

**HHS Purchasing  
Contract Purchase Order**



Contract ID: HHS001359700004

Supplier Loc: \*00

Bill To: 3500

Ship To: 6694

Contract Begin Date: <b>09/01/2023</b>	Contract End Date: <b>08/31/2028</b>	Contract PO Number: <b>HHS001359700004</b>	Status <b>I - A</b>	Entered Date <b>08/29/2023</b>
Maximum Contract PO Amount: HHS Agencies guarantee no minimum or maximum quantity for Contract Purchase Orders		<b>1000000</b>		
		Contract Manager: Chamorro,Gustavo A		

The State of Texas Agencies, including HHS Agencies, are exempt from all Federal Excise Taxes. The undersigned claims the State and City sales tax exemptions under Texas Tax Code, Section 141.309(4), for tangible goods and services. All subsequent shipments or releases shall be FOB Destination unless otherwise specified in the original solicitation. Additional ship and bill to locations identified in the original solicitation may be specified on a purchase order release referencing this contract.

**1870845606  
OFFICIAL WATER LLC  
10730 POTRANCO RD  
SAN ANTONIO TX  
78251-3455**

**Primary Bill To: HEALTH & HUMAN SERVICES  
COMMISSION  
4601 W Guadalupe St  
Austin TX  
78751**

**Primary Ship To: HEALTH & HUMAN SERVICES  
COMMISSION  
1111 W North Loop  
Austin TX  
78756**

**I. TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

**II. Bottled Water Contract for Emergencies and / or Declared Disasters in the State Of Texas**

HHS0013597

III. NIGP Class/Item No(s): 390-91

**1 HHSC Overview**

The Health and Human Services Commission (HHSC) was created in 1991 to oversee and coordinate the planning and delivery of health and human services in Texas. It is established pursuant to Chapter 531, Texas Government Code and is responsible for oversight of Texas Health and Human Services agencies (HHS Agency).

PCS administers the procurement processes, which include Solicitation announcement and publication, Bidder communications, receipt of Responses, screening of timely received responses, and facilitating the evaluation of qualified Responses. PCS, in coordination with each HHS program, manages the execution of the award, through issuance of Purchase Order(s) or other Contract document, resulting from Solicitation HHS0013597.

Both HHS Agencies, HHSC and DSHS, will be entitled to use any contract awarded as a result of this Contract.

**1.1 No Guarantee of Volume, Usage or Compensation**

HHS Agency does not guarantee any volume, usage, or compensation to be paid to any Contractor under any Contract resulting from this Solicitation. Additionally, all HHS Agency contracts are subject to appropriations, the availability of funds, and termination.

The estimated historical quantities included in the Price Sheet are provided only as a guideline for preparing the pricing response and should not be construed as representing anticipated or actual quantities that will be required.

**1.2 Contract Components**

This Solicitation includes the following items:

- \* Exhibit A - HHS Solicitation Affirmations
- \* Exhibit B - Contract Affirmations and HHS Uniform Terms and Conditions (UTCs)
- \* Exhibit C - Bid Execution Page
- \* Exhibit D - Pricing Sheet
- \* Exhibit F - Historically Underutilized Business (HUB) Subcontracting Plan(HSP) Requirements

**2 Definitions**

Unless the context clearly indicates otherwise, throughout this Contract, the definition given to a term below applies

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whenever the term appears in this Contract. All other terms have their ordinary and common meaning.

a) Addendum  $\zeta$  A written clarification or revision to this Contract issued by HHSC.

b) Contract  $\zeta$  A legally enforceable agreement between two or more parties. As a result of this Solicitation, HHSC may issue a Contract document or Purchase Order (see definition).

c) Contractor - Each Bidder, business entity or individual, if any, awarded a Contract (Purchase Order) to provide the services or goods as a result of this Solicitation.

d) Contract Term  $\zeta$  The period of time during which the Purchase Order or Contract is in effect from the start date through the end date and may include renewal or extension periods.

e) Debarment  $\zeta$  An exclusion from contracting or subcontracting with state agencies on the basis of cause pursuant to Title 34, Part 1, Chapter 20, Subchapter G of the Texas Administrative Code, and the Federal System for Award Management (SAM).

f) Deliverables  $\zeta$  The services or goods specified in this Solicitation and any resulting Contract, that the Contractor shall perform or deliver to the HHS Agency for acceptance.

g) Exhibit  $\zeta$  A document, included as an attachment to this Contract, which provides terms and conditions, additional requirements and information related to this Contract.

h) HHS Agency - The Texas Health and Human Services Commission (HHSC) and the Texas Department of State Health Services (DSHS), separately or combined.

i) Purchase Order  $\zeta$  A legally enforceable agreement between two or more parties. A Purchase Order is issued by HHSC indicating types, quantities, and agreed pricing for services and goods the Contractor will provide. Also considered a Contract.

j) Scope of Work  $\zeta$  The description of requirements, services, specifications for goods which may be required, and deliverables as provided in this Contract.

k) Solicitation - This document, including all exhibits, attachments, appendices, or Addenda (if applicable). May also be referred to as Invitation for Bid or IFB.

l) Subcontractor - Any entity or individual that enters into a contract with the Contractor to perform part or all of the obligations of the Contractor under the Contract.

m) Unit Rate  $\zeta$  The set rate per the unit of measure (UOM), used for payment of the services, included on the Price Sheet under the Contract or Purchase Order. (e.g., Hourly, Daily, Weekly, Monthly, etc.).

n) Vendor  $\zeta$  A business entity or individual that supplies services or goods and may be a potential Bidder to this Solicitation.

o) Texas Identification Number (TIN)  $\zeta$  The 11-digit identification number set up through the Texas Comptroller of Public Accounts which is required for any entity or individual to receive payment under a Contract with the State of Texas. Also known as Texas Payee ID Number required in Exhibit A, HHS Solicitation Affirmations. Further information regarding this number may be accessed on the CPA website at

[https://fm.x.cpa.texas.gov/fm/pubs/payment/gen\\_prov/index.php?s=payee\\_numreq&p=payee\\_numreq](https://fm.x.cpa.texas.gov/fm/pubs/payment/gen_prov/index.php?s=payee_numreq&p=payee_numreq)

### 3 Scope of Work (SOW) and Specifications

#### 3.1 Specifications

Water, bottled, 0.5 liter (or 16.9 oz), per bottle. Drinking/Bottled Water  $\zeta$  Treated or untreated water that is intended for human uses and consumption and considered to be free of disease-bearing bacteria, cysts, viruses and harmful chemicals.

#### 3.2 Additional specifications:

a) Water must be packaged 24 bottles per case. The cases must be palletized with approximately 72 cases per pallet and 22 pallets per truckload. All pallets must be shrink-wrapped.

b) Water must be potable, and vendor must submit certification with each shipment. The certification process must be accomplished by an appropriate food service inspecting organization (such as NSF Bottled Water Certification Program).

c) Pallet costs must be included in unit prices.

d) Product is to have a minimum shelf life of six (6) months.

The agency will only order the amount needed to satisfy operating requirements during a declared emergency or disaster. The amount may be more or less than indicated. The vendor will agree not to ship any materials until instructions are received from the agency.

The information identified above is intended to be descriptive, not restrictive, and to indicate the quality and characteristics

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of products that will be satisfactory.

#### A. Deliveries

##### 3.3 Delivery Driver Guidelines:

- a) Observe all posted speed limits. Speed limits are strictly enforced.
- b) Observe all stop signs and other traffic controls.
- c) Parking must be in area designated by Warehouse staff.
- d) Vehicles must be locked, and keys removed at all times when unattended.
- e) Pedestrians have the right-of-way at all times. Drive with extreme caution and be prepared to cope with unexpected circumstances.
- f) Firearms and alcoholic beverages are forbidden on campus.
- g) Tools and equipment must be properly secured at all times.
- h) No smoking.
- i) Contact with residents is forbidden. Do not offer cigarettes, matches, lighters, food or money to residents.
- j) If you require assistance with a resident, notify Facility staff.

##### 3.4 Carton Labeling/Pallet Labeling

- k) At a minimum, product must be labeled on outer carton with the following information:
  - a. Description of Contents
  - b. Agency Purchase Order #
  - c. Quantity per Carton
- l) At a minimum, pallets must be shrink wrapped and labeled.

3.5 It is required that vendor contact the point of contact specified on the issued PO to set up a delivery appointment.

3.6 Deliveries are to be made between 7:00 AM and 2:00 PM on date specified, to the address specified on the issued PO or instructions provided.

3.7 The vendor is responsible for payment of any additional charges by the contract warehouse (such as overtime, blast freezing, lowering temperatures, re-stacking; second delivery due to split delivery quantity [unless requested by HHSC], unloading charges, etc.).

3.8 ALL deliveries shall arrive ON TIME as requested by HHSC. It is the awarded vendor's responsibility to contact HHSC Purchaser if unforeseen circumstances arise that may cause a delivery to be late.

3.9 HHSC reserves the right to purchase late items on an emergency basis and charge any resulting increase in price to the awarded vendor.

3.10 On orders calling for multiple deliveries, awarded vendor will be notified in writing by HHSC approximately within 6 hours of activation prior to requested delivery date.

3.11 Orders must be delivered complete. Items delivered must be the item bid. Split deliveries will not be accepted, unless requested.

3.12 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. Vendor will reimburse the agency for cost of storage and handling fees incurred at the contracted storage facility and any cost to pick up and return product delivered to individual facilities. Any cost incurred to verify compliance with these specifications will be the responsibility of the vendor if product is found not to be in compliance. This may include but is not limited to laboratory tests.

##### 3.13 Receiving Products

The Agency will ensure product received is the same as awarded item. Product that is not the awarded contract item, or product that is damaged or otherwise not in good condition, will be refused. Instances of damaged case goods, the Agency will accept the product that is in good condition and return the portion of the shipment that is damaged. If shortages occur due to refusal of damaged products or otherwise at the fault of the vendor, The Agency may purchase

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needed items locally on an Emergency Purchase Basis. The awarded contract vendor shall be responsible for the difference in cost, if any, between the contract item and the emergency purchase items. Should the Agency determine an awarded product does not meet the specifications listed the Agency will immediately contact the vendor to attempt resolution. If not resolved, the Agency will contact the HHSC Buyer and HHSC Contract Manager. The Agency will retain the product case, label intact, under appropriate storage conditions until product is secured for further investigation.

### 3.14 Deliverables: Containers or Trailers

#### 3.14.1 Definitions

"Dropped Loads" = Container (trailer) is delivered and left at a specific location; the driver must later return to pick up the empty trailer, usually within 48 hours.

"Live Unload" = Unloading of freight from a container (trailer) while the driver waits onsite.

"Detention" = Containers (trailers) with bottled water are retained beyond a specific unloading time after a dropped load. Trailer detention time starts when the trailer is recorded as dropped. A single day of detention time shall be for a period of 24 hours.

3.14.2 Quantities of bottled water may be increased or decreased depending upon need and/or funding availability. HHSC will identify units of measure by the case, pallet, partial filled trailer, or full 53' trailer.

3.14.3 The quantities shown are estimates only and do not constitute a guarantee of purchase. No guarantee of any minimum or maximum purchase is made or implied. Actual usage may be more or less than estimates. HHSC will in no way be obligated for any quantity which falls short of the estimates. HHSC will order the amount needed to satisfy operating requirements that may be more or less than indicated.

3.14.4 Contractor shall consider re-stocking provisions, if any, based on the assumption that product remains in its original shrink-wrapped pallets, with the cargo seal remaining intact. Re-stocking provisions may include but are not limited to: product amount that can be returned, a re-stocking fee not to exceed 15% of the quoted price per bottle in contractor's bid and timeframe for returns.

3.14.5 To be responsive to emergency needs, the State may pre-stage product six to twenty-four (6 - 24) hours prior to the disaster or event; hence, ability to load within two to six (2 - 6) hours of notification to Contractor is required. If the Contractor is other than the manufacturer, Contractor must submit evidence of a contractual relationship between Contractor and manufacturer which guarantees that the contracted items are available and can be delivered as requested.

3.14.6 Staging locations will be assigned in designated locations within one of six regions as outlined by the Texas Division of Emergency Management (TDEM) in <https://www.tdem.texas.gov/regions> when HHSC is activated under a state or federal declaration to purchase emergency bottled water.

3.14.7 Any other required deliveries will be dependent upon the nature of the disaster relief effort and the area affected statewide by the formally declared disaster or state of emergency. The Contractor must have the capability to deliver product statewide.

3.14.8 The agency will only order the amount needed to satisfy operating requirements which may be more or less than indicated. The Contractor will agree not to ship any materials until instructions are received from the agency.

3.14.9 Contractor shall make product available for shipment within two to six (2 - 6) hours from notification to ship. Locations will be determined per request or disaster event.

3.14.10 Emergency availability for shipment is to be within two to six (2 - 6) hours of notification by HHSC. This shall include any day, any time, including weekends and holidays.

3.14.11 Live unload or dropped loads (See definitions immediately under Section 2 heading) may be requested.

3.14.12 - In the case of dropped load requests, a driver must be readily available (within 24 hours of notification) for trailer

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pick-up and possible load pick-up and relocation. Contractor must be ready to move trailers from one site to another as stipulated at the request and authorized direction of the contracting HHS agency.

3.14.13 Detention duration for dropped loads is typically between three to seven days.

3.14.14 Contractor must accurately estimate future arrival times and provide real-time delivery and pick up status notification of completed, attempted or refused delivery and or pickup.

3.14.15 Contractor must be able to track and communicate with their drivers at all times to ensure that service is being performed and that on-demand service requests are handled in a timely and accurate manner.

#### 4 HUB Subcontracting Plan (HSP) Requirements

The Comptroller of Public Accounts (CPA), Statewide Procurement Division (SPD) administers the Historically Underutilized Business (HUB) Program in accordance with Chapter 2161, Texas Government Code, and Rules §20.281 to §20.298, Title 34, Chapter 20, Subchapter D, Division 1, Texas Administrative Code. The HUB Program rules may be accessed at: <https://comptroller.texas.gov/purchasing/vendor/hub/>.

It is the policy of HHSC to promote and encourage contracting and subcontracting opportunities with State of Texas-certified Historically Underutilized Businesses (HUBs). Information regarding the HHSC Policy on Using HUBs may be accessed at: <https://hhs.texas.gov/doing-business-hhs/contracting-hhs/historically-underutilized-business-opportunities-program>.

### 5 Pricing Information

#### 5.1 Pricing Structure

Prices offered, as part of the Bidder's response, must be firm, fixed prices for the initial term of the Contract.

The pricing reported in Exhibit D Pricing Sheet is based on the description and the unit of measure(s) provided for each line item. The unit prices reflect the Solicitation HHS0013597 requirements, including, but not limited to, labor, equipment, materials, supplies and all related expenses.

#### 5.2 Price Adjustments

Contractors are required to immediately implement any price decrease that may become available during the Contract term. Contractor must notify the designated contract manager in writing so that a Purchase Order Change Notice or Contract Amendment may be processed. The Contractor will be provided the contract manager contact information upon award.

##### 5.2.1 Price Adjustment Index

Price adjustments are not automatic. Prices only may be adjusted at the sole discretion of HHSC.

HHSC may permit price adjustments when correlated with the index as specified below and as published by the Bureau of Labor Statistics (BLS), Region VI, Washington, DC 20212.

BLS Website: <https://data.bls.gov/cgi-bin/srgate>

CPI-W Urban Wage Earners and Clerical Workers  $\chi$  Series ID: CWURR0000AA0:

<https://data.bls.gov/timeseries/CWUR0000AA0>

CPI-U All Urban Consumers  $\chi$  Series ID: CUUR0000AA0 <https://data.bls.gov/timeseries/CUUR0000AA0>

When using the most recent monthly information from the index, the following applies:

A = Index from the month of the Response Deadline of this Solicitation, OR

The effective date/month of the last approved price increase or renewal option exercised

B = Current or latest baseline index

The allowable percent change must be calculated as follows:

$(B-A) \div A \times 100\% =$  Percent of allowable price increase or decrease

Failure by the Contractor to calculate this formula and provide any supporting documentation will not be considered a properly submitted price increase request.

The Contractor may offer price decreases in excess of the allowable percent change at any time during the term of the Contract.

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### 5.2.2 Price Adjustment Requests

The Contractor must provide, in writing to the HHS Agency contract manager, a request for a price adjustment. The adjustment request must use the index and formula identified in the Price Adjustment Index Section.

Contractor must provide supporting documentation to justify any price adjustment. Any request submitted that fails to use the formula above for calculating a price adjustment will not be considered a complete, properly submitted request. Additionally, any request submitted by a Contractor that does not include supporting documentation will not be considered a complete, properly submitted price adjustment request.

The HHS Agency reserves the right to accept or reject the request for a price adjustment. The Contractor will receive written notification, through a Purchase Order Change Notice or Contract Amendment, from the HHS Agency contract manager documenting action taken, to include effective dates, for any adjustments approved.

### 5.2.3 Federal Minimum Wage Adjustments

Contractor may request a price adjustment based on an increase in the Federal Minimum Wage Rate, published by the U.S. Department of Labor (USDOL), if applicable.

The request must be submitted to the HHS Agency contract manager in writing and include supporting documentation from the USDOL reflecting the increase and the effective date of the increase. HHSC reserves the right to accept or reject the request for an increase.

The effective date for an increase, if approved, will be based on the date of approval by the HHS Agency. Retroactive increases will not be allowed or approved if the USDOL effective date is prior to the date the written request is received by HHSC. Notification of an approved increase in the Contract rate will be provided through a Purchase Order Change Notice or Contract Amendment from the HHS Agency Contract Manager to include the new unit price and effective date for the increase.

## 6 Changes to The Contract

Following award, additional services or changes to the original solicitation be added/deleted via Purchase Order Change Notice (POCN) approved by the HHS Agency and the Contractor.

After award, substitute items may be accepted if they meet or exceed specifications with prior approval from agency.

## 7 Contract Term

### 7.1 Term of Contract or Purchase Order

The term of the awarded Contract or Purchase Order will be effective on the date the Purchase Order is issued and will expire based on the schedule for delivery of services or goods as outlined in this Contract or by the date or delivery days after receipt of order (ARO) provided by the Contractor.

### 7.2 Contract Term:

The Contract term shall is September 01, 2023 or date of award through August 31, 2028.

### 7.3 Price Increase(s)

The contractor must provide, in writing, to the HHS (Health and Human Services) agency, a request for a price increase. The Contractor must provide documentation to justify the price increase. Failure to provide the required documentation may result in rejection of the price increase request.

The contractor must submit written requests for price increase no later than ninety (90) days before the new fiscal year on September 1 of each year. Contractor must provide supporting documentation to justify any price adjustment. The HHS agency reserves the right to accept or reject the request for a price increase.

The Contractor will receive written notification, through a Purchase Order Change Notice or Contract Amendment, from the HHS Purchaser documenting action taken, to include effective dates, for any adjustments approved.

### 7.4 Extension Option

The HHS Agency, at its sole option and subject to availability of funding, may extend the Contract beyond the initial term and all renewal periods for up to one (1) year as necessary to ensure continuity of service, to process a new solicitation, to secure a new contract, for purposes of transition to a new Contractor, or as otherwise determined by the HHS Agency. This extension, if exercised, will require the Contractor to continue performing services in accordance with the Contract requirements and all terms and conditions.

## 8 Contract Administration/Transactional Purchase Order Administration

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**8.1 Contract Manager/Program Lead**

The designated Contract Manager or Program Lead is listed below.

HHSC Agency Contract Manager: Noel Lashbrook

4601 West Guadalupe

Austin, TX 78751

E-mail: noel.lashbrook@hhs.texas.gov

Phone: 512-915-6398

All communications related to the Contract and requests for changes to the Contract will be processed through the designated HHS Agency Contract Manager. The preferred method to contact the HHSC Contract manager is by e-mail.

**8.2 Services Performed**

a) The HHS Agency Contract Manager or designee will monitor all work performed which shall be in accordance with this Contract, local codes and ordinances and any other authority having lawful jurisdiction and shall periodically communicate with the Contractor via telephone, email, and conduct on-site visits to address questions, concerns or progress.

b) It is important that the Contractor performs all duties and requirements as stated. Failure to do so may result in termination of the Contract.

c) All services and deliverables must meet or exceed the required levels of performance specified in this Contract.

d) Contractor will be notified by the HHS Agency Contract Manager or designee in writing to correct any service or portion of a service. The Contractor shall take immediate action to correct the service or portion of a service at no additional cost to the HHS Agency. The Contractor shall notify the HHS Agency Contract Manager or designee upon completion for HHS Agency inspection and acceptance, as applicable.

**8.3 Performance Reporting**

The HHS Agency Contract Manager is required to report vendor performance for purchases over \$25,000 through the Texas Comptroller of Public Accounts (CPA) Vendor Performance Tracking System (VPTS). The VPTS reporting is required throughout the life of a contract and not just at its conclusion. HHSC PCS, at its sole discretion, may submit reports in the VPTS on Purchase Orders under \$25,000. The VPTS information and report search may be accessed at: <https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>.

**Performance Notification & Non-Material Deficiency**

The HHS Agency may notify Contractor in writing of specific areas of the Contractor's performance that fail to meet performance expectations, standards, or schedules, but that, in the determination of the HHS Agency, do not result in a material deficiency or delay in the implementation or operation of the services.

**8.4 Contractor Response to Notification of Non-Material Deficiency**

The Contractor shall, within three (3) business days (or another date approved by the HHS Agency) of receipt of written notice of a non-material deficiency, provide the HHS Agency Contract Manager a written response that:

8.4.1 Explains the reasons for the deficiency, the Contractor's plan to address or cure the deficiency, and when the deficiency will be cured; or

8.4.2 If the Contractor disagrees with the HHS Agency's findings, the response must include the reasons why the findings are disputed.

The Contractor's noncompliance or rectifying the deficiency may result in delayed payment or non-payment as determined by the HHS Agency.

**8.5 Corrective Action Plan (The Plan)**

At its discretion, the HHS Agency may request in writing and require the Contractor to submit a detailed written Corrective Action Plan and include how the Contractor will correct or resolve an issue, deficiency, or a breach of this Contract.

The Plan must include, but is not limited to:

8.5.1 A detailed explanation of the reasons for the cited deficiency;

8.5.2 The Contractor's assessment or diagnosis of the cause; and

8.5.3 A specific proposal to cure or resolve the deficiency.

The Plan must be submitted by the deadline set forth in the HHS Agency's request.

The Plan is subject to approval, which will not be unreasonably withheld, by the HHS Agency.

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**8.6 Performance Issues**

The Contractor shall be required to correct all performance issues reported by the HHS Agency Contract Manager within 48 business hours. If requested by the HHS Agency, the Contractor shall provide a written report detailing the performance issue(s) and resolution. The HHS Agency's Contract Manager will report/discuss performance deficiencies with the Contractor and seek to achieve resolution of the issues.

The HHS Agency Contract Manager may report the following compliance issues to HHSC/PCS for resolution.

8.6.1 Failure to reach agreement on corrective action.

8.6.2 Failure to perform in accordance with the Corrective Action Plan.

8.6.3 Violations of this Contract and Corrective Action Plan(s).

**8.7 Confidential or Proprietary Information****8.7.1 Bidder Requirements Regarding Disclosure**

Proposals and contracts are subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552, and may be disclosed to the public upon request. Other legal authority also requires HHSC to post certain contracts and Solicitation responses on its public website and to provide such information to the Legislative Budget Board for posting on its website.

Under the PIA, certain information is protected from public release. If Bidder asserts that information provided in its Solicitation Response is exempt from disclosure under the PIA, Bidder must:

**8.7.1.1 Mark Original Proposal**

8.7.1.2 Mark the Original Proposal, on the top of the front page, with the words **CONTAINS CONFIDENTIAL**

**INFORMATION** in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger); and

8.7.1.3 Identify, adjacent to each portion of the Solicitation Response, that Bidder claims is exempt from public disclosure, the claimed exemption from disclosure (NOTE: no redactions are to be made in the Original Solicitation Response).

8.7.2 Certify in Original Solicitation Response - HHS Solicitation Affirmations (attached as Exhibit A to this Solicitation)

8.7.3 Certify, in the designated section of the HHS Solicitation Affirmations, Bidder's confidential information assertion and the filing of its Public Information Act Copy; and

**8.7.3.1 Submit Public Information Act Copy of Proposal**

8.7.3.2 Submit a separate **Public Information Act Copy** of the Original Proposal (in addition to the original and all copies otherwise required under the provisions of this Solicitation). The Public Information Act Copy must meet the following requirements:

8.7.3.3 The copy must be clearly marked as **PUBLIC INFORMATION ACT COPY** on the front page in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger);

8.7.3.4 Each portion Bidder claims is exempt from public disclosure must be redacted (blacked out); and

8.7.3.5 Bidder must identify, adjacent to each redaction, the claimed exemption from disclosure. Each identification provided as required in Subsection (c) of this section must be identical to those set forth in the Original Proposal as required in Subsection (a)(2), above. The only difference in required markings and information between the Original Proposal and the **Public Information Act Copy** of the proposal will be redactions - which can only be included in the **Public Information Act Copy**. There must be no redactions in the Original Proposal.

By submitting a response to this Solicitation, Bidder agrees that, if Bidder does not mark the Original Solicitation Response, provide the required certification in the HHS Solicitation Affirmations, and submit the Public Information Act Copy, Bidder's Solicitation Response will be considered to be public information that may be released to the public in any manner including, but not limited to, in accordance with the Public Information Act, posted on the HHS public website, and posted on the Legislative Budget Board's public website.

Bidder should not submit a Public Information Act Copy indicating that the entire proposal is exempt from disclosure. Merely making a blanket claim that the entire proposal is protected from disclosure because it contains any amount of confidential, proprietary, trade secret, or privileged information is not acceptable, and may make the entire Solicitation Response subject to release under the PIA.

Solicitation Responses should not be marked or asserted as copyrighted material. If Bidder asserts a copyright to any portion of its proposal, by submitting a proposal, Bidder agrees to reproduction and posting on public websites by the State of Texas, including HHSC and all other state agencies, without cost or liability.

HHSC will strictly adhere to the requirements of the PIA regarding the disclosure of public information. As a result, by participating in this solicitation process, Bidder acknowledges that all information, documentation, and other materials submitted in the Solicitation Response in response to this Solicitation may be subject to public disclosure under the PIA.



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HHSC does not have authority to agree that any information submitted will not be subject to disclosure. Disclosure is governed by the PIA and by rulings of the Office of the Texas Attorney General. Bidders are advised to consult with their legal counsel concerning disclosure issues resulting from this process and to take precautions to safeguard trade secrets and proprietary or otherwise confidential information. HHSC assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Bidders. For more information concerning the types of information that may be withheld under the PIA or questions about the PIA, refer to the Public Information Act Handbook published by the Office of the Texas Attorney General or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the Public Information Act Handbook, visit the attorney general's website at <https://www.texasattorneygeneral.gov/>

### 8.8 Bidder Waiver & Intellectual Property

Submission of any document to any HHS Agency in response to this solicitation constitutes an irrevocable waiver and agreement by the submitting party to fully indemnify the State of Texas and the HHS Agency from any claim of infringement by the HHS Agency regarding the intellectual property rights of the submitting party or any third party for any materials submitted to HHS by the submitting party.

## 9 Invoicing and Payment

### 9.1 Bill-to Address

The Contract or Purchase Order will include the appropriate bill-to address for the submission of invoices to any HHS Agency requesting services.

### 9.2 Invoice Information

Invoices submitted to the HHS Agency must reflect the Contract or PO number and must provide the work completed, in detail, for which payment is due. The detail of the work completed must comply with the Pricing Sheet (see Exhibit D, Pricing Sheet).

Invoice must provide the following

- ¿ Contract number
- ¿ Contractor name
- ¿ Contractor Employer Identification Number (EIN)
- ¿ Contractor Address (street, PO Box, city, State, Zip)
- ¿ Telephone Number
- ¿ Fax Number
- ¿ Contact Name
- ¿ HHSC PO Number
- ¿ Event Name
- ¿ Description of product(s) or service(s) (description must coordinate with product/unit of measure ordered)
- ¿ Service Location & GPS coordinates (required by FEMA)
- ¿ Invoice Number
- ¿ Invoice Date
- ¿ Unit(s) of measure
- ¿ Unit price
- ¿ Extended price
- ¿ Invoice must record the STAR PO (State of Texas Request Purchase Order) number in such a way that all bottled water or trailers that are charged detention that are requested under a STAR PO number can be traced back to the STAR PO number.

### 9.3 Payment

Payment will be made by the HHS Agency in accordance with the pricing provided on Exhibit D - Pricing Sheet. The pricing is considered all-inclusive, and no other pricing may be provided on an invoice.

- a) The HHS Agency must receive products included on an invoice prior to approving the invoice for payment.
- b) Any additional expenses incurred by the Contractor are the responsibility of the Contractor and will not be paid by the

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**Contract Purchase Order**

**HHS Agency.**

c) The HHS Agency will not pay any per diem, travel, hotel, equipment, phone calls, paper, reproduction services, office space, or other incidental expenses related to performing the services required by the Contract.

**9.4 Invoice Submission**

- a) Contractor must submit invoices on a monthly basis or as otherwise indicated on the purchase order.
- b) Separate invoices must be submitted for each delivery, as applicable.
- c) Failure to submit an accurate and valid invoice with all required information may result in delay of payment.

**9.5 Disputed Invoice(s)**

In accordance with 34 Texas Administrative Code, Rule §20.487(b), the HHS Agency will immediately return disputed invoices to the Contractor but in no event later than the 21st day after the HHS Agency receives the invoice. The HHS Agency reserves the right to dispute any portion of an invoice and will attempt to resolve the dispute with the Contractor in good faith. The HHS Agency shall not be required to pay any disputed portion of an invoice until the dispute is resolved. Notwithstanding any such dispute, the Contractor must continue to perform the services and/or produce deliverables in compliance with the terms of the Contract. Pending resolution of a dispute, the HHS Agency will continue to process payments for undisputed amounts and invoices to the Contractor.

**9.6 Required Pricing**

The Pricing Sheet, Exhibit D, identifies the pricing requested and required for the products and related services outlined in this Solicitation. The pricing is significant in the overall evaluation of the responses. HHSC PCS is not obligated to select the lowest priced response. The pricing will be evaluated across all Bidders to determine the Response with the lowest price per line item or lowest total for all line items.

The award will be made to the Bidder whose response offers the best value to the State based on all factors considered, including price.

**10 Insurance**

If applicable, Bidder / Contractor must have insurance coverage on any vehicles used in the performance of this Contract as required by the State of Texas with appropriate coverage for commercial trucks (Owned, Non-Owned and Hired).

**11 Disclosure of Interested Parties**

Subject to certain specified exceptions, Texas Government Code Section 2252.908, Disclosure of Interested Parties, applies to a contract of a state agency that has a value of at least \$1 million or a contract that requires an action or vote by the governing body of the agency before the contract may be signed or a Purchase Order can be issued. One of the requirements of Section 2252.908 is that a business entity (defined as any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation) must submit a Form 1295, Certificate of Interested Parties, to the state agency at the time the business entity is notified it is a potential awardee or at the time the business entity submits the signed contract to the agency.

Contractor represents and warrants that, Contractor has submitted to HHSC a Certificate of Interested Parties at the time Contractor submitted the signed contract or is notified by HHSC that Bidder is a potential awardee. Form 1295 involves an electronic process through the Texas Ethics Commission (TEC).

Information regarding the online process for completing Form 1295 is available at:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

For further information:

Reference Section 2252.908 of the Texas Government Code which can be accessed at:

<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm#2252.908>.

Title 1, Chapter 46, Disclosure of Interested Parties of the Texas Administrative Code which can be accessed at:

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=1&pt=2&ch=46&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=2&ch=46&rl=Y).

Vendor Contact Information and 24/7H POC

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Kristie Hurley Ph: 806-993-1391 Email: sales@essencebottling.com

Vendor Contact Information and 24/7H POC

Jasper Evins Phone: 830-360-0421 Email: jevins@2officialwater.com

I. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

II. Bottled Water Contract for Emergencies and / or Declared Disasters in the State Of Texas

HHS0013597

III. NIGP Class/Item No(s): 390-91

### 1 HHSC Overview

The Health and Human Services Commission (HHSC) was created in 1991 to oversee and coordinate the planning and delivery of health and human services in Texas. It is established pursuant to Chapter 531, Texas Government Code and is responsible for oversight of Texas Health and Human Services agencies (HHS Agency).

PCS administers the procurement processes, which include Solicitation announcement and publication, Bidder communications, receipt of Responses, screening of timely received responses, and facilitating the evaluation of qualified Responses. PCS, in coordination with each HHS program, manages the execution of the award, through issuance of Purchase Order(s) or other Contract document, resulting from Solicitation HHS0013597.

Both HHS Agencies, HHSC and DSHS, will be entitled to use any contract awarded as a result of this Contract.

#### 1.1 No Guarantee of Volume, Usage or Compensation

HHS Agency does not guarantee any volume, usage, or compensation to be paid to any Contractor under any Contract resulting from this Solicitation. Additionally, all HHS Agency contracts are subject to appropriations, the availability of funds, and termination.

The estimated historical quantities included in the Price Sheet are provided only as a guideline for preparing the pricing response and should not be construed as representing anticipated or actual quantities that will be required.

#### 1.2 Contract Components

This Solicitation includes the following items:

- \* Exhibit A - HHS Solicitation Affirmations
- \* Exhibit B - Contract Affirmations and HHS Uniform Terms and Conditions (UTCs)
- \* Exhibit C - Bid Execution Page
- \* Exhibit D - Pricing Sheet
- \* Exhibit F - Historically Underutilized Business (HUB) Subcontracting Plan(HSP) Requirements

### 2 Definitions

Unless the context clearly indicates otherwise, throughout this Contract, the definition given to a term below applies whenever the term appears in this Contract. All other terms have their ordinary and common meaning.

- a) Addendum  $\zeta$  A written clarification or revision to this Contract issued by HHSC.
- b) Contract  $\zeta$  A legally enforceable agreement between two or more parties. As a result of this Solicitation, HHSC may issue a Contract document or Purchase Order (see definition).
- c) Contractor - Each Bidder, business entity or individual, if any, awarded a Contract (Purchase Order) to provide the services or goods as a result of this Solicitation.
- d) Contract Term  $\zeta$  The period of time during which the Purchase Order or Contract is in effect from the start date through the end date and may include renewal or extension periods.
- e) Debarment  $\zeta$  An exclusion from contracting or subcontracting with state agencies on the basis of cause pursuant to Title 34, Part 1, Chapter 20, Subchapter G of the Texas Administrative Code, and the Federal System for Award Management (SAM).
- f) Deliverables  $\zeta$  The services or goods specified in this Solicitation and any resulting Contract, that the Contractor shall perform or deliver to the HHS Agency for acceptance.
- g) Exhibit  $\zeta$  A document, included as an attachment to this Contract, which provides terms and conditions, additional requirements and information related to this Contract.
- h) HHS Agency - The Texas Health and Human Services Commission (HHSC) and the Texas Department of State Health Services (DSHS), separately or combined.
- i) Purchase Order  $\zeta$  A legally enforceable agreement between two or more parties. A Purchase Order is issued by HHSC

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indicating types, quantities, and agreed pricing for services and goods the Contractor will provide. Also considered a Contract.

j) Scope of Work  $\zeta$  The description of requirements, services, specifications for goods which may be required, and deliverables as provided in this Contract.

k) Solicitation - This document, including all exhibits, attachments, appendices, or Addenda (if applicable). May also be referred to as Invitation for Bid or IFB.

l) Subcontractor - Any entity or individual that enters into a contract with the Contractor to perform part or all of the obligations of the Contractor under the Contract.

m) Unit Rate  $\zeta$  The set rate per the unit of measure (UOM), used for payment of the services, included on the Price Sheet under the Contract or Purchase Order. (e.g., Hourly, Daily, Weekly, Monthly, etc.).

n) Vendor  $\zeta$  A business entity or individual that supplies services or goods and may be a potential Bidder to this Solicitation.

o) Texas Identification Number (TIN)  $\zeta$  The 11-digit identification number set up through the Texas Comptroller of Public Accounts which is required for any entity or individual to receive payment under a Contract with the State of Texas. Also known as Texas Payee ID Number required in Exhibit A, HHS Solicitation Affirmations. Further information regarding this number may be accessed on the CPA website at

[https://fm.xcpa.texas.gov/fm/pubs/payment/gen\\_prov/index.php?s=payee\\_numreq&p=payee\\_numreq](https://fm.xcpa.texas.gov/fm/pubs/payment/gen_prov/index.php?s=payee_numreq&p=payee_numreq)

### 3 Scope of Work (SOW) and Specifications

#### 3.1 Specifications

Water, bottled, 0.5 liter (or 16.9 oz), per bottle. Drinking/Bottled Water  $\zeta$  Treated or untreated water that is intended for human uses and consumption and considered to be free of disease-bearing bacteria, cysts, viruses and harmful chemicals.

#### 3.2 Additional specifications:

a) Water must be packaged 24 bottles per case. The cases must be palletized with approximately 72 cases per pallet and 22 pallets per truckload. All pallets must be shrink-wrapped.

b) Water must be potable, and vendor must submit certification with each shipment. The certification process must be accomplished by an appropriate food service inspecting organization (such as NSF Bottled Water Certification Program).

c) Pallet costs must be included in unit prices.

d) Product is to have a minimum shelf life of six (6) months.

The agency will only order the amount needed to satisfy operating requirements during a declared emergency or disaster. The amount may be more or less than indicated. The vendor will agree not to ship any materials until instructions are received from the agency.

The information identified above is intended to be descriptive, not restrictive, and to indicate the quality and characteristics of products that will be satisfactory.

#### A. Deliveries

##### 3.3 Delivery Driver Guidelines:

a) Observe all posted speed limits. Speed limits are strictly enforced.

b) Observe all stop signs and other traffic controls.

c) Parking must be in area designated by Warehouse staff.

d) Vehicles must be locked, and keys removed at all times when unattended.

e) Pedestrians have the right-of-way at all times. Drive with extreme caution and be prepared to cope with unexpected circumstances.

f) Firearms and alcoholic beverages are forbidden on campus.

g) Tools and equipment must be properly secured at all times.

h) No smoking.

i) Contact with residents is forbidden. Do not offer cigarettes, matches, lighters, food or money to residents.

j) If you require assistance with a resident, notify Facility staff.

##### 3.4 Carton Labeling/Pallet Labeling

k) At a minimum, product must be labeled on outer carton with the following information:

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- a. Description of Contents
- b. Agency Purchase Order #
- c. Quantity per Carton

l) At a minimum, pallets must be shrink wrapped and labeled.

3.5 It is required that vendor contact the point of contact specified on the issued PO to set up a delivery appointment.

3.6 Deliveries are to be made between 7:00 AM and 2:00 PM on date specified, to the address specified on the issued PO or instructions provided.

3.7 The vendor is responsible for payment of any additional charges by the contract warehouse (such as overtime, blast freezing, lowering temperatures, re-stacking; second delivery due to split delivery quantity [unless requested by HHSC], unloading charges, etc.).

3.8 ALL deliveries shall arrive ON TIME as requested by HHSC. It is the awarded vendor's responsibility to contact HHSC Purchaser if unforeseen circumstances arise that may cause a delivery to be late.

3.9 HHSC reserves the right to purchase late items on an emergency basis and charge any resulting increase in price to the awarded vendor.

3.10 On orders calling for multiple deliveries, awarded vendor will be notified in writing by HHSC approximately within 6 hours of activation prior to requested delivery date.

3.11 Orders must be delivered complete. Items delivered must be the item bid. Split deliveries will not be accepted, unless requested.

3.12 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. Vendor will reimburse the agency for cost of storage and handling fees incurred at the contracted storage facility and any cost to pick up and return product delivered to individual facilities. Any cost incurred to verify compliance with these specifications will be the responsibility of the vendor if product is found not to be in compliance. This may include but is not limited to laboratory tests.

### 3.13 Receiving Products

The Agency will ensure product received is the same as awarded item. Product that is not the awarded contract item, or product that is damaged or otherwise not in good condition, will be refused. Instances of damaged case goods, the Agency will accept the product that is in good condition and return the portion of the shipment that is damaged. If shortages occur due to refusal of damaged products or otherwise at the fault of the vendor, The Agency may purchase needed items locally on an Emergency Purchase Basis. The awarded contract vendor shall be responsible for the difference in cost, if any, between the contract item and the emergency purchase items. Should the Agency determine an awarded product does not meet the specifications listed the Agency will immediately contact the vendor to attempt resolution. If not resolved, the Agency will contact the HHSC Buyer and HHSC Contract Manager. The Agency will retain the product case, label intact, under appropriate storage conditions until product is secured for further investigation.

### 3.14 Deliverables: Containers or Trailers

#### 3.14.1 Definitions

"Dropped Loads" = Container (trailer) is delivered and left at a specific location; the driver must later return to pick up the empty trailer, usually within 48 hours.

"Live Unload" = Unloading of freight from a container (trailer) while the driver waits onsite.

"Detention" = Containers (trailers) with bottled water are retained beyond a specific unloading time after a dropped load. Trailer detention time starts when the trailer is recorded as dropped. A single day of detention time shall be for a period of 24 hours.

3.14.2 Quantities of bottled water may be increased or decreased depending upon need and/or funding availability. HHSC

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will identify units of measure by the case, pallet, partial filled trailer, or full 53' trailer.

3.14.3 The quantities shown are estimates only and do not constitute a guarantee of purchase. No guarantee of any minimum or maximum purchase is made or implied. Actual usage may be more or less than estimates. HHSC will in no way be obligated for any quantity which falls short of the estimates. HHSC will order the amount needed to satisfy operating requirements that may be more or less than indicated.

3.14.4 Contractor shall consider re-stocking provisions, if any, based on the assumption that product remains in its original shrink-wrapped pallets, with the cargo seal remaining intact. Re-stocking provisions may include but are not limited to: product amount that can be returned, a re-stocking fee not to exceed 15% of the quoted price per bottle in contractor's bid and timeframe for returns.

3.14.5 To be responsive to emergency needs, the State may pre-stage product six to twenty-four (6 - 24) hours prior to the disaster or event; hence, ability to load within two to six (2 - 6) hours of notification to Contractor is required. If the Contractor is other than the manufacturer, Contractor must submit evidence of a contractual relationship between Contractor and manufacturer which guarantees that the contracted items are available and can be delivered as requested.

3.14.6 Staging locations will be assigned in designated locations within one of six regions as outlined by the Texas Division of Emergency Management (TDEM) in <https://www.tdem.texas.gov/regions> when HHSC is activated under a state or federal declaration to purchase emergency bottled water.

3.14.7 Any other required deliveries will be dependent upon the nature of the disaster relief effort and the area affected statewide by the formally declared disaster or state of emergency. The Contractor must have the capability to deliver product statewide.

3.14.8 The agency will only order the amount needed to satisfy operating requirements which may be more or less than indicated. The Contractor will agree not to ship any materials until instructions are received from the agency.

3.14.9 Contractor shall make product available for shipment within two to six (2 - 6) hours from notification to ship. Locations will be determined per request or disaster event.

3.14.10 Emergency availability for shipment is to be within two to six (2 - 6) hours of notification by HHSC. This shall include any day, any time, including weekends and holidays.

3.14.11 Live unload or dropped loads (See definitions immediately under Section 2 heading) may be requested.

3.14.12 - In the case of dropped load requests, a driver must be readily available (within 24 hours of notification) for trailer pick-up and possible load pick-up and relocation. Contractor must be ready to move trailers from one site to another as stipulated at the request and authorized direction of the contracting HHS agency.

3.14.13 Detention duration for dropped loads is typically between three to seven days.

3.14.14 Contractor must accurately estimate future arrival times and provide real-time delivery and pick up status notification of completed, attempted or refused delivery and or pickup.

3.14.15 Contractor must be able to track and communicate with their drivers at all times to ensure that service is being performed and that on-demand service requests are handled in a timely and accurate manner.

#### 4 HUB Subcontracting Plan (HSP) Requirements

The Comptroller of Public Accounts (CPA), Statewide Procurement Division (SPD) administers the Historically Underutilized Business (HUB) Program in accordance with Chapter 2161, Texas Government Code, and Rules §20.281 to §20.298, Title 34, Chapter 20, Subchapter D, Division 1, Texas Administrative Code. The HUB Program rules may be accessed at: <https://comptroller.texas.gov/purchasing/vendor/hub/>.

It is the policy of HHSC to promote and encourage contracting and subcontracting opportunities with State of Texas-certified Historically Underutilized Businesses (HUBs). Information regarding the HHSC Policy on Using HUBs may be

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accessed at: <https://hhs.texas.gov/doing-business-hhs/contracting-hhs/historically-underutilized-business-opportunities-program>.

## 5 Pricing Information

### 5.1 Pricing Structure

Prices offered, as part of the Bidder's response, must be firm, fixed prices for the initial term of the Contract.

The pricing reported in Exhibit D Pricing Sheet is based on the description and the unit of measure(s) provided for each line item. The unit prices reflect the Solicitation HHS0013597 requirements, including, but not limited to, labor, equipment, materials, supplies and all related expenses.

### 5.2 Price Adjustments

Contractors are required to immediately implement any price decrease that may become available during the Contract term. Contractor must notify the designated contract manager in writing so that a Purchase Order Change Notice or Contract Amendment may be processed. The Contractor will be provided the contract manager contact information upon award.

#### 5.2.1 Price Adjustment Index

Price adjustments are not automatic. Prices only may be adjusted at the sole discretion of HHSC.

HHSC may permit price adjustments when correlated with the index as specified below and as published by the Bureau of Labor Statistics (BLS), Region VI, Washington, DC 20212.

BLS Website: <https://data.bls.gov/cgi-bin/srgate>

CPI-W Urban Wage Earners and Clerical Workers  $\chi$  Series ID: CWURR0000AA0:

<https://data.bls.gov/timeseries/CWUR0000AA0>

CPI-U All Urban Consumers  $\chi$  Series ID: CUUR0000AA0 <https://data.bls.gov/timeseries/CUUR0000AA0>

When using the most recent monthly information from the index, the following applies:

A = Index from the month of the Response Deadline of this Solicitation, OR

The effective date/month of the last approved price increase or renewal option exercised

B = Current or latest baseline index

The allowable percent change must be calculated as follows:

$(B-A) \div A \times 100\% =$  Percent of allowable price increase or decrease

Failure by the Contractor to calculate this formula and provide any supporting documentation will not be considered a properly submitted price increase request.

The Contractor may offer price decreases in excess of the allowable percent change at any time during the term of the Contract.

#### 5.2.2 Price Adjustment Requests

The Contractor must provide, in writing to the HHS Agency contract manager, a request for a price adjustment. The adjustment request must use the index and formula identified in the Price Adjustment Index Section.

Contractor must provide supporting documentation to justify any price adjustment. Any request submitted that fails to use the formula above for calculating a price adjustment will not be considered a complete, properly submitted request.

Additionally, any request submitted by a Contractor that does not include supporting documentation will not be considered a complete, properly submitted price adjustment request.

The HHS Agency reserves the right to accept or reject the request for a price adjustment. The Contractor will receive written notification, through a Purchase Order Change Notice or Contract Amendment, from the HHS Agency contract manager documenting action taken, to include effective dates, for any adjustments approved.

#### 5.2.3 Federal Minimum Wage Adjustments

Contractor may request a price adjustment based on an increase in the Federal Minimum Wage Rate, published by the U.S. Department of Labor (USDOL), if applicable.

The request must be submitted to the HHS Agency contract manager in writing and include supporting documentation from the USDOL reflecting the increase and the effective date of the increase. HHSC reserves the right to accept or reject the request for an increase.

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The effective date for an increase, if approved, will be based on the date of approval by the HHS Agency. Retroactive increases will not be allowed or approved if the USDOL effective date is prior to the date the written request is received by HHSC. Notification of an approved increase in the Contract rate will be provided through a Purchase Order Change Notice or Contract Amendment from the HHS Agency Contract Manager to include the new unit price and effective date for the increase.

**6 Changes to The Contract**

Following award, additional services or changes to the original solicitation be added/deleted via Purchase Order Change Notice (POCN) approved by the HHS Agency and the Contractor.

After award, substitute items may be accepted if they meet or exceed specifications with prior approval from agency.

**7 Contract Term****7.1 Term of Contract or Purchase Order**

The term of the awarded Contract or Purchase Order will be effective on the date the Purchase Order is issued and will expire based on the schedule for delivery of services or goods as outlined in this Contract or by the date or delivery days after receipt of order (ARO) provided by the Contractor.

**7.2 Contract Term:**

The Contract term shall is September 01, 2023 or date of award through August 31, 2028.

**7.3 Price Increase(s)**

The contractor must provide, in writing, to the HHS (Health and Human Services) agency, a request for a price increase. The Contractor must provide documentation to justify the price increase. Failure to provide the required documentation may result in rejection of the price increase request.

The contractor must submit written requests for price increase no later than ninety (90) days before the new fiscal year on September 1 of each year. Contractor must provide supporting documentation to justify any price adjustment. The HHS agency reserves the right to accept or reject the request for a price increase.

The Contractor will receive written notification, through a Purchase Order Change Notice or Contract Amendment, from the HHS Purchaser documenting action taken, to include effective dates, for any adjustments approved.

**7.4 Extension Option**

The HHS Agency, at its sole option and subject to availability of funding, may extend the Contract beyond the initial term and all renewal periods for up to one (1) year as necessary to ensure continuity of service, to process a new solicitation, to secure a new contract, for purposes of transition to a new Contractor, or as otherwise determined by the HHS Agency. This extension, if exercised, will require the Contractor to continue performing services in accordance with the Contract requirements and all terms and conditions.

**8 Contract Administration/Transactional Purchase Order Administration****8.1 Contract Manager/Program Lead**

The designated Contract Manager or Program Lead is listed below.

HHSC Agency Contract Manager: Noel Lashbrook

4601 West Guadalupe

Austin, TX 78751

E-mail: noel.lashbrook@hhs.texas.gov

Phone: 512-915-6398

All communications related to the Contract and requests for changes to the Contract will be processed through the designated HHS Agency Contract Manager. The preferred method to contact the HHSC Contract manager is by e-mail.

**8.2 Services Performed**

a) The HHS Agency Contract Manager or designee will monitor all work performed which shall be in accordance with this Contract, local codes and ordinances and any other authority having lawful jurisdiction and shall periodically communicate with the Contractor via telephone, email, and conduct on-site visits to address questions, concerns or progress.

b) It is important that the Contractor performs all duties and requirements as stated. Failure to do so may result in



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termination of the Contract.

c) All services and deliverables must meet or exceed the required levels of performance specified in this Contract.

d) Contractor will be notified by the HHS Agency Contract Manager or designee in writing to correct any service or portion of a service. The Contractor shall take immediate action to correct the service or portion of a service at no additional cost to the HHS Agency. The Contractor shall notify the HHS Agency Contract Manager or designee upon completion for HHS Agency inspection and acceptance, as applicable.

### 8.3 Performance Reporting

The HHS Agency Contract Manager is required to report vendor performance for purchases over \$25,000 through the Texas Comptroller of Public Accounts (CPA) Vendor Performance Tracking System (VPTS). The VPTS reporting is required throughout the life of a contract and not just at its conclusion. HHSC PCS, at its sole discretion, may submit reports in the VPTS on Purchase Orders under \$25,000. The VPTS information and report search may be accessed at: <https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>.

#### Performance Notification & Non-Material Deficiency

The HHS Agency may notify Contractor in writing of specific areas of the Contractor's performance that fail to meet performance expectations, standards, or schedules, but that, in the determination of the HHS Agency, do not result in a material deficiency or delay in the implementation or operation of the services.

### 8.4 Contractor Response to Notification of Non-Material Deficiency

The Contractor shall, within three (3) business days (or another date approved by the HHS Agency) of receipt of written notice of a non-material deficiency, provide the HHS Agency Contract Manager a written response that:

8.4.1 Explains the reasons for the deficiency, the Contractor's plan to address or cure the deficiency, and when the deficiency will be cured; or

8.4.2 If the Contractor disagrees with the HHS Agency's findings, the response must include the reasons why the findings are disputed.

The Contractor's noncompliance or rectifying the deficiency may result in delayed payment or non-payment as determined by the HHS Agency.

### 8.5 Corrective Action Plan (The Plan)

At its discretion, the HHS Agency may request in writing and require the Contractor to submit a detailed written Corrective Action Plan and include how the Contractor will correct or resolve an issue, deficiency, or a breach of this Contract.

The Plan must include, but is not limited to:

8.5.1 A detailed explanation of the reasons for the cited deficiency;

8.5.2 The Contractor's assessment or diagnosis of the cause; and

8.5.3 A specific proposal to cure or resolve the deficiency.

The Plan must be submitted by the deadline set forth in the HHS Agency's request.

The Plan is subject to approval, which will not be unreasonably withheld, by the HHS Agency.

### 8.6 Performance Issues

The Contractor shall be required to correct all performance issues reported by the HHS Agency Contract Manager within 48 business hours. If requested by the HHS Agency, the Contractor shall provide a written report detailing the performance issue(s) and resolution. The HHS Agency's Contract Manager will report/discuss performance deficiencies with the Contractor and seek to achieve resolution of the issues.

The HHS Agency Contract Manager may report the following compliance issues to HHSC/PCS for resolution.

8.6.1 Failure to reach agreement on corrective action.

8.6.2 Failure to perform in accordance with the Corrective Action Plan.

8.6.3 Violations of this Contract and Corrective Action Plan(s).

### 8.7 Confidential or Proprietary Information

#### 8.7.1 Bidder Requirements Regarding Disclosure

Proposals and contracts are subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552, and may be disclosed to the public upon request. Other legal authority also requires HHSC to post certain contracts and Solicitation responses on its public website and to provide such information to the Legislative Budget Board for posting on its website.

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Under the PIA, certain information is protected from public release. If Bidder asserts that information provided in its Solicitation Response is exempt from disclosure under the PIA, Bidder must:

8.7.1.1 Mark Original Proposal

8.7.1.2 Mark the Original Proposal, on the top of the front page, with the words **CONTAINS CONFIDENTIAL INFORMATION** in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger); and

8.7.1.3 Identify, adjacent to each portion of the Solicitation Response, that Bidder claims is exempt from public disclosure, the claimed exemption from disclosure (NOTE: no redactions are to be made in the Original Solicitation Response).

8.7.2 Certify in Original Solicitation Response - HHS Solicitation Affirmations (attached as Exhibit A to this Solicitation)

8.7.3 Certify, in the designated section of the HHS Solicitation Affirmations, Bidder's confidential information assertion and the filing of its Public Information Act Copy; and

8.7.3.1 Submit Public Information Act Copy of Proposal

8.7.3.2 Submit a separate **Public Information Act Copy** of the Original Proposal (in addition to the original and all copies otherwise required under the provisions of this Solicitation). The Public Information Act Copy must meet the following requirements:

8.7.3.3 The copy must be clearly marked as **PUBLIC INFORMATION ACT COPY** on the front page in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger);

8.7.3.4 Each portion Bidder claims is exempt from public disclosure must be redacted (blacked out); and

8.7.3.5 Bidder must identify, adjacent to each redaction, the claimed exemption from disclosure. Each identification provided as required in Subsection (c) of this section must be identical to those set forth in the Original Proposal as required in Subsection (a)(2), above. The only difference in required markings and information between the Original Proposal and the **Public Information Act Copy** of the proposal will be redactions - which can only be included in the **Public Information Act Copy**. There must be no redactions in the Original Proposal.

By submitting a response to this Solicitation, Bidder agrees that, if Bidder does not mark the Original Solicitation Response, provide the required certification in the HHS Solicitation Affirmations, and submit the Public Information Act Copy, Bidder's Solicitation Response will be considered to be public information that may be released to the public in any manner including, but not limited to, in accordance with the Public Information Act, posted on the HHS public website, and posted on the Legislative Budget Board's public website.

Bidder should not submit a Public Information Act Copy indicating that the entire proposal is exempt from disclosure. Merely making a blanket claim that the entire proposal is protected from disclosure because it contains any amount of confidential, proprietary, trade secret, or privileged information is not acceptable, and may make the entire Solicitation Response subject to release under the PIA.

Solicitation Responses should not be marked or asserted as copyrighted material. If Bidder asserts a copyright to any portion of its proposal, by submitting a proposal, Bidder agrees to reproduction and posting on public websites by the State of Texas, including HHSC and all other state agencies, without cost or liability.

HHSC will strictly adhere to the requirements of the PIA regarding the disclosure of public information. As a result, by participating in this solicitation process, Bidder acknowledges that all information, documentation, and other materials submitted in the Solicitation Response in response to this Solicitation may be subject to public disclosure under the PIA. HHSC does not have authority to agree that any information submitted will not be subject to disclosure.

Disclosure is governed by the PIA and by rulings of the Office of the Texas Attorney General. Bidders are advised to consult with their legal counsel concerning disclosure issues resulting from this process and to take precautions to safeguard trade secrets and proprietary or otherwise confidential information. HHSC assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Bidders.

For more information concerning the types of information that may be withheld under the PIA or questions about the PIA, refer to the Public Information Act Handbook published by the Office of the Texas Attorney General or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the Public Information Act Handbook, visit the attorney general's website at <https://www.texasattorneygeneral.gov/>

8.8 Bidder Waiver **Intellectual Property**

Submission of any document to any HHS Agency in response to this solicitation constitutes an irrevocable waiver and agreement by the submitting party to fully indemnify the State of Texas and the HHS Agency from any claim of infringement by the HHS Agency regarding the intellectual property rights of the submitting party or any third party for any materials submitted to HHS by the submitting party.

**HHS Purchasing**  
**Contract Purchase Order**



## 9 Invoicing and Payment

### 9.1 Bill-to Address

The Contract or Purchase Order will include the appropriate bill-to address for the submission of invoices to any HHS Agency requesting services.

### 9.2 Invoice Information

Invoices submitted to the HHS Agency must reflect the Contract or PO number and must provide the work completed, in detail, for which payment is due. The detail of the work completed must comply with the Pricing Sheet (see Exhibit D, Pricing Sheet).

Invoice must provide the following

- ¿ Contract number
- ¿ Contractor name
- ¿ Contractor Employer Identification Number (EIN)
- ¿ Contractor Address (street, PO Box, city, State, Zip)
- ¿ Telephone Number
- ¿ Fax Number
- ¿ Contact Name
- ¿ HHSC PO Number
- ¿ Event Name
- ¿ Description of product(s) or service(s) (description must coordinate with product/unit of measure ordered)
- ¿ Service Location ¿ GPS coordinates (required by FEMA)
- ¿ Invoice Number
- ¿ Invoice Date
- ¿ Unit(s) of measure
- ¿ Unit price
- ¿ Extended price
- ¿ Invoice must record the STAR PO (State of Texas Request Purchase Order) number in such a way that all bottled water or trailers that are charged detention that are requested under a STAR PO number can be traced back to the STAR PO number.

### 9.3 Payment

Payment will be made by the HHS Agency in accordance with the pricing provided on Exhibit D - Pricing Sheet. The pricing is considered all-inclusive, and no other pricing may be provided on an invoice.

- a) The HHS Agency must receive products included on an invoice prior to approving the invoice for payment.
- b) Any additional expenses incurred by the Contractor are the responsibility of the Contractor and will not be paid by the HHS Agency.
- c) The HHS Agency will not pay any per diem, travel, hotel, equipment, phone calls, paper, reproduction services, office space, or other incidental expenses related to performing the services required by the Contract.

### 9.4 Invoice Submission

- a) Contractor must submit invoices on a monthly basis or as otherwise indicated on the purchase order.
- b) Separate invoices must be submitted for each delivery, as applicable.
- c) Failure to submit an accurate and valid invoice with all required information may result in delay of payment.

### 9.5 Disputed Invoice(s)

In accordance with 34 Texas Administrative Code, Rule §20.487(b), the HHS Agency will immediately return disputed invoices to the Contractor but in no event later than the 21st day after the HHS Agency receives the invoice. The HHS Agency reserves the right to dispute any portion of an invoice and will attempt to resolve the dispute with the Contractor in good faith. The HHS Agency shall not be required to pay any disputed portion of an invoice until the dispute is resolved. Notwithstanding any such dispute, the Contractor must continue to perform the services and/or produce deliverables in compliance with the terms of the Contract. Pending resolution of a dispute, the HHS Agency will continue to process payments for undisputed amounts and invoices to the Contractor.

**HHS Purchasing  
Contract Purchase Order**



**9.6 Required Pricing**

The Pricing Sheet, Exhibit D, identifies the pricing requested and required for the products and related services outlined in this Solicitation. The pricing is significant in the overall evaluation of the responses. HHSC PCS is not obligated to select the lowest priced response. The pricing will be evaluated across all Bidders to determine the Response with the lowest price per line item or lowest total for all line items.

The award will be made to the Bidder whose response offers the best value to the State based on all factors considered, including price.

**10 Insurance**

If applicable, Bidder / Contractor must have insurance coverage on any vehicles used in the performance of this Contract as required by the State of Texas with appropriate coverage for commercial trucks (Owned, Non-Owned and Hired).

**11 Disclosure of Interested Parties**

Subject to certain specified exceptions, Texas Government Code Section 2252.908, Disclosure of Interested Parties, applies to a contract of a state agency that has a value of at least \$1 million or a contract that requires an action or vote by the governing body of the agency before the contract may be signed or a Purchase Order can be issued. One of the requirements of Section 2252.908 is that a business entity (defined as ¿any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation¿) must submit a Form 1295, Certificate of Interested Parties, to the state agency at the time the business entity is notified it is a potential awardee or at the time the business entity submits the signed contract to the agency.

Contractor represents and warrants that, Contractor has submitted to HHSC a Certificate of Interested Parties at the time Contractor submitted the signed contract or is notified by HHSC that Bidder is a potential awardee. Form 1295 involves an electronic process through the Texas Ethics Commission (TEC).

Information regarding the online process for completing Form 1295 is available at:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

For further information:

Reference Section 2252.908 of the Texas Government Code which can be accessed at:

<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm#2252.908>.

Title 1, Chapter 46, Disclosure of Interested Parties of the Texas Administrative Code which can be accessed at:

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=1&pt=2&ch=46&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=2&ch=46&rl=Y).

Line Item	Line Item Description	Class	Max Ln Quantity	UoM	Unit Price	Max Line Amount
1	<b>FY24 emergency bottled water</b>	<b>390</b>	<b>1</b>	<b>BTL</b>	<b>.52</b>	<b>.52</b>
2	<b>Dropped Trailer - Detention</b>	<b>975</b>	<b>1</b>	<b>DAY</b>	<b>500</b>	<b>500</b>

All specifications, terms, and conditions set forth in the contractor's conforming solicitation response become a part of this Contract Purchase Order. Vendor guarantees goods and services delivered will meet or exceed specifications. No substitutions, over-shipments or cancellations are permitted without prior approval from the agency. If the vendor fails to deliver by promised delivery date or fails to meet advertised specifications, the agency reserves the right to purchase elsewhere and charge any increase in cost and handling to the contractor. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the agency and the Vendor to attempt to resolve all disputes arising under this contract.

Releases against this Contract Purchase Order are done by issuing a Purchase Order release and require all shipments, invoices, and correspondence to be identified with the Purchase Order #.

**HHS Purchaser**  
**Signature: Gustavo Chamorro**

Digitally signed by  
Gustavo Chamorro  
Date: 2023.08.30 11:12:43  
-05'00'

Report ID:EBPO0055

Database: FSPRD

Prepared By: Chamorro,Gustavo A

Run Date: 8/30/2023 9:53 AM

Prompts: SetID:HHSTX

Bill/Ship SetID: HHSTX

**HHS Purchasing**  
**Contract Purchase Order**



Contract ID: HHS001359700004

Bill To: 3500

Supplier Loc: \*00

Ship To: 6694

\_\_\_\_ Releases against this Contract Purchase Order are to be done by HHS Purchaser or Contract Manager authorization and are to be identified by this Contract Purchase Order #.

**Date:** \_\_\_\_\_ **Phone:** \_\_\_\_\_