENCY] employees are required or permitted to access; or
 - (ii) members of the public are required or permitted to access. This section does not apply to incidental uses of EIR in the performance of a contract, unless the parties agree that the EIR will become property of the state or will be used by the HHS agency's Client/Recipient after completion of the contract. Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a product / service.
- (b) Definitions. For purposes of this Section:
 - "**Accessibility Standards**" means the Electronic and Information Resources Accessibility Standards and the Web Site Accessibility Standards/Specifications.
 - "**Electronic and Information Resources**" means information resources, including information resources technologies, and any equipment or interconnected system of equipment that is used in the creation, conversion, duplication, or delivery of data or information. The term includes, but is not limited to, telephones and other telecommunications products, information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, including copy machines and fax machines.
 - "**Electronic and Information Resources Accessibility Standards**" means the accessibility standards for electronic and information resources contained in Title 1 Texas Administrative Code Chapter 213.
 - "**Products**" means information resources technologies that are, or are related to, EIR.
 - "**Web Site Accessibility Standards/Specifications**" means standards contained in Title 1 Texas Administrative Code Chapter 206.
- (c) Accessibility Requirements. Under Texas Government Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, [HHS AGENCY] must procure Products that comply with the Accessibility Standards when such Products are available in the commercial marketplace or when such Products are developed in response to a procurement solicitation. Accordingly, CONTRACTOR must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.
- (d) Evaluation, Testing and Monitoring.
 - (i) [HHS AGENCY] may review, test, evaluate and monitor CONTRACTOR's Products and associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing. Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product, nor (2) the absence of such review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the CONTRACTOR'S assertion of compliance with the Accessibility Standards.
 - (ii) CONTRACTOR agrees to cooperate fully and provide [HHS AGENCY] and its representatives timely access to Products, records, and other items and information needed to conduct such review, evaluation, testing and monitoring.
- (e) Representations and Warranties.
 - (i) CONTRACTOR represents and warrants that:
 - (A) as of the effective date of the contract, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the contract, unless and to the extent the Parties otherwise expressly agree in writing; and
 - (B) if the Products will be in the custody of the state or an HHS agency's client or recipient after the contract expiration or termination, the Products will continue to comply with such Accessibility Standards after the expiration or termination of the contract term, unless [HHS AGENCY and/or Client/Recipient, as applicable] uses the Products in a manner that renders it noncompliant.
 - (ii) In the event CONTRACTOR should have known, becomes aware, or is notified that the Product and associated documentation and technical support do not comply with the Accessibility Standards, CONTRACTOR represents and warrants that it will, in a timely manner and at no cost to [HHS AGENCY], perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, replacement, and upgrading of the Product, or providing a suitable substitute.
 - (iii) CONTRACTOR acknowledges and agrees that these representations and warranties are essential inducements on which [HHS AGENCY] relies in awarding this contract.
 - (iv) CONTRACTOR's representations and warranties under this subsection will survive the termination or expiration of the contract and will remain in full force and effect throughout the useful life of the Product.
- (f) Remedies.
 - (i) Pursuant to Texas Government Code Sec. 2054.465, neither CONTRACTOR nor any other person has a cause of action against [HHS AGENCY] for a claim of a failure to comply with Texas Government Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
 - (ii) In the event of a breach of CONTRACTOR's representations and warranties, CONTRACTOR will be liable for direct and consequential damages and any other remedies to which [HHS AGENCY] may be entitled. This remedy is cumulative of any and all other remedies to which [HHS AGENCY] may be entitled under this contract and other applicable law.

9. SECURITY OF INFORMATION:

- 9.1. The HHS agency may be in possession of confidential information and material which require protection under applicable laws and regulations, as well as policies and procedures, of the State of Texas and the United States. Confidential information and material obtained within or from the HHS agency may not be discussed,

communicated, copied, extracted, or used in any manner by awarded vendor other than in fulfillment of the contract resulting from this solicitation. All confidential material must be returned to the HHS agency on completion or as requested.

- 9.2. By entering a contract with a Texas Health & Human Services agency, you agree to be bound by the terms of the HHS Data Use Agreement (HHS DUA), v.8.4 March 15, 2018: This is the general version that should be used for all contractors who access agency confidential information. It is available on the HHSC website at <https://hhs.texas.gov/doing-business-hhs/business-contracting-opportunities>, Data Use Agreement (PDF). Information that explains the terms of the DUA and what laws require us to protect and safeguard agency confidential data can be found at <https://hhs.texas.gov/doing-business-hhs/business-contracting-opportunities>, Data Use Agreement FAQs (PDF).
- 9.3. If this box is checked, Section 9.2, above does not apply to the contract, or purchase order, because the contractor will not have access to confidential information.

10. VENDOR CERTIFICATION INFORMATION TECHNOLOGY STAFF AUGMENTATION: In addition to those Vendor Certifications included in the [Department of Information Resources' Appendix A "Standard Terms and Conditions for INFORMATION TECHNOLOGY STAFF AUGMENTATION SERVICES."](#) Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- 10.1. Will use any information received while providing services to an individual customer under the Contract only for the purpose of providing those services;
- 10.2. Will treat any information so received as confidential and will not disclose, reveal, communicate, impart, or divulge the information or any summary or synopsis of the information in any manner or any form whatsoever without prior written authorization to do so from the relevant individual customer; and
- 10.3. Are not authorized to make any representations concerning the work done for an individual customer to third parties for promotional, research, or other commercial or proprietary purposes without the individual customer's written advance approval.

11. FELONY CONVICTION NOTICE: Respondent represents that neither Respondent nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, has been convicted of a felony or that if such a conviction has occurred, Respondent has fully advised the HHS agency of the facts and circumstances surrounding the convictions.

12. AWARD:

- 12.1. The HHS agency reserves the right to waive minor informalities in a proposal and award a contract if in the best interest of the State of Texas.
- 12.2. SAM-Suspension, debarment, and terrorism: Respondent certifies that it and its principals are eligible to participate in this solicitation and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and are not listed on the State of Texas Debarred Vendor List maintained by the CPA or the System for Award Management (SAM) maintained by the General Services Administration at <http://www.sam.gov>; and that Respondent is in compliance with all applicable State of Texas statutes and HHS agency rules; and that Respondent certifies it is not listed on the federal government's terrorism watch list as described in executive order 13224.
- 12.3. The State reserves the right to make an award on the basis of low line item, low total of line items, or in any other combination that will serve the best interest of the State.
- 12.4. Tie responses: In the case of tie bids, awards will be made in accordance with Title 34, Texas Administrative Code, Chapter 20, Subchapter C, Division 2, § 20.207(c)(2), either by application of one or more preferences described in Title 34, Texas Administrative Code, Chapter 20, Subchapter D, Division 2, § 20.306; or in the case of tie bids that cannot be resolved by application of one or more preferences, by drawing lots.
- 12.5. A response to this solicitation is an offer to contract based upon the terms, conditions, and specifications contained herein. Responses do not become orders until a purchase order and/or contract is released by an HHS agency, purchasing agent, or designee through a written purchase order/contract. The contract shall be governed, construed, and interpreted under the laws of the State of Texas.
- 12.6. Option to Extend Services: The Respondent by submission of a response to this solicitation agrees that HHSC may require continued performance, beyond the initial term or renewal contract term, of any of the herein described services at the rates specified herein. This option may be exercised more than once, for the purpose of meeting HHS agency procurement goals but the total extension of performance hereunder shall not exceed one hundred twenty (120) calendar days. Such extension of services shall be subject to all specifications and terms and conditions of the contract resulting from this procurement, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. The HHS agency may exercise this option upon notice to the awarded Respondent.
- 12.7. The Procurement and Contracting Services (PCS) section of HHSC will administer the initial stages of the procurement process, prior to the contract award, including announcement and publication, handling of communications from the Respondent, as well as managing the receipt and handling of valid responses for final review and evaluation. PCS directs the execution of the contract after the awarded vendor has been selected. The contract(s) issued as a result of this solicitation may be utilized by one or all of the HHS agencies listed below:
- 12.7.1. Health and Human Services Commission (HHSC);
- 12.7.2. Department of Family and Protective Services (DFPS);
- 12.7.3. Department of State Health Services (DSHS).
- PCS will issue an individual purchase order, contract, or release for each HHS agency, region, city, or location requiring goods or services under the contract(s). Each purchase order will include the delivery/service location and bill to address for the HHS agency requesting goods/services.
- 12.8. No terms or conditions advanced by the contractor, by way of exception or other means, are included as part of the contract unless expressly agreed to in writing by HHSC.

13. DELIVERY:

- 13.1. Respondent must show number of days required to place material in receiving agency's designated location under normal conditions. Failure to state delivery time obligates Respondent to deliver in 14 calendar days. Delivery shall be made during normal working hours only, unless prior approval has been obtained from the HHS agency.
- 13.2. If delivery will be delayed, Contractor shall notify the HHS agency. Default in promised delivery or failure to meet specifications authorizes the HHS agency to purchase goods and/or services elsewhere and charge full increase, if any, in cost and handling to defaulting Contractor. Any damages incurred by the HHS agency as a result of the default may also be assessed to the defaulting Contractor.
- 13.3. Products delivered that fail to meet specifications or are not the actual item(s) awarded on the contract shall be rejected or returned at the vendor's expense. Item(s) may be purchased on the open market, and any resulting increase in price shall be charged to awarded vendor.

14. CANCELLATION OR EARLY TERMINATION:

- 14.1. TERMINATION FOR CONVENIENCE: The HHS agency reserves the right to terminate, in whole or in part without recourse or penalty, any Contract resulting from this solicitation with 30 days' written notice to the Contractor.
- 14.2. TERMINATION FOR CAUSE OR DEFAULT: The HHS agency may terminate this Contract immediately for any failure of the Contractor to comply with the terms and conditions of the Contract.
- 14.3. TERMINATION DUE TO REDUCTION IN OR UNAVAILABILITY OF STATE FUNDS: HHSC reserves the right to terminate the purchase order and/or Contract awarded from this solicitation, without penalty to HHSC, either in whole or in part, based on reduction in or unavailability of state funds. HHSC is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. HHSC will not be liable to Contractor for any damages, which are caused or associated with such termination or cancellation and HHSC will not be required to give notice.
- 14.4. ABANDONMENT OR DEFAULT: If the Respondent abandons or defaults on any work under this Contract and causes the work to be rebid, the Respondent may not be considered on future bids to perform similar work. Damages for abandonment or default may be assessed at HHSC's option.
- 14.5. CANCELLATION FOR NONCOMPLIANCE: HHSC may cancel all or any part of the resulting purchase order and/or contract if the Contractor fails to comply with any requirement of the purchase order and/or contract, including but not limited to this solicitation and its General Terms and Conditions. HHSC may also obtain substitute goods and services, may withhold acceptance and payments to the Contractor and may pursue all available rights and remedies against the Contractor. In addition, HHSC will report the defaulting contractor to the Texas Comptroller of Public Accounts' (CPA) Statewide Procurement Division (SPD) for possible action, including, but not limited to, removal of the Contractor from the Centralized Master Bidders List (CMBL).

- 14.6. **RIGHT TO RECOVER:** HHSC reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Contractor's request or the result of Contractor's failure to perform. This right is in addition to any other remedies available to HHSC under applicable law.
- 15. RESPONSIBILITY FOR NEGLIGENCE:** Contractor shall bear all risk of loss or damage due to product defects, unfitness or obsolescence thereof, and negligence or willful misconduct of Contractor or its employees, agents, or representatives.
- 16. FORCE MAJEURE:** Neither party shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, or other causes that are beyond the reasonable control of the party claiming force majeure and that by exercise of due foresight such party could not reasonably have avoided, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
- 17. PATENTS OR COPYRIGHTS:** Contractor must defend, at its own expense, any action brought against the State of Texas based on a claim that the product(s) supplied by Contractor or the operation of such product(s) pursuant to the current release and modification level on any programming aid, infringes a United States patent, copyright, or trade secret. Contractor must pay those costs and damages finally awarded against the State of Texas in any such claim.
- 18. WORK MADE FOR HIRE.** All work performed by Contractor for the HHS agency pursuant to this Contract, including all work developed or prepared by Contractor or its subcontractors or authorized representatives, is the exclusive property of the HHS agency. All right, title and interest in and to said property shall vest in the HHS agency upon creation and shall be deemed to be a work made for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in the HHS agency, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the HHS agency. The HHS agency shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate, and any extensions and renewals thereof. Contractor must give the HHS agency and the State of Texas, as well as any person designated by the HHS agency and the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.
- 19. REPRODUCTION RIGHTS:** Contractor agrees that the HHS agency is free to reproduce, without royalty, all manuals, publications, maintenance programs, diagnostics and documents for exclusive use by the HHS agency for State of Texas business. The HHS agency is free to reproduce, without royalty, necessary material selectively extracted from publications provided, for incorporation into HHS agency-published manuals, which are for exclusive use by state-authorized systems. Any proprietary statement contained in any document will be referenced if that document, or any part thereof, is used.
- 20. TEXAS PUBLIC INFORMATION ACT:** Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. If the Respondent believes that parts of its response are exempt from disclosure under the Texas Public Information Act, Respondent must specifically identify the information it contends to be confidential or proprietary. If Respondent designates substantial portions of its solicitation response or its entire solicitation response as confidential or proprietary, the solicitation response is subject to being disqualified.
- 21. REQUESTS FOR INFORMATION:** The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any party other than the HHS agency and its authorized agents except as otherwise authorized by this Contract or after obtaining written permission from the HHS agency.
- 22. INDEMNIFICATION: RESPONDENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF RESPONDENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY RESPONDENT WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND RESPONDENT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. RESPONDENT AND AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**
- 23. RIGHT TO AUDIT:** The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the Contract or indirectly through a subcontract. The acceptance of funds directly under the Contract or indirectly through a subcontract 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, an 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. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors and the requirement to cooperate is included in any subcontract it awards.
- 24. CONTRACTOR PERFORMANCE:** Contractor shall comply with and act in good faith in the performance of all provisions of this Contract and any amendments.
- 25. REMEDIES AND SANCTIONS:** In accordance with Section 2261.101, Government Code, Remedies and Sanctions, state agencies are required to hold contractors accountable for breach of contract or substandard performance.
- 25.1. The HHS agency may impose remedies and sanctions as described in this solicitation for Contractor's default under this Contract.
- 25.2. The HHS agency at its own discretion may impose remedies and sanctions as appropriate on a case-by-case basis.
- 25.3. The HHS agency may terminate the Contract in accordance with Section 14, above.
- 26. RECORDS RETENTION:** Contractor must retain all invoices, records and other documents pertinent to this Contract until seven (7) years following the expiration or termination of this Contract, until any audits in progress are completed, or until any lawsuits relating to this Contract are resolved, whichever is later.
- 27. PAYMENT:** Prior to any payment being made, the HHS agency must certify that the goods and services being invoiced have been received and accepted. Contractor shall submit an itemized invoice showing the HHS agency purchase order or contract number. Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 shall govern remittance of payment and remedies for late payment and non-payment.
- 28. ASSIGNMENT BY CONTRACTOR:** Contractor shall not assign all or any portion of its rights under or interests in this Contract or delegate the performance of its duties under the Contract without prior written consent of the HHS agency contract manager. Any written request for assignment must be accompanied by written acceptance of the assignment by the assignee. Except where otherwise agreed in writing by the HHS agency contract manager, no assignment will release the Contractor from its Contract obligations. Any attempted assignment in violation of this section is void and without effect.
- 29. PAYMENT OF CONTRACTOR DEBT:** In accordance with Texas Government Code, Section 403.055 and Section 2252.903, Contractor agrees that any Contract payments due to Contractor will be applied toward any debt or delinquency the Contractor owes to the State of Texas, including, but not limited to, delinquent taxes and child support. Payments will be applied until the debts and back taxes are paid in full. Federal law may supersede this requirement.
- 30. DISCLOSURE OF INFORMATION:** If the Contract includes federal funds, the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives, must have access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract.
- 31. GOVERNING LAW AND VENUE:** This Contract is being executed and delivered to the State of Texas. This Contract is intended to be performed in the State of Texas and shall be governed by and construed in accordance with the laws of the State of Texas, without regard to any conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction in Travis County, Texas. If any provision/part of the Contract is construed to be illegal, invalid, or unenforceable, such construction will not affect the legality or validity of any other provisions/parts. The illegal or invalid provision/part will be deemed severable and

stricken from the Contract as if it had never been incorporated, but all other provisions/parts will continue in full force and effect. The Contract represents the entire agreement of the parties; any amendment must be in writing and signed by the parties.

32. DISPUTE RESOLUTION: The dispute resolution process provided for in Texas Government Code, Title 10, Chapter 2260, shall be used by the HHS agency and the Contractor to attempt to resolve any dispute or any claim for breach of Contract made by the Contractor.

33. COMPLIANCE WITH STATE AND FEDERAL ANTI-DISCRIMINATION LAWS

33.1. Contractor agrees to comply with state and federal anti-discrimination laws, including without limitation: 1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); 2) Sec. 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); 3) Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.); 4) Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107); 5) Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); 6) Food Stamp Act of 1977 (7 U.S.C. § 200 et seq.); 7) HHSC's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this agreement. Contractor agrees to comply with all amendments to the referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by federal or state funding, or otherwise be subjected to discrimination.

33.2. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin. Contractor also agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

33.3. Contractor agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

33.4. Upon request, Contractor will provide the HHS agency with copies of all of the Contractor's civil rights policies and procedures.

33.5. Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to Contractor's performance under this agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to: HHSC Civil Rights Office, 701 W. 51st Street, mail code W206, Austin, Texas 78751. Phone toll free: (888) 388-6332; phone: (512) 438-7232; TTY Toll free: (877) 432-7232; Fax: (512) 438-5885

34. PROHIBITION ON CONTRACTING WITH ENTITIES THAT BOYCOTT ISRAEL:

34.1. Contractor represents and warrants that, pursuant to Section 2270.002 of the Texas Government Code, Contractor does not boycott Israel and will not boycott Israel during the term of the Contract.

35. PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGED IN BUSINESS WITH FOREIGN TERRORIST ORGANIZATIONS:

35.1. Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

36. DISCLOSURE OF INTERESTED PARTIES:

36.1. Respondent represents and warrants that if selected for award of a contract as a result of the solicitation, that has a value of at least \$1 million, Respondent will submit to HHSC a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code and the rules of the Texas Ethics Commission, Title 1, Texas Administrative Code, Part 2, Chapter 46.

37. E-VERIFY PROGRAM: Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of all persons employed by Contractor to perform duties within Texas; and all persons, including subcontractors, assigned by Contractor to perform work pursuant to the Contract within the United States.

38. COMPUTER EQUIPMENT RECYCLING PROGRAM: To the extent applicable to this Contract, Respondent certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in Title 30, Texas Administrative Code, Chapter 328.

39. DISASTER RECOVERY PLAN: To the extent applicable to this Contract, upon request of HHSC, Respondent shall provide the descriptions of its business continuity and disaster recovery plans.

40. TELEVISION EQUIPMENT RECYCLING PROGRAM: To the extent applicable to this Contract, Respondent certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.