TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Cecile E. Young, Executive Commissioner

Invitation for Bids

for

JFrog Software Maintenance

IFB No. #HHS0012876

NIGP Class/Item No(s): 920-45

Procurement Schedule - All Times are Central Time Reference Section 2 for further information	
Solicitation Date Posted to ESBD	November 16, 2022
Questions or Clarifications Submission Deadline	November 22, 2022
Responses to Questions or Clarifications - Addendum posted on the ESBD	November 23, 2022
Response Deadline	November 30, 2022**, 10:30 AM**
Anticipated Contract Start Date	December 23, 2022

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1 Introduction and Purpose of Solicitation

The Texas Health and Human Services Commission (HHSC) is an agency within the Texas Health and Human Services (HHS) system. The Procurement and Contracting Services (PCS) division of HHSC administers solicitations for HHS.

HHSC PCS is seeking competitive bids to establish Contract(s) for JFrog Software Maintenance.

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

To be considered for award, Bidders must submit a comprehensive Response which includes all required information and documentation as outlined in this Solicitation to ensure the Bidder meets all requirements, possesses the required experience and qualifications and has the capacity to provide the goods and related services described in this Solicitation. See Appendix A, Submission Instructions and Response Checklist.

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.

1.2 Solicitation Components

This Solicitation includes the following items:

- Exhibit A – HHS Solicitation Affirmations
- Exhibit B – PCS 111-Contract Affirmations and HHS Uniform Terms and Conditions (UTCs)
- Exhibit C – Bid Execution Page
- Exhibit D – Pricing Sheet
- Exhibit E – HHS Online Bid Room Information

2 Procurement Schedule

The Procurement Schedule dates on the cover page of this Solicitation are tentative. HHSC reserves the right to modify these dates at any time by issuing an addendum. Any events listed in the Procurement Schedule after the Response Deadline will occur at the discretion of HHSC.

Responses must be received by HHSC prior to the Response Deadline as indicated in the Procurement Schedule or as changed via an Addendum. Every Bidder is solely responsible for ensuring its Response is received before the Response Deadline. HHSC is not responsible for lost, misdirected or late Responses.

By submitting a Response, the Bidder represents and warrants that any individual submitting the Response and any related documents on behalf of the Bidder is authorized to do so and to bind the Bidder under any resulting contract.

3 Withdrawal of Response

Responses may be withdrawn from consideration or amended at any time prior to the Response Deadline by submitting a written request by e-mail to the point of contact listed in Section 6.1 (Sole Point of Contact and Communications).

The e-mail subject line for withdrawal should contain the Solicitation (IFB) number as indicated on the cover page of this Solicitation. The Bidder is solely responsible for ensuring the email is received by HHSC before the Response Deadline. HHSC is not responsible for lost or misdirected e-mails.

4 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 this Solicitation.

5 Definitions

Unless the context clearly indicates otherwise, throughout this Solicitation, the definition given to a term below applies whenever the term appears in this Solicitation, in any Response (Bid) submitted in response to this Solicitation, and in any Contract awarded as a result of this Solicitation. All other terms have their ordinary and common meaning.

a) **Addendum** – A written clarification or revision to this Solicitation issued by HHSC.

b) **Bidder** – Entity or individual that submits a response to this Solicitation. This term also includes anyone acting on behalf of the entity or individual that submits a response, such as an agent, employee, or representative. *See also Respondent below.*

c) **Contract** – 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).

d) **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.

e) **Contract Term** – 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.

f) **Debarment** – 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).

g) **Deliverables** – 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.

h) **Electronic State Business Daily (ESBD)** - The electronic online directory, administered by the Comptroller of Public Accounts, Statewide Procurement Division (SPD), for publishing procurement opportunities which exceed $25,000 in total estimated value and for providing public notice of contract awards. The ESBD may be accessed through the CPA web site at: http://www.txsmartbuy.com/esbd.

Note: The Texas Comptroller of Public Accounts (CPA) recommends utilizing Google Chrome when navigating CPA websites.

i) **Exhibit** – A document, included as an attachment to this Solicitation, which provides terms and conditions, additional requirements and information related to this Solicitation.

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

k) **Purchase Order** – 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.

l) **Response** – All information and materials submitted in response to this Solicitation. May also be referred to as Bid or Bid Response.

m) **Respondent** – a term interchangeable with Bidder.

n) **Scope of Work** – The description of requirements, services, specifications for goods which may be required, and deliverables as provided in this Solicitation and any resulting Contract which the Contractor is required to provide.

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

p) **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.

q) **Unit Rate** – 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.).

r) **Vendor** – A business entity or individual that supplies services or goods and may be a potential Bidder to this Solicitation.

s) **Texas Identification Number (TIN)** – 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://fmx.cpa.texas.gov/fm/pubs/payment/gen_prov/index.php?s=payee_numreq&p=payee_numreq.

6 General Solicitation Information

6.1 Sole Point of Contact and Communications

The HHSC PCS Sole Point of Contact for inquiries concerning this Solicitation is:

Brian Kozlovsky, CTCD

903-683-3421 x7112

brian.kozlovsky@hhs.texas.gov

Bidders shall NOT use the e-mail address above for submission of a Response to this Solicitation. See Appendix A for submission requirements.

Bidders shall direct all communications, including questions or clarifications relating to this Solicitation, in writing by e-mail to the HHSC PCS Sole Point of Contact named in **Section 6.1 (Sole Point of Contact and Communications);** communications by phone will not be accepted. See Appendix A for submission requirements. All other communications between a Bidder and HHS agency staff concerning this Solicitation are prohibited. In no instance is a Bidder to discuss cost information regarding this Solicitation and contained in a Response with the HHSC PCS Sole Point of Contact or any other HHS staff**. Failure to comply with these requirements may result in disqualification of the Response.**

The Sole Point of Contact will authorize a secondary Sole Point of Contact in the event of their absence and, in such an event, will include the contact information for the secondary Sole Point of Contact in their automatic reply out-of-office e-mail message. Bidders seeking to contact the Sole Point of Contact should do so via e-mail in order to receive updated contact information. See also **Section 6.2 (Exception to Sole Point of Contact)** below.

This restriction (as to only communicating in writing with the HHSC Sole Point of Contact identified above) does not preclude discussions between Bidder and agency personnel for the purposes of conducting business unrelated to this Solicitation.

6.2 Offer Period

By submitting a Response to this Solicitation, Bidder agrees that its Response will remain a firm and binding offer for at least the period of time, 240 days, as stated in the **HHS Solicitation Affirmations (Exhibit A).**

Bidder may extend the time for which its Response will be honored and include the extended period in the Response.

6.3 Costs Incurred

Bidder understands that issuance of this Solicitation or retention of responses in no way constitutes a commitment by HHSC to award a Contract. HHSC accepts no obligations for cost incurred in preparing and submitting a response, including, but not limited to, preparing for or participating in a vendor conference or site visit.

Responses shall be submitted at the sole expense of the Bidder. All responses shall be prepared simply and economically, providing a straightforward, concise delineation of the Bidder's capabilities to satisfy the requirements of this Solicitation.

6.4 Changes, Modifications and Cancellation

HHSC reserves the right to change, amend, or modify this Solicitation prior to the Response Deadline indicated in the Procurement Schedule (cover page of this Solicitation). Changes, amendments and modifications will be processed through one or more Addendum. The notification for any Addendum will be processed in accordance with **Section 6.7**.

HHSC reserves the right to cancel this Solicitation at any time. The notice of cancellation will be in accordance with **Section 6.7**.

6.5 Ambiguity, Conflict, Discrepancy

Bidders must notify the **Sole Point of Contact**, **Section 6.1**, of any ambiguity, conflict, discrepancy, exclusionary specification, omission or other error in the Solicitation in the manner and by the deadline for submitting questions.

If Bidder fails to properly and timely notify the Sole Point of Contact, Section 6.1, of any ambiguity, conflict, discrepancy, exclusionary specification, omission or other error in the Solicitation, the Bidder, whether awarded a contract or not:

a) shall have waived any claim of error or ambiguity in the Solicitation and any resulting contract,

b) shall not contest the interpretation by HHSC of such provision(s), and

c) shall not be entitled to additional compensation, relief, or time by reason of ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error or its later correction.

6.6 Solicitation Questions or Clarifications

HHSC will allow written questions and requests for clarification regarding this Solicitation if submitted by e-mail to the **Sole Point of Contact, Section 6.1**, by the deadline established in the Procurement Schedule (cover page of this solicitation) or deadlines established in subsequent Addenda. Responses to questions or other written requests for clarification will not be provided individually to requestors but will be consolidated in one or more Addenda.

HHSC reserves the right to amend the answers to questions or clarifications prior to the Response Deadline (cover page of this solicitation) through a new Addendum. The notification will be processed in accordance with **Section 6.7 (Notification of Addenda or Cancellation)**.

6.6.1 Submission of Questions or Clarifications

All questions and requests for clarification must be submitted in writing by e-mail and include the following information:

a) IFB Number and Title of Solicitation (cover page of this Solicitation) must be included in the e-mail subject line and in the e-mail body

b) Section or Paragraph number from this Solicitation

c) Page Number of this Solicitation

d) Exhibit name, Section or Paragraph, page number from the Exhibit

e) Language, Topic, Section Heading being questioned

f) Requestor Contact Information must be included in the body of the e-mail submitted with questions

Questions or requests for clarification received after the deadline set in the Procurement Schedule (cover page of this Solicitation) may be reviewed by HHSC but will not be answered.

6.7 Notification of Addenda or Cancellation

6.7.1 Addenda Notification

Addenda for changes, modifications and answers to questions or requests for clarification as well as subsequent Addenda with amended answers to questions or requests for clarifications, will be posted to the ESBD. It is the responsibility of each Bidder to monitor the ESBD for any Addenda affecting this Solicitation. Failure to check the ESBD will in no way release any Bidder or awarded Contractor from the requirements of posted Addenda. No HHS Agency will be responsible or liable in any regard for the failure of any Bidder or awarded Contractor to stay

informed of all postings to the ESBD. If the Bidder fails to monitor the ESBD for any changes or modifications to this Solicitation, such failure will not relieve the Bidder or Contractor of its obligation to fulfill the requirements as posted.

6.7.2 Cancellation Notification

HHSC reserves the right to cancel this Solicitation at any time. Notice of the cancellation will be posted on the ESBD. Bidders are responsible for monitoring the ESBD frequently for notices regarding this Solicitation.

7 Scope of Work (SOW)

7.1 Scope of Services to be Performed

The required services to be provided are JFrog Software Maintenance.

JFrog Enterprise X, Part #NPN-JFRO-ENTE-A

JFrog is a universal DevOps solution that provides end-to-end automation and management of binaries and artifacts through the application delivery process which improves productivity.

7.1.1 State Holidays

The state holidays observed are maintained by the State Auditor's Office and may be accessed at: http://www.hr.sao.texas.gov/Holidays. HHS Agency does not specifically require services to be performed on these holidays.

To fulfill the required services, as applicable, the Contractor may perform the services on a holiday observed by HHS at NO additional expense to the HHS Agency.

Performance of services on a state holiday requested by HHS Agency will be performed and invoiced at the Contract rate for Outside Regular Hours.

7.1.2 Independent Contractor

It is understood and agreed by the HHS Agency and the Contractor that the Contractor is retained as an independent Contractor and in no event shall any employee hired by the Contractor be considered an employee of the State.

a) The Contractor shall not allow any visitors, spouses, children or other relatives of the Contractor's or Subcontractor's employees to be on state property in connection with the Contract during working hours.

b) The Contractor shall be responsible for all employment taxes and other payroll withholding for its employees.

c) The Contractor shall be responsible and liable for the safety and health of its personnel while they are performing work for an HHS agency and while on the HHS Agency premises.

d) The Contractor shall be responsible for verifying that all of its employees assigned to perform services under the Contract are in compliance with all requirements of the Immigration Reform and Control Act of 1986, Public Law 99-603, which became effective November 6, 1986, and any subsequent amendments.

e) The Contractor and the assigned Contractor employees or the Contractor's Subcontractor and Subcontractor employees assigned to perform the services must have all applicable permits, licenses, accreditations and insurance coverage.

7.1.3 24-Hour Contact

The Contractor must provide, in **Exhibit C** – **Bid Execution Page**, the HHS Agency Contract Manager with 24-hour contact information for a minimum of two (2) Contractor personnel so the HHS Agency may communicate urgent performance issues that require immediate correction or any other issues that may occur. The Contractor's 24-hour contact must always be available. Any urgent performance issues requiring immediate correction will be followed up in writing by the HHS Agency Contract Manager.

8 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.

8.1 HUB Subcontracting Plan (HSP)

Although submission of the HSP is not required, if Bidders identify subcontracting opportunities or have a need to subcontract to fulfill any portion of an awarded Contract, Bidders are encouraged to submit, with their Proposal, a properly completed HSP.

To obtain more information regarding the HSP, contact the HUB Program Office. Provide the Solicitation number and title (cover page of this Solicitation).

- Phone: 512-406-2570 or
- E-mail: HHSCHUB@hhs.texas.gov

9 Pricing Information

9.1 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 must be submitted only using **Exhibit D - Pricing Sheet** based on the description and the unit of measure(s) provided for each line item. The unit prices must include all Solicitation requirements, including, but not limited to, labor, equipment, materials, supplies and all related expenses.

9.2 Price Adjustments

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

10 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.

11 Contract Term

11.1 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 as outlined in this Solicitation or by the date or delivery days after receipt of order (ARO) provided by the Bidder.

11.2 Initial Contract Term:

Any contract resulting from this Solicitation will have an initial term beginning December 23, 2022 and expiring December 22, 2023.

11.3 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.

12 Contract Administration/Transactional Purchase Order Administration

12.1 Contract Manager/Program Lead

An HHS Agency Contract Manager or Program Lead will be designated, and the contact information will be provided to the Contractor.

After award of any Contract resulting from this IFB, all communications related to the Contract and requests for changes to the Contract will be processed through the designated HHS Agency Contract Manager.

12.2 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.

12.3 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:

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

b) 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.

12.4 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:

a) A detailed explanation of the reasons for the cited deficiency;

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

c) 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.

12.5 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.

a) Failure to reach agreement on corrective action.

b) Failure to perform in accordance with the Corrective Action Plan.

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

12.6 Confidential or Proprietary Information

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:

a) Mark Original Proposal

1. 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

2. 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).

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

1. 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

2. Submit Public Information Act Copy of Proposal

   i. 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:

   ii. 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);

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

   iv. 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.

If any or all Bidders submit partial, but not complete, information suggesting inclusion of confidential information and failure to comply with the requirements set forth in this section, HHSC, in its sole discretion and in any solicitation, reserves the right to (1) disqualify all Bidders that fail to fully comply with the requirements set forth in this section, or (2) to offer all Bidders that fail to fully comply with the requirements set forth in this section additional time to comply.

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 http://www.texasattorneygeneral.gov.

12.7 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.

13 Invoicing and Payment

13.1 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.

13.2 Invoice Information

Invoices submitted to the HHS Agency must reflect the Contract or Purchase Order 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**).

13.3 Payment

a) 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.

b) The HHS Agency must receive products included on an invoice prior to approving the invoice for payment.

c) Any additional expenses incurred by the Contractor are the responsibility of the Contractor and will not be paid by the HHS Agency.

d) 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.

13.4 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.

13.5 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.

14 Insurance Requirements

Contractor may be required to submit bond documentation and current certificates of insurance or other proof acceptable to the HHS Agency at the time of notification of a potential award and such proof must be received by the HHS Agency Contract Manager prior to execution by the HHS Agency of any contract. The HHS Agency, in its sole discretion, may request additional evidence of insurance or bonds coverage as deemed necessary.

The HHS Agency may designate a deadline for submission of proof of required insurance or bonds. Failure to timely submit acceptable proof may result in the HHS Agency's revocation of the award.

Contractor shall maintain the required insurance during the initial Contract term and any renewal or extension period exercised. Contractor shall be responsible for ensuring its subcontractors are in compliance with all applicable insurance and bond requirements.

14.1 Specific Insurance Requirements

For the full term of the Contract, including the original Contract term and all periods of renewal and all additional extensions, Contractor and its Subcontractors, if any, shall obtain and maintain all insurance coverage as set forth below. Contractor shall be responsible for ensuring its Subcontractors' compliance with all requirements.

14.2 Workers' Compensation and Employers' Liability

Contractor shall maintain Workers' Compensation insurance coverage in accordance with applicable statutory limits.

a) Workers' Compensation: Statutory Limits

b) Employers Liability: Each Accident $1,000,000

c) Disease: Each Employee $1,000,000

d) Disease: Policy Limit $1,000,000

14.3 Commercial Automobile Liability

Coverage provided should include any automobile, including hired and non-owned automobiles, at: $1,000,000 combined single limit for each accident.

14.4 Commercial General Liability

Occurrence Based:

a) Bodily Injury and Property Damage

b) Each occurrence Limit: $1,000,000

c) Aggregate Limit: $2,000,000

d) Medical Expense Each Person: $5,000

e) Personal Injury and Advertising Liability: $1,000,000

f) Products / Completed Operations Aggregate Limit: $2,000,000

g) Damage to Premises Rented to HHSC or Affiliated Entity: $50,000

14.5 Umbrella/Excess Liability

Per Occurrence: $1,000,000

a) All required bonds and insurance shall be in a form satisfactory to the HHS Agency and must be issued by companies or financial institutions that:

   1. have a Financial Strength Rating of “A” or better from A.M. Best Company, Inc.;

   2. have a Financial Size Category Class of “VII” or better from A.M. Best Company, Inc.; and

   3. are duly licensed, admitted and authorized to do business under the laws of the State of Texas.

b) The HHS Agency shall be named as the obligee in each required bond.

c) All required insurance contracts must:

   1. be written on a primary and non-contributory basis with any other insurance coverages the Contractor currently has in place; and

   2. include a Waiver of Subrogation Clause in favor of the State of Texas and its officers, directors, and employees for bodily injury (including death), property damage or any other loss.

Each insurance policy, other than worker’s compensation, employer’s liability and professional liability, must name the State of Texas and its officers, directors, and employees as additional insureds on the original policy and all renewals or replacements.

The insurance shall be evidenced by delivery to the HHS Agency of certificates of insurance executed by the insurer or its authorized agency stating coverage, limits, expiration dates, and compliance with all required provisions. Upon request, the HHS Agency shall be entitled to receive, without expense, certified copies of the policies and all endorsements. Except as

otherwise provided herein, required coverage must remain in full force and effect throughout the term of the Contract and any extensions thereof, and provide adequate coverage for incidents discovered after termination of the Contract.

Contractor Shall

a) Provide written notice to the HHS Agency Contract Manager as indicated on the purchase order at least 30 calendar days prior to any cancellation, non-renewal, or material change of a required policy;

b) Ensure all insurance policies and certificates of insurance for required coverage are written to include all products, services, and locations related to Contractor's performance under the Contract; and

c) Deliver to the HHS Agency Contract Manager as indicated on the purchaser order all renewal policies at least ten (10) calendar days prior to any expiration of a required policy. All renewal policies and corresponding certificates of insurance must meet all terms set forth herein.

Contractor must submit original certificates of insurance for each required insurance contract, and any renewals thereof, within 15 days after contract execution. Renewal certificates shall be submitted prior to or within 15 days after expiration of the existing policy. Bidders must submit required bonds when and as provided in sections of this Solicitation outlining bond requirements.

Contractor shall ensure that all Contract provisions concerning liability, duty, and standard of care, together with all indemnification provisions, shall be underwritten by contractual liability coverage sufficient to include the awarded Contractor's obligations under any contract awarded as a result of this Solicitation. In addition, Contractor shall be responsible for ensuring all Subcontractors used in the performance of the Contract maintain the insurance required in this section (covering all goods and services provided by the Subcontractors) throughout the Contract term and all renewals.

15 Screening of Responses

Neither issuance of this Solicitation nor retention of Responses constitutes a commitment on the part of HHSC to award a Contract. HHSC maintains the right to reject any or all Responses and to cancel this Solicitation if HHSC, in its sole discretion, considers it to be in the best interests of HHSC to do so.

Retention of Responses by HHSC confers no legal rights upon any Bidder.

HHSC reserves the right to select qualified Bidders to this Solicitation with or without discussion of the Response with Bidders.

15.1 Administrative Screening

An administrative screening of Responses timely received will be conducted by HHSC PCS to determine which Responses meet all Solicitation minimum requirements and are deemed responsive and qualified for further consideration and evaluation.

Appendix A – Submission Instructions and Response Checklist will be used to conduct the screening process.

HHSC reserves the right to ask questions or request clarification from any Bidder at any time during the screening process.

15.2 Irregularities

HHSC reserves the right to waive irregularities in a Response. An irregularity is an omission or error that, in HHSC's determination if waived or modified when screening Responses, would not give a Bidder an unfair advantage over other Bidders or result in a material change in the Response or Solicitation requirements.

HHSC, at its sole discretion, may give a Bidder the opportunity to submit missing information or make corrections. The missing information or corrections must be submitted to the Sole Point of Contact e-mail address, **Section 6.1 (Sole Point of Contact and Communications)** by the deadline set by HHSC. Failure to respond before the deadline may result in HHSC's rejecting the Response and the Bidder not being considered for award.

Note: Any disqualifying factor set forth in this Solicitation does not constitute an irregularity (e.g., Submission of Exhibit A HHS Solicitation Affirmations, which must be signed and submitted with the Solicitation response).

16 Evaluation

16.1 Evaluation of Responses

HHSC reserves the right to select qualified Responses to this Solicitation without discussion of the Responses with Bidders. It is understood that all Responses will become a part of HHSC PCS' official procurement files and the Contract after award or the procurement has been terminated and will be available for public inspection in accordance with the Texas Public Information Act.

HHSC reserves the right to conduct studies and other investigations as necessary to evaluate any Response.

16.2 Conformance with State Law for Evaluation

Responses shall be evaluated in accordance with Title 10, Subtitle D, Chapter 2155, sections 2155.074, 2155.075(a), and 2155.144; and Chapter 2156, section 2156.007, Texas Government Code; and Chapter 2157, section 2157.003.

Sections 2155.074, 2156.007, and 2157.003 provide the Best Value Standard for the purchase of goods or services and for the award, which includes consideration of the purchase price and whether the Bidder meets all requirements of this Solicitation.

16.3 Specific Evaluation Criteria

HHSC shall not be obligated to select the Bidder with the lowest price but shall make an award to the Bidder that provides the best value to the State of Texas.

All Responses will be evaluated according to the following criteria:

a) Bidder meeting or exceeding specifications in accordance with this solicitation

b) Bidder's ability to meet delivery requirements

c) Price

16.3.1 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.

16.3.2 Verification of Past Vendor Performance

By submitting a Response, the Bidder generally releases from liability and waives all claims against any party providing information about the Bidder at the request of HHSC.

Bidders may be rejected as a result of unsatisfactory past performance under any contract(s) as reflected in vendor performance reports, reference checks, or other sources.

The Bidder's past performance may be considered in the evaluation process and prior to making an award determination.

Reasons for which a Bidder may be denied a contract include, but are not limited to:

a) Bidder has unfavorable reports or grade less than a "C" on the CPA Vendor Performance Tracking System (VPTS). VPTS may be accessed at:

https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/,

OR,

b) Bidder is currently under a corrective action plan through HHSC, OR,

c) Bidder has had repeated, negative vendor performance reports for the same reason, OR,

d) Bidder has a record of repeated non-responsiveness to vendor performance issues, OR,

e) Bidder has contracts or purchase orders that have been cancelled in the previous 12 months for non-performance or sub-standard performance.

In addition, HHSC may examine other sources of vendor performance, which may include information provided by any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the federal government.

The performance information may include, but is not limited to:

a) Notices of termination,

b) Cure notices,

c) Assessments of liquidated damages,

d) Litigation,

e) Audit reports, and

f) Non-renewals of contracts.

Further, HHSC, at its sole discretion, may initiate investigations or examinations of vendor performance based upon media reports. Any negative findings, as determined by HHSC in its sole discretion, may result in HHSC's removing the Bidder from further consideration for award.

16.3.3 Ability to Perform

Evaluation will be based upon Bidder's demonstrated experience and ability to provide goods and related services with consideration of the Bidder's business size and scope of all operations, the number of employees and supervisors available to perform the services. The evaluation may also consider the Bidder's demonstrated financial capability, financial solvency and capacity to fulfil the requirements of this Solicitation.

17 Award

HHSC, at its sole discretion, reserves the right to cancel this Solicitation at any time or decline to award any contract(s) as a result of this Solicitation.

All awards are contingent upon approval of the HHSC Executive Commissioner or designee.

HHSC, at its sole discretion, reserves the right to make a single award or multiple awards to achieve the highest overall best value for the state.

18 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.

Bidder represents and warrants that, if selected for award of a contract as a result of this Solicitation, Bidder shall submit to HHSC a Certificate of Interested Parties at the time Bidder submits 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.

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 .

If the potential awardee does not timely submit a completed, certified and signed TEC Form 1295 to HHSC after notification of being a potential awardee or with the signed Contract, HHSC is prohibited by law from executing a contract, even if the potential awardee is otherwise eligible for award. Each qualified Bidder will be subject to this procedure.

19 Protest Procedures

Texas Administrative Code, Title 1, Part 15, Chapter 391, Subchapter C provides a formal protest procedure to be used by any Bidder who is allegedly aggrieved in connection with the solicitation, evaluation, or award of a contract by HHSC.

Appendix A – Submission Instructions and Response Checklist

Before submitting a Response to this Solicitation, read the ENTIRE solicitation including all exhibits, attachments, forms, etc. Failure to read any part of this Solicitation will not relieve the Bidder from any submission requirements or a Contractor of its contractual obligations.

Each Bidder submits a Response at its own risk and is solely responsible for ensuring its Response is submitted in accordance with all Solicitation requirements, including, but not limited to, instructions in this Appendix, proper labeling, sufficient postage or delivery fees, and ensuring timely receipt by HHSC.

In no event will HHSC be responsible or liable for any delivery delays or errors. Responses must be received by HHSC by the Response Deadline as identified in the Procurement Schedule on the cover page of this Solicitation.

Each Response must include all required information/documents for this Solicitation, but also may contain additional information considered pertinent by Bidder. HHSC reserves the right to reject any or all responses. All responses become the property of HHSC and subject to the Public Information Act (PIA).

Failure to comply with these instructions or the submission requirements may result in disqualification of the Response.

SUBMISSION REQUIREMENTS

Responses submitted by facsimile, or any other method not specified in this Solicitation, will NOT be accepted or considered.

1. E-Mail Submission

The Bidder is solely responsible for ensuring that the electronic Response is complete and submitted to, and RECEIVED by, HHSC before the Response Deadline identified in the Procurement Schedule (cover page of this Solicitation) or deadline established in subsequent Addenda. HHSC is not responsible for lost, misdirected or late Responses. Late Responses will be disqualified.

The Response, including all documentation required by this Solicitation and Appendix, must be sent in its entirety in one or more e-mails as warranted by the size of each attachment.

Responses sent by e-mail must be sent to: pcsbids@hhsc.state.tx.us.

a) E-mail Subject Line

The e-mail subject line must contain the Solicitation number, title as indicated on the cover page of this Solicitation and number of e-mails if more than one (e.g., 1 of #, etc.).

b) Body of E-mail

The body of each e-mail must include the following information:

- Bidder's name
- Contact Name for Response
- Phone number for Response Contact
- Solicitation number from cover page of this Solicitation
- Purchaser Name (**Sole Point of Contact and Communications, Section 6.1**).

HHSC takes no responsibility for e-mailed Responses that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any HHSC anti-virus or other security software.

c) Additional Information Regarding Electronic Submission by E-Mail

All documents should be submitted in Microsoft Office® formats (Word® and Excel®, as applicable) or in a form that may be read by Microsoft Office® software. Any documents with signatures shall be submitted as an Adobe® portable document format (.pdf) file. HHSC is not responsible for documents that cannot be read or converted. Unreadable Responses may be, in HHSC's sole discretion, rejected as nonresponsive.

Be aware Internet Service Providers may limit file sizes on outgoing emails; therefore, it is recommended Responses not contain graphics, pictures, letterheads, etc., which consume a lot of space. These typically include *.tif/*.tiff, *.gif, & *.bmp file extensions, but may use others, as well. HHSC's firewall virus protection runs at all times, so during times of new active virus alerts, incoming traffic may be delayed while virus software scans emails with attachments.

2. HHS Online Bid Room

The Bidder is solely responsible for ensuring that the Response is complete and submitted to, and RECEIVED by, HHSC before the Response Deadline identified in the Procurement Schedule (cover page of this Solicitation) or deadline established in subsequent Addenda. HHSC is not responsible for lost, misdirected or late Responses, or technical difficulties preventing submission through the Online Bid Room. Late Responses will be disqualified.

The Response, including all documentation required by this Solicitation and Appendix, must be submitted in its entirety.

Responses may be submitted through the HHS Online Bid Room. **See Exhibit F – Online Bid Room** for information regarding the two-part registration process required prior to submitting a Response.

3. Hand Delivery or Overnight/Express/Priority Mail delivery of USB Drive

The Bidder is solely responsible for ensuring that the Response is complete and submitted to and RECEIVED by HHSC before the Response Deadline identified in the Procurement Schedule (cover page of this Solicitation) or deadline established in subsequent Addenda. HHSC is not responsible for lost, misdirected or late Responses. Late Responses will be disqualified.

All documents should be submitted on a single USB drive and must be in Microsoft office® formats (Word® and Excel®, as applicable) or in a form that may be read by Microsoft office® software. Any documents with signatures shall be submitted as an Adobe® portable document format (pdf) file. HHSC is not responsible for documents that cannot be read or converted. Unreadable Responses may be, in HHSC's sole discretion, rejected as nonresponsive.

The Response must include all documentation required by this Solicitation and this Appendix.

a) Submit one (1) USB drive of the complete Response package – hard copy Responses will not be accepted.

b) The USB drive must be enclosed in properly documented and sealed envelope or sealed carton.

c) The envelope or carton must be properly labeled, on the face or top of each, with the following:

    1. Bidder's name
    2. Contact Name for Response
    3. Phone number for Response Contact
    4. Solicitation number from the cover page of this Solicitation
    5. HHSC PCS Purchaser Name (Sole Point of Contact and Communications, Section 6.1).

d) The address for hand delivery:

Health and Human Services Commission
Attn: Bid Room Coordinator
Procurement and Contracting Services Building
1100 W 49th St. MC: 2020
Austin, TX 78756

The address for Overnight/Express/Priority Mail delivery is:

Health and Human Services Commission
Attn: Bid Room Coordinator
Tower Building Room 108
1100 W 49th St. MC: 2020
Austin, TX 78756

It is the Respondent's sole responsibility to ensure that packaging is sufficient to prevent damage to contents. HHSC will not be responsible or liable for any damage, and damaged Solicitation Responses will not be considered at HHSC's sole discretion.

HHSC will not be held responsible for any Solicitation Response that is mishandled prior to receipt by HHSC PCS. It is the Respondent's sole responsibility to mark appropriately and deliver the Solicitation Response to HHSC PCS by the specified date and time. HHSC will not be responsible for late delivery, inappropriately identified documents, or other submission errors that may lead to disqualification or nonreceipt of the Respondent's Solicitation Response.

4. CHECKLIST FOR SUBMISSION OF RESPONSE

This checklist is included to provide assistance in submitting a complete and accurate Response to this Solicitation.

Failure to submit the following with the Response WILL disqualify the Bidder from further consideration for evaluation or award.

- ☐ **Exhibit A** - HHS Solicitation Affirmations
- ☐ **Exhibit C** - Bid Execution Page
- ☐ **Exhibit D** - Pricing Sheet
- ☐ **Demonstration of the ability to perform** by a written description of the size and scope of all operations, including the number of Bidder's employees available to provide customer service, order fulfillment, safe shipping and handling of product and the number of supervisors for each location, as applicable. Bidder must include the number of years it has been in business.
- ☐ **Provide any other information Bidder believes is pertinent** to demonstrate the Bidder's financial capability, financial solvency, and capacity to fulfill the requirements of this Solicitation.
- ☐ **Addendum Acknowledgement Form(s),** if applicable
- ☐ **Public Information Act** Copy of Response, if applicable