



HHS Procurement and Contracting Services
SOLICITATION DOCUMENT

Check one: <input checked="" type="checkbox"/> Invitation for Bid (IFB) <input type="checkbox"/> Request for Offer (RFO) <input type="checkbox"/> Request for Qualifications (RFQ)		
Check one: <input checked="" type="checkbox"/> Formal <input type="checkbox"/> Informal		
Solicitation No.:	Issue Date:	Response Due Date:
HHS0005120	07/24/2019 at 10:00 AM	08/07/2019 at 2:00 PM
Formal responses MUST be mailed to the address below. E-mail responses will only be accepted if indicated in the solicitation.		
Contact Information: Purchaser: Kimberly LaPointe, CPPB, CTPM, CTCM Phone: 512-406-2606	Mail Response: Health and Human Services Commission ATTN: Response Coordinator 1100 W 49 th . MC 2020 Austin, Texas 78756 OR Email: PCSbids@hhsc.state.tx.us	Ship to or Service Delivered to Location: Rusk State Hospital (RSH) 805 N. Dickinson Dr. Rusk, TX 75785
Source of Authority	<input checked="" type="checkbox"/> CPA/TPASS	<input type="checkbox"/> DIR
<input type="checkbox"/> Other:		
By signing this document, respondent certifies that prices shown on this quote are true and correct. Should this bid/offer result in a Purchase Order, respondent agrees to comply with all "Terms and Conditions," which are attached and incorporated into this document.		

- Check below if preference claimed under Texas Administrative Code (TAC), Title 34, Part 1, Chapter 20, Subchapter D, Division 2, Rule 20.306:**
- Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
 - Agricultural products grown in Texas
 - Agricultural products offered by a Texas bidder
 - Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
 - Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
 - Texas Vegetation Native to the Region
 - USA produced supplies, materials or equipment
 - Products of persons with mental or physical disabilities
 - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
 - Energy Efficient Products
 - Rubberized asphalt paving material
 - Recycled motor oil and lubricants
 - Products produced at facilities located on formerly contaminated property
 - Products and services from economically depressed or blighted areas
 - Vendors that meet or exceed air quality standards
 - Recycled or Reused Computer Equipment of Other Manufacturers
 - Foods of Higher Nutritional Value.

VENDOR / RESPONDENT MUST COMPLETE ALL ITEMS

Signature of Vendor or Authorized Representative

Print Name
(Must be manually signed; failure to sign will disqualify response.)

Texas Vendor Identification No. (or Federal Employer's ID):

Name of Business _____

Street Address _____

City-State-Zip Code _____

Telephone Number _____

Fax Number _____

E-Mail Address _____

*By signing this bid, bidder certifies that if a Texas address is shown as the address of the bidder, bidder qualifies as a Texas Bidder as defined in Tex. Gov't Code § 2155.444(c)(2).
AWARD NOTICE: The State reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items in the sole discretion of the State.

1. INTRODUCTION AND PURPOSE OF SOLICITATION

The Health and Human Services Commission (HHSC) Procurement and Contracting Services (PCS) on behalf of Rusk State Hospital is soliciting bid responses for generator testing, inspections, maintenance and repairs. See attached solicitation for full scope of work.

NIGP Codes: 936/39, 285/69, 910/82, 928/38, 941/00, 941/21, 941/63, 941/72, 962/39, 968/47, 968/48

2. AGENCY 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 agencies). As a result of the consolidation due to [House Bill 2292 \(HB2292\)](#), some of the contracting and procurement activities for HHS agencies have been assigned to the Procurement and Contracting Services (PCS) section of HHSC. As such, PCS will administer the initial stages of the procurement process, prior to the contract award, including solicitation announcement and publication, handling of communications from the respondent, as well as managing the receipt and evaluation of valid responses for final review and evaluation. PCS directs the execution of the award of the contract resulting from this solicitation.

3. DEFINITIONS

- Appendix -- Additional information and/or forms that is available in the back of this solicitation document.
- Contract -- A written document referring to promises or agreement for which the law establishes enforceable duties and remedies between a minimum of two parties.
- Contract Term -- The period of time during which the contract will be effective from begin date to end, or renewal date. The contract term may or may not be the same as the budget period.
- Debarment -- An exclusion from contracting or subcontracting with state agencies on the basis of cause set forth in Title 34, Texas Administrative Code, §20.105 et seq., and the EPLS.
- Deliverables -- Goods or services contracted for delivery or performance.
- Due Date -- Established deadline for submission of a document or deliverable.
- Effective Date -- The date the contract term begins.
- Respondent -- Entity or individual that submits a response to a solicitation.
- Scope of Work -- A statement that defines specific services to be performed.
- Solicitation -- The process of notifying prospective Contractors of an opportunity to provide goods or services to the state.
- Subcontractor -- An entity hired by an awarded Contractor to perform a portion of the scope of work by the entity contracting with an HHS agency as a result of this solicitation. The Contractor remains entirely responsible for performance of all requirements of the contract through monitoring the subcontractor's performance.
- Unit Rate -- Payment mechanism for services that are paid at a set rate per unit of service; for example, plumbing repair services at a prescribed rate per hour.
- Vendor -- A Contractor that provides goods and services that are typically procured through the open market.
- Vendor Identification Number (Vendor ID No.) -- Fourteen-digit number needed for any entity to contract with the State of Texas and which must be set up with the State Comptroller's Office. It

consists of a ten-digit Vendor ID No. (IRS number, state agency number, or social security number) +check digit + 3-digit mail code.

- Work Plan -- A plan that describes how services will be delivered and includes specifics such as what types of services will be provided, who will be responsible for the work, timelines for completion of activities, and how services will be evaluated when complete. The work plan will be part of the contract.

4. INSTRUCTIONS TO RESPONDENTS

- 4.1. Before submitting a response to this solicitation, read the ENTIRE solicitation including the Terms and Conditions. Failure to read any part of this solicitation will not relieve an awarded Contractor of his/her contractual obligations.
- 4.2. Failure to comply with this section may result in disqualification of the response.
- 4.3. Responses to this solicitation will be received until the date and time shown above. Incomplete or late responses will not be considered.
- 4.4. Responses to this solicitation may be submitted in original hard copy to the address below. An authorized officer of the respondent must manually sign submittal.

Original hard copy responses must:

- Be enclosed in sealed envelope(s) or sealed carton(s). Include the solicitation number, time, date of opening and title of the solicitation on the face of sealed envelope(s) or sealed carton(s).
- Include the respondent's name, address and telephone number on the face of all sealed envelope(s) or sealed carton(s).

- 4.5. The physical address for hand delivery only is:

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

- 4.6. Emailed responses will be accepted at PCSBids@hhsc.state.tx.us only. This is the only email address that will be used for receipt of emailed responses. HHSC/PCS will not be responsible for failure of electronic equipment or operator error. Late, illegible, incomplete or otherwise non-responsive submissions will not be considered.
- 4.7. Response must include all required information/documents for this specification but may contain additional information considered pertinent by respondent. HHSC/PCS reserves the right to reject any or all responses. All responses become property of HHSC/ PCS.
- 4.8. Respondent must provide the following contact information for the submitted response:

Respondent Contact Person **PLEASE PRINT**

_____/_____/_____
Respondent Contact Person's Telephone Number / Fax Number / Mobile Number

E-mail Address

5. QUESTIONS

- 5.1. The sole point of contact for inquiries concerning this solicitation is:

HHSC/ PCS Purchaser's Name: Kimberly LaPointe, CPPB, CTPM, CTCM
Tel: 512-406-2606
Email address: kimberly.lapointe@hhsc.state.tx.us

- 5.2. Direct all communications relating to this solicitation to the HHSC/PCS contact person named above. All other communications between a respondent and HHS agency staff concerning this solicitation are prohibited. In no instance is a respondent to discuss cost information contained in a response with the HHSC/ PCS point of contact or any other staff prior to response evaluation. **Failure to comply with these requirements may result in response disqualification.**

6. PROCUREMENT SCHEDULE

The following table documents the critical pre-award events for the procurement. All dates are subject to change at HHSC's discretion.

Procurement Schedule	
IFB Release Date	July 24, 2019
Vendor Questions submitted no later than	July 26, 2019
Questions and Answers posted by	July 31, 2019
Bids Due	August 7, 2019
Anticipated Contract Start Date	September 1, 2019

7. PCS AMENDMENTS AND ANNOUNCEMENTS REGARDING THIS SOLICITATION

PCS will post all official communication regarding this solicitation on the ESD website, including the notice of award for solicitations exceeding \$25,000. PCS reserves the right to revise the solicitation at any time. Any changes, amendments, or clarifications will be made in the form of written responses to respondent questions, amendments, or addendum issued by PCS on the ESD website. Respondents should check the website frequently for notice of matters affecting the solicitation.

8. HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REQUIREMENTS

- 8.1. HHSC is committed to promoting full and equal business opportunities for businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. HHSC encourages the use of Historically Underutilized Businesses (HUBs) through race, ethnic and gender-neutral means. HHSC has adopted administrative rules relating to HUBs, and a [Policy on the Utilization of HUBs](#), which is located on HHSC's website.
- 8.2. Because the estimated value of the solicitation or resulting contract is more than \$100,000, respondents are required to submit a [HUB Subcontracting Plan](#) with their response at the time of submission. If subcontractors are used in the delivery of the goods and/or services, the awarded Contractor(s) is requested to submit monthly progress reports, in the prescribed format, to HHSC's HUB Program Office. When applicable, the reports should include a narrative description of the Contractor's good faith efforts and accomplishments, and financial information reflecting payments to all subcontractors, including HUBs.
- 8.3. During the term of the original contract, HHSC and the awarded Contractor(s) may have the opportunity to modify its arrangement, which may require a new scope of work through an amendment, renewal, or extension of the contract. As a result, the amendment, renewal, or extension of the contract may potentially increase the contract value to equal or exceed \$100,000. As applicable and in accordance with statute and the HUB rules, the HHSC HUB Program Office may review the proposed amendment, renewal, or extension for potential subcontracting opportunities and for the inclusion of the [HUB Subcontracting Plan](#).

9. ESTIMATED QUANTITIES

- 9.1. Neither PCS nor any HHS agency guarantees the acquisition of any quantities of goods or services during the term of the contract. "Quantity" information is provided only as a guideline for preparing the response. The quantity information should not be construed as representing anticipated or actual quantities that will be ordered.
- 9.2. PCS does not guarantee the use of the blanket contract or the award of services for any facility or office. HHSC reserves the right to resolicit some or all of the facilities or office locations if PCS determines that it is in the best interest for the state.

10. METHOD AND TERMS FOR ORDERING

- 10.1. Release orders for these services will be issued by PCS on an as needed basis or may be requested (call out) by the Contract Manager as needed if indicated in the solicitation.
- 10.2. Effective dates of Release orders: The vendor shall honor all release orders that are prepared, dated and approved by PCS prior to the conclusion of each contract period and/or the date of expiration of the blanket order. The Contractor will be obligated to fill these orders if received by the Contractor within a period of fifteen (15) days following the end of each period.

11. SCOPE OF WORK (SOW) TO BE PERFORMED

11.1. Specifications

Contract Description:

- a. Awarded Contractor shall perform generator maintenance, inspections, testing and repairs, for eight (8) generators located at the Rusk State Hospital, 805 N. Dickinson, Rusk Texas 75785. Services shall include, but not be limited to the following:
 - i. Monthly testing and inspection, **shall be conducted in the third week of every month.**
 - ii. Annual load test and inspection, shall be a 90-minute load test, **in the month of April.**
 - iii. The three-year load test and inspection shall be a four-hour load test, **in the month of April.**
 - iv. 30-minute load test exercised monthly.
 - v. Parts and repairs as needed (including oil and filter changes)
- 11.2. The Contractor shall sign in at the Maintenance Engineers Office upon every visit to the campus. The Contractor shall comply with any and all rules and safety requirements set forth by Rusk State Hospital or other Federal, State, and local laws or ordinances and permits, while on campus.
- 11.3. Contractor and/or workers shall secure **ALL** vehicles at **ALL** times. All equipment must be locked up or secured in a fashion that would prevent access or removal from unauthorized persons. If items cannot be secured, then Contractor must have a designated employee within five feet of loose or unsecured items at **ALL** times. **NO EXCEPTIONS!**
- 11.4. When working inside the buildings on campus, Contractor and its employees shall not allow anyone to piggyback through secured doors behind them. Giving or receiving of any money, gifts or items of any kind with anyone on campus is strictly prohibited. Contractors will not engage in debates and/or arguments or altercations with anyone at any time while on campus. If there is an unfamiliar person or persons showing signs of aggression or sexual harassment of any kind, please notify the operator (by dialing 903-683-3421) or the director of maintenance (by dialing 903-683-7570) for assistance. **DO NOT ENGAGE OR INDULGE THE INDIVIDUAL IN ANY WAY.**

- 11.5. The Contractor's monthly testing shall be followed by NFPA-110, Sec. 8.4.2.
- 11.6. The Contractor's annual testing shall be followed by NFPA-110, Sec. 8.2.4.3.
- 11.7. The Contractor shall conduct all inspections and testing and not sub-contract the work.
- 11.8. The Contractor shall conduct inspections in the third week of their due month as listed above.
- 11.9. The Contractor shall provide all inspection documentation and **reports within fifteen days of inspection and repair completion.**
- 11.10. The Contractor shall provide a detailed and itemized bill on service and repair work. The Contractor's invoice shall contain labor hours, parts price, date work performed, building number and detailed description on work performed.
- 11.11. The Contractor shall provide a detailed and itemized quote on new installs. The Contractor's quote shall contain the scope of work, itemized parts, price, labor and a detailed description.
- 11.12. If service / goods have not been received or to a satisfactory resolution, payment will be withheld until service / goods are received and comply with scope of work and standards.
- 11.13. The Contractor shall respond accordingly to service calls and emergency calls.
- a. **EMERGENCY CALL OUT:** Contractor shall verbally respond to requests for emergency services to any generating unit within one (1) hour and be on site to perform repairs within two (2) hours after being contacted. The designated facility representative will notify the vendor if a call constitutes an emergency. The Contractor shall contact the designated facility representative upon arrival at the job site. Emergency work shall be performed during normal working hours whenever possible; however, services shall be performed on a 24-hour, seven day a week basis if deemed necessary by the designated facility representative.
- 11.14. The Contractor shall provide documentation and reports on all generator testing and inspections, and meet the standards as follows: Code References shall be documented on reports. NFPA code reference, NFPA 110-2010, 8.4.2, 8.2.3, 3.3.3.6 and NFPA 101-2012.
- 11.15. The Contractor shall provide, on all documentation, and report facility name, address of campus building number, date, time, W/O number, brand of unit, KW of unit, M/N and S/N.
- 11.16. The Contractor's monthly inspection and testing documentation shall include the following:
- a. **Monthly Maintenance Check List (checked pass or fail);**
 - b. **Engine Lubrication System:** check for leaks, engine oil and pressure, replenish oil to proper level if necessary (up to one gallon per visit), check hydraulic/mechanical governor oil level, oil and filter, change lube oil and filters once every twelve (12) months during annual maintenance;
 - c. **Engine Cooling System:** check for leaks, radiator restrictions, coolant heater for proper operation, hoses and connections, coolant level, anti-freeze conations, replenish coolant if needed at no additional cost;
 - d. **Air Intake System:** check air cleaner, clean air filter and housing and clean crankcase breather;
 - e. **Engine Fuel System:** check governor linkage, grease if necessary, check fuel lines and connections, check fuel transfer pump, engine fuel priming and pump, check fuel filters;
 - f. **Engine Exhaust System:** check for leaks, check all visible connections and hoses, change fuel filter(s) once every twelve (12) months during annual maintenance;
 - g. **Electrical System:** check battery charging system, check battery fluid level, check engine safety controls, alarms and all wiring, check battery voltage connections and terminals, clean and lubricate battery terminals and cables, check all controls and instrumentation for proper operation;

- h. **Engine System:** check for excessive vibration, check for broken brackets and loose components;
 - i. **Main Generator:** check generator bearing and liberation as necessary and perform operational load test;
 - j. **Transfer Switch and Switchgear:** check switchgear and transfer switch for visible damage, check all time delays for proper set points test emergency shut of switch and document that the transfer switch is completed within the 10 seconds;
 - k. **Post Service Inspection:** insure control switches are in Auto and breaker closed, clean unit inside and out, use touch up pain where necessary. Operating Parameters, document AC Voltmeter A-B/B-C/A-C, AC Ammeter A-B/ B-C/A-C, Frequency, Hour meter start and stop, Oil Pressure cold and hot, Coolant Temperature and Battery Voltage.
- 11.17. The Contractor shall provide all materials, quantities, devices, equipment and labor to provide a working system, complete in all respects integrated into the building and connected to the facility's campus where required by project scope.
- 11.18. The Contractor represents to the Owner, that the company has a minimum of five years of experience in the type of work as described in paragraph one (1) above, and has technicians or employees trained and certified in the proposed work.
- 11.19. It is crucial that all potential bidders perform a walkthrough prior to submitting a bid. Potential bidders may call Harold Dement, Plant Maintenance Manager, and/or designee to schedule the walk-through. Mr. Dement may be reached at (903) 683-7570.
- 11.20. Contractor shall verify all voltages, dimensions and connections prior to ordering equipment and materials. Work surfaces/workable areas shall be inspected by the Contractor prior to commencing work. All deficiencies found but not covered by this contract shall be reported to the Facility Plant Maintenance Manager (PMM). Contractor commencing work implies acceptance of work surfaces/workable areas, and any work deficiency shall become the responsibility of the Contractor.
- 11.21. The Contractor shall be responsible for any repairs of surfaces that may be damaged as a result of the installation of the systems, equipment or devices as defined in this scope of work. Repairs shall match the existing surrounding surfaces and provide a seamless transition.
- 11.22. Contractor shall remove all demolished equipment, etc. from the campus and dispose of properly and legally after giving facility first refusal. Contractor shall provide the facility with a disposal ticket for any hazardous materials.
- 11.23. Contractor shall provide licensed electricians to perform all electrical work. All electrical and instrumentation wiring shall comply with the manufacturer's requirements and shall be in accordance with local and state electrical codes. The Contractor shall provide all necessary electrical upgrades to provide a complete and fully functioning system in all respects.
- 11.24. Seven working days prior to mobilization, the Contractor shall provide a plan for the protection of grounds, sidewalks, roadways, etc. from heavy equipment such as cranes, trucks, etc. The Contractor shall repair all damage to the facility caused by heavy equipment.
- 11.25. Contractor shall provide the names, descriptions of experience, and length of experience of key construction team members.
- 11.26. The Contractor's employees will be escorted at all times. If the successful respondent desires to utilize more than one crew, this will have to be pre-arranged with the facility in writing prior to commencing work.
- 11.27. Normal hours for occupied buildings are 8-5, Monday thru Friday.

- 11.28. All equipment, materials and parts shall be new and supported by the manufacturer.
- 11.29. Contractor shall provide all cutting, patching, and structural support as required for a complete and operating system. All surfaces cut shall be patched to provide a seamless transition to surrounding areas. All wall penetrations shall be sealed in accordance with facility procedures.
- 11.30. All openings in rated walls, ceilings and floors associated with new systems installed as part of this contract shall be fire or smoke sealed in accordance with the required rating.
- 11.31. Contractor shall provide Field Supervisor to supervise installation, safety and project schedule. The Field Supervisor shall attend the pre-construction conference on site and attend any special meetings required to expedite the project.
- 11.32. Contractor shall repair any damage caused by the Contractor and its employees at no cost to the Owner.
- 11.33. Contractor shall provide clean-up and legal disposition of all spoils created by the work. Contractor shall coordinate with the facility on salvage of all items indicated for removal.
- 11.34. Contractor shall install all equipment and material in accordance with the manufacturers' written instructions.
- 11.35. Contractor and Field Supervisor shall maintain close coordination with the Plant Maintenance Manager on a day-to-day basis.
- 11.36. Contractor shall include in this bid, materials and labor necessary to implement the Owner's Infection Control Risk plan. The Infection Control Risk Assessment List will be reviewed at the pre-construction conference and Contractor shall sign the Infection Control Construction Permit. Original permit shall be retained by the facility.
- 11.37. Contractor shall provide the following items to the facility within ten (10) calendar days from the date of issuance of a Purchase Order (PO):
 - a. number of calendar days for the project work to be completed to assist the facility in scheduling of personnel. Contractor shall allow fourteen (14) calendar days for submittal review and final test observation; and
 - b. name of field supervisor who will oversee the project and provide a single point of contact.
- 11.38. This is necessary to stay in compliance with NFPA and State Fire Marshall codes and standards.

12. HOURS AND DAYS SERVICES ARE TO BE PERFORMED

- 12.1. Services are to be performed between the hours of 8:00 a.m. and 5:00 p.m. Any minor adjustment call-back services will be performed during regular hours. Awarded Contractor is responsible for not interfering with normal flow of business.
- 12.2. Outside Regular Hours -- Any services performed outside of regular work hours will need to be approved by the authorized facility designee or HHS representative.
- 12.3. HOLIDAYS: The holidays observed by the state are listed at <http://www.hr.sao.texas.gov/Holidays>. HHSC does not specifically require the Contractor to work on these holidays but does require the Contractor to fulfill the requirements of the contract. If this requires the Contractor to work on holidays observed by the state or the Contractor, then Contractor shall fulfill obligations at NO additional expense to the HHS agency.
- 12.4. The awarded Contractor must provide a 24-hour contact number and name in case of any urgent issue that may arise. Awarded Contractor or a representative of awarded Contractor's company must be available at all times.

Provide name(s) and number(s) below:

13. TERM OF CONTRACT

- 13.1. Initial Contract Term: The initial term of Contract is **09/01/2019 through 08/31/2020, with two (2), one-year options to renew.**
First renewal option period: 09/01/2020 through 08/31/2021
Second renewal option period: 09/01/2021 through 08/31/2022
- 13.2. If the Federal Minimum Wage Rate increases during the term of this service, the minimum wage rate paid to janitors or workers will be increased and fees to the respondent may be increased. This increase may be paid upon HHSC's receipt of written notification from the respondent that the Federal Minimum Wage Rate has increased. No increase can be provided prior to the actual date of the Federal Minimum Wage Rate increase.
- 13.3. The decision to renew this contract shall be at the sole discretion of the HHSC. Such renewal shall be subject to all specifications and terms and conditions of the contract resulting from this procurement. By submission of a response to this solicitation, respondent agrees to be bound, for the initial term of the contract and for any and all renewal terms that the HHSC may elect to exercise, and to perform the services described at the rates quoted in the IFB.
- 13.4. Option to Extend Services: The respondent by submission of a response to this solicitation agrees that the HHSC may require continued performance, beyond the initial term or renewal contract term, of any of the herein described services at the rates specified herein. This option may be exercised more than once, for the purpose of meeting HHSC procurement goals but the total extension of performance hereunder shall not exceed one hundred twenty (120) calendar days. Such extension of services shall be subject to all specifications and terms and conditions of the contract resulting from this procurement, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. The HHSC may exercise this option upon notice to the awarded respondent.
- 13.5. During the contract period, the HHS agency may add space to an office, relocate offices, close offices, consolidate multiple offices into a single location, or expand from a single location into multiple offices. The HHS agency will attempt to provide awarded Contractor(s) with at least 30 days' notice of new address in the event of office relocation. HHSC reserves the right, in its sole discretion, to add or delete space and or service locations during the period covered by any resulting contract(s) at the same rate. Any new service locations added to this contract will be in close proximity to existing office locations (within 50-mile radius of existing location), or in the same HHSC region.
- 13.6. Emergency Option to Extend Services: The Contractor by submission of a response to this solicitation agrees that the PCS/HHSC may require continued performance, beyond the initial term or renewal contract term, of any of the herein described services at the rates specified herein. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed one hundred twenty (120) calendar days. Such extension of services shall be subject to all specifications and terms and conditions of the contract resulting from this procurement, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. The PCS/HHSC may exercise this option upon written notice to the awarded Contractor.

14. CONTRACTOR'S RESPONSIBILITIES

- 14.1. The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the purchase order including, if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations.
- 14.2. The Contractor will be responsible for verifying that all employees will be in compliance with all requirements of the Immigration Reform and Control Act of 1986, Public Law 99-603, which became effective November 6, 1986.
- 14.3. The Contractor shall provide all labor and equipment necessary to perform/accomplish the service. All employees of the Contractor shall be a minimum of 18 years of age and experienced in the type of work to

be performed. No visitors, wives, husbands, children or other relatives of the Contractor's employees will be allowed on state property during working hours.

- 14.4. The awarded Contractor will be responsible for all employment taxes and other payroll withholding for their employees.
- 14.5. The Contractor shall be responsible for damage to the HHS agency's equipment, and/or the workplace and its contents by its works, its negligence in work, its personnel, or its equipment. The Contractor shall be responsible and liable for the safety, injury, and health of its working personnel while its employees are performing work for an HHS agency.
- 14.6. The Contractor shall have local telephone service. The use of a recording/answering device, or an answering service, is not acceptable except for after normal business hours. Normal business hours are considered to be between 8:00 AM and 5:00 PM Monday through Friday, unless otherwise stated in the solicitation. An emergency 24-hour response number must be provided to allow immediate contact of the Contractor.
- 14.7. The Contractor shall have available, under its direct employment and supervision, necessary organization and facilities to properly fulfill services required under the resulting contract and only personnel trained in completing the services shall be employed under and for this contract.

15. PERSONNEL QUALIFICATIONS

Documentation of qualifications will be provided to PCS or the HHS agency upon request.

16. PERSONNEL REQUIREMENTS/CONDUCT

- 16.1. The Contractor and Contractor employees shall not use state equipment including but not limited to (computers, telephones, facsimiles, copiers, printers, calculators, typewriters), except for phone use in cases of emergency and/or to respond to work requests from the HHS agency. Misuse of this equipment may result in termination of the contract.
- 16.2. The Contractor shall have competent supervisors at the work location at all times that services are being rendered. All supervisors must be able to communicate fluently in English. The supervisor shall be knowledgeable of the specifications of the contract and shall personally inspect the work to ensure that uniform first class workmanship is continually maintained.
- 16.3. Intoxicants and Illegal Drugs: The use of any kind of intoxicants or illegal drugs while on duty by the Contractor's employees may result in termination of the contract by the HHS agency. Contractor's employees shall not bring intoxicants or illegal drugs onto state property.
- 16.4. Quality and Job Progress: The Contractor shall maintain continuous awareness of the quality and completeness of the work performed/accomplished by his/her employees by personal inspection of the premises. The Contractor may be required to inspect the job location/building with the contract administrator or designee.
- 16.5. The Contractor shall provide trained qualified personnel to perform/accomplish the work in accordance with the contract documents.
- 16.6. Absenteeism and Vacation: The Contractor shall provide substitutes for any workers not present for work. The Contractor shall provide relief personnel as necessary and/or work overtime at no cost to HHS agency to ensure that the requirements of this contract are performed/accomplished as required.
- 16.7. 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.
- 16.8. The Contractor shall provide each employee used in the performance of work under the contract with adequate training to perform/accomplish the work competently as defined in the specifications.
- 16.9. Smoking: All facilities are nonsmoking buildings. CONTRACTOR'S EMPLOYEES ARE PROHIBITED FROM SMOKING IN ALL NON- DESIGNATED AREAS.

16.10. **BACKGROUND CHECK:** The awarded Contractor will conduct statewide DPS criminal and sex offender background checks on all the Contractor's permanent and temporary personnel and subcontractors scheduled to work on services under this contract prior to date of award. Supporting documentation confirming the completion of these comprehensive background checks may be subject to review upon request by the HHS agency. Failure to produce the requested documentation may be cause for cancellation of the purchase order. Any expense associated with the background checks will be borne by the Contractor. Complete background checks will be required before any contract employee begins work at a state building or on state property and may be requested any time thereafter. An independent third-party company must accomplish background checks and must include the following at a minimum. The background checks shall include, but not be limited to, the following:

- Social Security Number verification.
- Statewide criminal and sex offender records shall include, but not be limited to, all Texas counties and out-of-state counties based on the current and previous addresses of the applicant for the last seven years.
- Personnel with sex offender, child or adult abuse, or fraud offenses, shall not be allowed to work on this project and shall not be allowed access to the HHS agency offices, facilities, or documents. Personnel with misdemeanor offenses must receive prior approval by the HHS agency before being allowed to work under this contract.

16.11. When on state property, employees are required to wear uniforms and identifying badges at all times. Uniforms may be simple "company T-shirts" or smocks -- or other approved apparel. All employees must wear clean/presentable pants (no shorts). Company uniform shirts/smocks must be all of one uniform/consistent color or design. Managers/Supervisors may wear a distinguishing style of uniform but should strive to maintain a company "standard color" to aid in identification. All contract personnel must prominently display their company identification cards - at all times.

17. CONTRACTOR'S PERSONAL CONDUCT:

17.1. While performing the services, Contractor's and sub-Contractor's personnel must comply with applicable state rules, regulations, and HHS agency's requests regarding personal and professional conduct applicable to the service locations; and otherwise conduct themselves in a businesslike and professional manner. If the HHS agency determines in good faith that a particular employee or sub-Contractor's employee is not conducting himself or herself in accordance with this Section, the HHS agency may provide awarded Contractor with notice and documentation concerning such conduct. Upon receipt of such notice, Contractor must promptly investigate the matter and take appropriate action that may include:

- Removing the employee from the project;
- Providing HHS agency with written notice of such removal; and
- Replacing the employee with a similarly qualified individual in a period acceptable to HHS agency.

17.2. Nothing in the Agreement will prevent Contractor, at the request of HHS agency, from replacing any personnel who are not adequately performing their assigned responsibilities or who, in the reasonable opinion of HHS agency staff, after consultation with Contractor, are unable to work effectively with the members of the HHS agency's staff. In such event, awarded Contractor will provide replacement personnel with equal or greater skills and qualifications as soon as reasonably practicable. Replacement of key personnel will be subject to the HHS agency review and approval. The parties will work together in the event of any such required replacement so as not to disrupt the overall project schedule.

17.3. The awarded Contractor agrees that anyone employed by awarded Contractor to fulfill the terms of the agreement is an employee of Contractor and remains under Contractor's sole direction and control.

17.4. The HHS agency may request the Contractor to remove any employee for cause, including but not limited to: poor or unacceptable performance of work, theft, abusive language or behavior, improper attire, in accordance with the terms and conditions of the contract. Occurrences of this type may be cause for termination of the contract.

18. FORMER EMPLOYEES OF A STATE AGENCY:

- 18.1. Respondents must comply with Texas and federal laws and regulations relating to the hiring of former state employees (see e.g., [Texas Government Code §572.054](#) and [45 C.F.R. §74.43](#)). Such "revolving door" provisions generally restrict former agency heads from communicating with or appearing before the agency on certain matters for two years after leaving the agency. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employees' official responsibility.
- 18.2. As a result of such laws and regulations, a respondent must certify that it has complied with all applicable laws and regulations regarding former state employees by signing this solicitation. Furthermore, a respondent must disclose any relevant past state employment of the respondent's or its subcontractors' employees and agents.

19. CONTRACTOR'S PERFORMANCE:

- 19.1. All work performed under this contract shall be in accordance with this contract, local codes and ordinances and any other authority having lawful jurisdiction. It is important that the Contractor performs all duties as stated. Failure to do so may result in cancellation of the contract.
- 19.2. Quality Assurance: The HHS agency shall periodically communicate with the awarded Contractor via telephone, email, and on-site visits to address questions, concerns or progress.
- 19.3. All services and deliverables must meet or exceed the required levels of performance specified in this solicitation.
- 19.4. Contractor will perform services in a skillful manner, in accordance with best practices and high professional standards used in well-managed operations performing services similar to the services described in this solicitation.
- 19.5. Within forty-eight (48) business hours, all performance issues reported to the awarded Contractor shall be corrected. 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 with the contractor. The HHS agency contract manager will report the following compliance issues to HHSC/PCS for resolution.
 - Failure to reach agreement on corrective action.
 - Failure to perform in accordance with corrective action plan.
 - Numerous, repeated violations of this contract and corrective action plan(s).
- 19.6. The HHS agency contract administrator and/or PCS may utilize a Comptroller of Public Accounts (CPA) Vendor Performance Form to report awarded Contractor's performance to HHSC Procurement and Contracting Services (PCS) staff. PCS staff may report the Contractor's performance to the Texas Comptroller of Public Accounts-Vendor Performance Section.
- 19.7. Respondent warrants that deliverables developed and delivered under this agreement will meet the specifications as described in the agreement during the period following its acceptance by the HHS agency, through the term of the agreement, including any extensions and/or renewals as provided in the agreement, which is subsequently exercised by HHSC/PCS. Awarded Contractor will promptly repair or replace any such deliverables not in compliance with this warranty at no charge to the HHS agency.

20. REMEDIES AND DISPUTES

- 20.1. Respondent agrees and understands that HHS agency may pursue tailored contractual remedies for noncompliance with the agreement. At any time and at its discretion, HHS agency may impose or pursue one or more remedies for each item of noncompliance and will determine remedies on a case-by-case basis. HHS agency's pursuit or non-pursuit of a tailored remedy does not constitute a waiver of any other remedy that HHS agency may have at law or equity.
- 20.2. The HHS agency will notify respondent in writing of specific areas of awarded Contractor performance that fail to meet performance expectations, standards, or schedules, but that, in the determination of HHS agency, do not result in a material deficiency or delay in the implementation or operation of the services.

- 20.3. Awarded Contractor will, within three (3) business days (or another date approved by HHS agency) of receipt of written notice of a non-material deficiency, provide the HHS agency requestor a written response that:
- Explains the reasons for the deficiency, awarded Contractor's plan to address or cure the deficiency, and the date and time by which the deficiency will be cured; or
 - If awarded Contractor disagrees with the HHS agency's findings, its reasons for disagreeing with the findings.
- 20.4. The awarded Contractor's noncompliance may result in delayed payment or non-payment as determined by HHS agency.
- 20.5. At its discretion, the HHS agency may require Contractor to submit a detailed written plan (the "Corrective Action Plan") to correct or resolve an issue, deficiency, or a breach of this Agreement.
- A detailed explanation of the reasons for the cited deficiency;
 - Awarded Contractor's assessment or diagnosis of the cause; and
 - A specific proposal to cure or resolve the deficiency.
- 20.6. The Corrective Action Plan must be submitted by the deadline set forth in HHS agency's request for a Corrective Action Plan. The Corrective Action Plan is subject to approval by HHS agency, which will not unreasonably be withheld.

21. REFERENCES

Respondents must submit with response a list of business references (minimum 3) for which they have provided similar services for in the last two years. Respondent's references should include at a minimum the company name, company point-of-contact, phone number, address, city, state, zip code and description of services provided, including language(s) interpreted (see attachment "Reference's"). Failure to submit required list of references may cause response to be disqualified. HHSC/PCS may contact any or all references prior to an award. Any negative response may result in disqualification of the vendor's submittal.

22. INVOICING AND PAYMENT

- 22.1. HHSC/PCS will issue an individual purchase order for the HHS agency requiring services under the contract issued in accordance with this solicitation. Each purchase order will include the appropriate bill to address for the HHS agency requesting services.
- 22.2. Invoices submitted to the HHS agency must reflect the purchase order number as shown on the purchase order and must specify in detail the work completed for which payment is due. Invoices are to be submitted to the address specified on the individual HHS agency purchase order.
- 22.3. Payment for services will be made by the HHS ordering agency in accordance with the "Price Sheet" form.
- 22.4. Contractor must submit Invoices on a monthly basis or as otherwise indicated on the purchase order. Separate invoices must be submitted for each service location.
- 22.5. Failure to submit required information may result in delay of payment or return of invoice.
- 22.6. No payment will be made under the contract until and unless the HHS agency approves the services performed.
- 22.7. Prices shown on "Price Sheet" form are all inclusive and no other charges are authorized. It is the responsibility of the awarded Contractor to pay for any expenses incurred. 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 as advertised.
- 22.8. If the HHS agency disputes payment of all or any portion of an invoice from the awarded Contractor, the HHS agency will notify the awarded Contractor of such dispute and both parties will attempt in good faith to resolve the dispute. The HHS agency shall not be required to pay any disputed portion of an awarded

Contractor's invoice. Notwithstanding any such dispute, the awarded Contractor must continue to perform the services and produce deliverables in compliance with the terms of this agreement pending resolution of such dispute so long as all undisputed amounts continue to be paid to the awarded Contractor.

23. INSURANCE

23.1. Awarded Contractor shall carry insurance in the following types and amounts for the duration of the contract (or the minimum limit specific by State of Texas statute, whichever is highest), and shall furnish Certificates of Insurance within (10) calendar days from the receipt of notice award. State or other applicable entities, in lieu of the above, may submit a letter stating that they are self-insuring in the amounts required.

- Statutory Worker's Compensation and Employer's Liability with minimum of \$100,000.00.
- Comprehensive General Liability Insurance with minimum Bodily Injury limits of \$ 500,000.00 for each occurrence, and Property Damage limits \$500,000.00 for each occurrence to include Premises-Operations, Broad Form Property Damage, Personal Injury and Contractual Liability Coverage.
- If the insurance policies are not written for the amount specified above, the Awarded Contractor is required to carry an Excess Insurance policy for any difference in the amount specified. Awarded Contractor shall be responsible for any deductible amounts stated in the policies.
- If the service specified requires the awarded Contractor to use an automobile, the awarded Contractor shall carry Automobile Liability insurance for all owned, non-owned, and hired vehicles with minimum limits for bodily Injury \$250,000.00 for each person and \$500,000.00 for each occurrence, and Property Damage limits of \$250,000.00 for each occurrence.

23.2. Property Damage: AWARDED CONTRACTOR will protect the HHS agency's real and personal property from damage arising from awarded Contractor its agent's, employees' and sub-awarded Contractor's performance of the Agreement. The awarded Contractor will be responsible for any loss, destruction, or damage to the HHS agency's property that results from or is caused by Awarded Contractor, its agents', employees' or sub-Contractor's negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of the HHS agency, awarded Contractor will notify the HHS agency contract manager or other designated staff. Subject to direction from PCS or the HHS agency's Contractor manager or her or his designee, will take all reasonable steps to protect that property from further damage.

24. MINOR INFORMALITY OR WITHDRAWAL OF RESPONSE

Responses may be withdrawn from consideration at any time prior to the response submission deadline. A written request for withdrawal must be made to the HHSC Point of Contact. A respondent has the right to amend its response at any time and to any degree by written notice of changes or corrections in a sealed letter or carton to the Response Coordinator prior to the response submission deadline. HHSC reserves the right to waive minor informalities in a response and award a contract that is in the best interests of the State of Texas. A minor informality may include, but is not limited to, a minor irregularity or error such as a clerical error in the production of copies of the response. When HHSC determines that a response contains a minor informality, HHSC shall notify the respondent of the irregularity or error and shall provide the respondent the opportunity to correct.

25. EVALUATION

25.1. Any negative result concerning submission information, references or forms may cause response to be disqualified.

25.2. In evaluating responses to determine the best value for the State, PCS may consider information related to past contract performance/results of a Respondent including, but not limited to: CPA's [Vendor Performance Tracking System](#).

25.3. All responses will be evaluated in a standard manner and will be rated according to the following criteria:

COST OF SERVICES SPECIFIED IN SOLICITATION

Costs of services are significant in the overall evaluation of the responses. However, PCS/HHSC is not obligated to select the lowest cost response. The award will be made to the vendor whose response is most advantageous to the HHS agencies, cost and other factors considered.

EXPERIENCE AND PERFORMANCE RECORD

PCS reserves the right to consider respondents experience with this agency or contact individuals or businesses, whether private or governmental, which might have information bearing on the performance record of respondents.

Respondents must provide three (3) customer references for which a contract was entered into to perform similar or same work as detailed in this solicitation. Each reference should provide information on experience of at least a two-year period. These references must be submitted with the response.

CAPABILITIES

Evaluation will be based upon your response to this solicitation, overall experience, and vendor's capabilities with particular emphasis on the degree of supervision and number of employees that will be provided to perform this contract.

26. PRICING

Respondents must propose their pricing based on the specifications in this solicitation. Respondents must indicate their pricing in the format on the attached "Price Sheet" form. The HHS agency is not responsible for any ancillary costs and will not be responsible for any additional expenses incurred by the respondent that are not represented in the respondent's pricing.

27. AWARD

27.1. HHSC/PCS reserves the right to make an award on the basis of a low line item, low total (group or groups) or in any other combination, to the lowest respondent meeting or exceeding all advertised specifications, performance requirements, and terms and conditions, that will best serve the interests of the State. HHSC/PCS shall be sole judge of "the best interest of the state".

27.2. A contract award or awards shall be made to the highest-ranked respondent(s) after PCS is satisfied that the respondent has met stipulations contained in this solicitation, and that the vendor can perform per specifications, terms and conditions. HHSC/PCS may also opt not to issue an award with regard to this solicitation. During the life of this contract PCS reserves the right to solicit for services that would normally be performed/accomplished using this contract if it deems that by doing so would be in the best interest of the state.

28. INSTRUCTIONS FOR SUBMITTING RESPONSES

RESPONSE SUBMISSION:

Submit the following with the response. Failure by the respondent to submit the documentation listed below may disqualify the respondent from further consideration.

Section 1: Signed Solicitation form:

- Original, signed, dated, and completed solicitation form.
- All addendums (if issued)

Section 2: Respondent's Background and Experience

In this section detail the respondent's corporate background and experience. If the respondent proposes to use subcontractor(s), it must describe any existing or ongoing relationships with the subcontractor(s), including project descriptions. Describe the respondent's corporate background as it relates to projects similar in scope and complexity to the project described in this solicitation. This section must include information regarding the years the respondent has been in business under the same name completing the same or similar services.

Section 3: Capabilities:

In this section, detail the respondent's approach and ability to meet the service requirements as specified in the solicitation. Include organization chart, project management activities, number of staff, with particular emphasis on the degree of supervision and number of employees that will be provided to perform this contract. Include a description of current business activities and if the response includes the use of subcontractors, include a similar description of each subcontractor's capabilities. The respondent may add any other information that demonstrates their capability to perform under this contract.

Section 4: Attachments:

In this section, include all required attachments.

- Reference form (Appendix B)
- Price Sheet - the price sheet includes the format for submitting the pricing information.

29. PROTEST PROCEDURES

[Texas Administrative Code, Title 1, Part 15, Chapter 391, Subchapter D](#) outlines HHSC's respondent protest procedures.

30. CONTRACT ADMINISTRATION:

Administration of the contract is a joint responsibility of the HHS agency Contract Administrator and PCS.

Any proposed changes to work to be performed, whether initiated by the HHS agency or the awarded Contractor, must receive final written approval in the form of a Purchase Order Change Notice signed by the authorized PCS purchasing agent.

- Upon issuance of purchase order, PCS will designate an individual who will serve as the Contract Manager, if necessary, and point of contact between the agency and the vendor. The Contract Manager does not have any express or implied authority to vary the terms of the purchase order, amend the purchase order in any way or waive strict performance of the terms or conditions of the purchase order. This individual's contract management and contract administration responsibilities include, but are not limited to:
 -
 - Monitoring the vendor's progress and performance and ensuring services conform to established specification requirements.
 - Managing the financial aspects of the contract including approval of payments.
 - Meeting with the vendor as needed to review progress, discuss problems, and consider necessary action.
 - Identifying a breach of contract by assessing the difference between contract performance and non-performance.
 - Other areas as identified by the Comptroller of Public Accounts Contract Management Guide, latest edition.

Appendix A -- RESPONDENT CHECKLIST FOR SUBMISSION OF RESPONSE

The following is checklist of certain required and requested items in this solicitation to assist the respondent in responding to this solicitation. Failure to submit required information may cause response to be disqualified.

Respondent should submit response in accordance with the instructions on the cover sheet. Response must be submitted in a sealed envelope referencing the following information in the lower left corner of the envelope: opening date & time, requisition number and respondent's name and address.

Respondent must sign and return the face (cover sheet) of the solicitation. Unsigned responses will not be considered under any circumstance.

Respondent shall complete Payee ID Number, full business name and address of Respondent on the face of the solicitation.

Respondent must read the solicitation thoroughly and understands that by signing the response the Respondent represents that they have read and understood the specifications as well as the Terms & Conditions.

Respondent must submit with response a list of business references on the "References" form attached. Failure to submit required list of references may cause response to be disqualified.

Respondent shall submit with response, the following completed forms and information. Failure to return form(s) may cause response to be disqualified.

- "Solicitation" Form with signature
- "Company information" as indicated above
- "Price Sheet" Form(s)
- "Respondent Reference" Form
- Addendum/Addenda (if applicable)

Appendix B -- Respondent Reference Form

Respondents must submit with response a list of business references (minimum 3) for which they have provided similar services for in the last two years. These references should demonstrate the respondent's ability to perform the Scope of Work described in the solicitation. Include contract dates and contact information (customer points of contact, address, telephone number and email address). The respondent must explain whether it performed the work as a prime Contractor or subcontractor. If the respondent performed the work as a subcontractor, the respondent must describe the scope of subcontracted activities.

1. Business Name:

Point-of-Contact / Title:

Phone: Address/City/State:

Description of Service Provided

2. Business Name:

Point-of-Contact / Title:

Phone: Address/City/State:

Description of Service Provided

3. Business Name:

Point-of-Contact / Title:

Phone: Address/City/State:

Description of Service Provided

4. Business Name:

Point-of-Contact / Title:

Phone: Address/City/State:

Description of Service Provided



Health and Human Services Commission
HHSC Uniform Terms and Conditions - Vendor
Version 2.15

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Responsible Office: Chief Counsel

TABLE OF CONTENTS

Article I. Definitions and Interpretations 4

 1.1 Definitions 4

 1.2 Interpretive Provisions..... 5

Article II. Consideration..... 6

 2.1 Prompt Payment..... 6

 2.2 Expenses 6

 2.3 Work Orders 6

Article III. State and Federal Funding..... 7

 3.1 Funding..... 7

 3.2 No debt Against the State 7

 3.3 Debt to State 7

 3.4 Recapture of Funds 7

Article IV. Warranty, Affirmations, Assurances and Certifications 8

 4.1 Warranty 8

 4.2 General Affirmations 8

 4.3 Federal Assurances 8

 4.4 Federal Certifications..... 8

Article V. Ownership and Intellectual Property..... 9

 5.1 Ownership..... 9

 5.2 Intellectual Property..... 9

Article VI. Records, Audit, and Disclosure..... 9

 6.1 Books and Records 9

 6.2 Access to records, books, and documents 9

 6.3 Response/compliance with audit or inspection findings 10

 6.4 SAO Audit 10

 6.5 Confidentiality 10

 6.6 Public Information Act..... 11

Article VII. Contract Management and Early Termination 11

 7.1 Contract Management..... 11

7.2	Termination for Convenience	11
7.3	Termination for Cause	11
7.4	Contractor responsibility for associated costs.	12
7.5	Equitable Settlement.....	12
Article VIII.	Miscellaneous Provisions	12
8.1	Amendment.....	12
8.2	Insurance.....	12
8.3	Delegation of Authority.....	12
8.4	Legal Obligations.....	13
8.5	E-Verify.....	13
8.6	Permitting and Licensure.....	13
8.7	Indemnity.....	13
8.8	Assignments.....	14
8.9	Subcontracts.....	14
8.10	HUB/Mentor Protégé.....	15
8.11	Relationship of the Parties	15
8.12	Technical Guidance Letters	16
8.13	Governing Law and Venue	16
8.14	Severability.....	16
8.15	Survivability	16
8.16	Force Majeure.....	16
8.17	Dispute Resolution.....	17
8.18.2017	No Waiver of Provisions.....	17
8.19	Publicity.....	17
8.20	Prohibition on Non-compete Restrictions	17
8.21	No Waiver of Sovereign Immunity	17
8.22	Entire Contract and Modification.....	17
8.23	Counterparts.....	18
8.24	Proper Authority.....	18
8.25	Civil Rights.....	18
8.26	Enterprise Information Management Standards	19
8.27	Notice of Legal Matter or Litigation	19

ARTICLE I. DEFINITIONS AND INTERPRETATIONS

1.1 DEFINITIONS

As used in this Contract, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“Amendment” means a written agreement, signed by the parties hereto, which documents changes to the Contract other than those permitted by Work Orders or Technical Guidance Letters, as herein defined.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the Signature Document or included by reference, as if physically, within the body of this Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, purchase orders, Work Orders, or Technical Guidance Letters that may be issued by the System Agency, to be incorporated by reference herein for all purposes if issued.

“Contractor” means the Party selected to provide the goods or services under this Contract, if any.

“Deliverable” means a work product prepared, developed, or procured by Contractor as part of the Services under the Contract for the use or benefit of the System Agency or the State of Texas.

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

“Federal Fiscal Year” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Health and Human Services Commission” or “HHSC” means the administrative agency established under Chapter 531, Texas Government Code or its designee.

“HUB” means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

“Intellectual Property” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, and other intangible proprietary information.

“Mentor Protégé” means the Comptroller of Public Accounts’ leadership program found at: <http://www.window.state.tx.us/procurement/prog/hub/mentorprotege/>.

“Parties” means the System Agency and Contractor, collectively.

“Party” means either the System Agency or Contractor, individually.

“[Project](#)” means the goods or Services described in the Signature Document or a Work Order of this Contract.

“[Public Information Act](#)” or “[PIA](#)” means Chapter 552 of the Texas Government Code.

“[Scope of Work](#)” means the description of Services and Deliverables specified in the Contract as may be amended.

“[Services](#)” means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract.

“[Signature Document](#)” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“[Solicitation](#)” means the document issued by the System Agency under which the goods or services provided under the Contract were initially requested, which is incorporated herein by reference for all purposes in its entirety, including all Amendments and Attachments.

“[Solicitation Response](#)” means Contractor’s full and complete response to the Solicitation, which is incorporated herein by reference for all purposes in its entirety, including any Attachments and addenda.

“[State Fiscal Year](#)” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“[State of Texas Textravel](#)” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“[Subcontract](#)” means any written agreement between Contractor and a third party to fulfill the requirements of the Contract. All Subcontracts are required to be in writing.

“[Subcontractor](#)” means any individual or entity that enters a contract with the Contractor to perform part or all of the obligations of Contractor under this Contract.

“[System Agency](#)” means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

“[Technical Guidance Letter](#)” or “[TGL](#)” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the System Agency to the Contractor.

“[Work](#)” means all Services to be performed, goods to be delivered, and any appurtenant actions performed and items produced, conceived, or developed, including Deliverables.

“[Work Order](#)” means an individually negotiated document that is executed by both Parties and which authorizes a Project, if any, in an indefinite quantity Contract.

1.2 INTERPRETIVE PROVISIONS

- a. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

- b. The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, or schedule of this Contract unless otherwise specified.
- c. The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications thereto, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.
- d. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- e. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- f. The captions and headings of this Contract are for convenience of reference only and do not affect the interpretation of this Contract.
- g. All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- h. This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each will be performed in accordance with its terms.
- i. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase “in its sole discretion.”
- j. Time is of the essence in this Contract.

ARTICLE II. CONSIDERATION

2.1 PROMPT PAYMENT

The System Agency will pay Contractor in accordance with the Prompt Payment Act, Texas Government Code, Chapter 2251.

2.2 EXPENSES

Except as otherwise provided in the Contract, no ancillary expenses incurred by the Contractor in connection with its provision of the Services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.

When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the State of Texas Texttravel.

2.3 WORK ORDERS

To the extent the Contract is for indefinite quantities of services, as specified in the Signature Document, all Work will be performed in accordance with Work Orders.

- a. Upon identification of a Project, the System Agency will request that Contractor submit a proposal, including pricing and a project plan, to System Agency.
- b. If Contractor is selected to carry out an individual Project, a Work Order will be issued. Multiple Work Orders may be issued during the term of this Contract, all of which will be in writing and signed by the Parties. Each Work Order will include a scope of services; a list of tasks required; a time schedule; a list of Deliverables, if any; a detailed Project budget; and such other information or special conditions as may be necessary for the work assigned.
- c. Nothing in this Contract expresses or guarantees that the System Agency will issue Work Orders to Contractor for any of the tasks set forth in the Signature Document. All work requested under this Contract will be required on an irregular and as needed basis throughout the Contract term, and the System Agency makes no guarantee of volume or usage under this Contract.

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 FUNDING

This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current funding for this Contract, the System Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the System Agency, if sufficient and adequate funds are not available. Contractor will have no right of action against the System Agency if the System Agency cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract. In the event of cancellation or termination under this Section, the System Agency will not be required to give notice and will not be liable for any damages or losses caused or associated with such termination or cancellation.

3.2 NO DEBT AGAINST THE STATE

The Contract will not be construed as creating any debt by or on behalf of the State of Texas.

3.3 DEBT TO STATE

If a payment law prohibits the Texas Comptroller of Public Accounts from making a payment, the Contractor acknowledges the System Agency's payments under the Contract will be applied toward eliminating the debt or delinquency. This requirement specifically applies to any debt or delinquency, regardless of when it arises.

3.4 RECAPTURE OF FUNDS

The System Agency may withhold all or part of any payments to Contractor to offset overpayments made to the Contractor. Overpayments as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Contractor

understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Contractor further understands and agrees that reimbursement of such disallowed costs will be paid by Contractor from funds which were not provided or otherwise made available to Contractor under this Contract.

ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

4.1 WARRANTY

Contractor warrants that all Work under this Contract will be completed in a manner consistent with standards under the terms of this Contract, in the applicable trade, profession, or industry; will conform to or exceed the specifications set forth in the Contract; and will be fit for ordinary use, of good quality, and with no material defects. If Contractor fails to complete Work timely or to perform satisfactorily under conditions required by this Contract, the System Agency may require Contractor, at its sole expense, to:

- a. Repair or replace all defective or damaged Work;
- b. Refund any payment received for all defective or damaged Work and, in conjunction therewith, require Contractor to accept the return of such Work; and
- c. Take necessary action to ensure that future performance and Work conform to the Contract requirements.

4.2 GENERAL AFFIRMATIONS

Contractor further certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the General Affirmations have been reviewed and that Contractor is in compliance with each of the requirements reflected therein.

4.3 FEDERAL ASSURANCES

Contractor further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Federal Assurances have been reviewed and that Contractor is in compliance with each of the requirements reflected therein.

4.4 FEDERAL CERTIFICATIONS

Contractor further certifies, to the extent Federal Certifications are incorporated into the Contract under the Signature Document, that the Federal Certifications have been reviewed, and that Contractor is in compliance with each of the requirements reflected therein. **In addition, Contractor certifies that it is in compliance with all applicable federal laws, rules, or regulations, as they may pertain to this Contract.**

ARTICLE V. OWNERSHIP AND INTELLECTUAL PROPERTY

5.1 OWNERSHIP

The System Agency will own, and Contractor hereby assigns to the System Agency, all right, title, and interest in all Work.

5.2 INTELLECTUAL PROPERTY

- a. To the extent any Work results in the creation of Intellectual Property, all right, title, and interest in and to such Intellectual Property will vest in the System Agency upon creation and will be deemed to be a “work made for hire” and made in the course of the services rendered pursuant to this Contract.
- b. To the extent that title to any such Intellectual Property may not by law vest in the System Agency, or such Intellectual Property may not be considered a “work made for hire,” all rights, title, and interest therein are hereby irrevocably assigned to the System Agency. The System Agency will have the right to obtain and to hold in its name any and all patents, copyrights, trademarks, service marks, registrations, or such other protection as may be appropriate to the subject matter, including extensions and renewals thereof.
- c. Contractor must give the System Agency and the State of Texas, as well as any person designated by the System Agency or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond the stated amount payable to Contractor for the services authorized under this Contract.

ARTICLE VI. RECORDS, AUDIT, AND DISCLOSURE

6.1 BOOKS AND RECORDS

Contractor will keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor’s Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes. Unless otherwise specified in this Contract, Contractor will maintain legible copies of this Contract and all related documents for a minimum of seven (7) years after the termination of the contract period or seven (7) years after the completion of any litigation or dispute involving the Contract, whichever is later.

6.2 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS

In addition to any right of access arising by operation of law, Contractor and any of Contractor’s affiliate or subsidiary organizations, or Subcontractors will permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that will have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States,

the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that will have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor will produce original documents related to this Contract. The System Agency and any duly authorized authority will have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Contractor will include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

6.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

- a. Contractor must act to ensure its and its Subcontractor's compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the goods or services provided hereunder. Any such correction will be at Contractor or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance will be solely the decision of the System Agency.
- b. As part of the Services, Contractor must provide to HHSC upon request a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

6.4 SAO AUDIT

Contractor understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Contractor agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Contractor and the requirement to cooperate is included in any Subcontract it awards.

6.5 CONFIDENTIALITY

Any specific confidentiality agreement between the Parties takes precedent over the terms of this section. To the extent permitted by law, Contractor agrees to keep all information confidential, in whatever form produced, prepared, observed, or received by Contractor. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.

6.6 PUBLIC INFORMATION ACT

Information related to the performance of this Contract may be subject to the PIA and will be withheld from public disclosure or released only in accordance therewith. Contractor must make all information not otherwise excepted from disclosure under the PIA available in portable document file (".pdf") format or any other format agreed between the Parties.

ARTICLE VII. CONTRACT MANAGEMENT AND EARLY TERMINATION

7.1 CONTRACT MANAGEMENT

To ensure full performance of the Contract and compliance with applicable law, the System Agency may take actions including:

- a. Suspending all or part of the Contract;
- b. Requiring the Contractor to take specific corrective actions in order to remain in compliance with term of the Contract;
- c. Recouping payments made to the Contractor found to be in error;
- d. Suspending, limiting, or placing conditions on the continued performance of Work;
- e. Imposing any other remedies authorized under this Contract; and
- f. Imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, or rule.

7.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC's notice of termination.

7.3 TERMINATION FOR CAUSE

Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Contract, in whole or in part, upon either of the following conditions:

a. **Material Breach**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, at its sole discretion, that Contractor has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Contractor's duties under the Contract. Contractor's misrepresentation in any aspect of Contractor's Solicitation Response, if any, or Contractor's addition to the Excluded Parties List System (EPLS) will also constitute a material breach of the Contract.

b. **Failure to Maintain Financial Viability**

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Contractor no longer maintains the financial

viability required to complete the Services and Deliverables, or otherwise fully perform its responsibilities under the Contract.

7.4 CONTRACTOR RESPONSIBILITY FOR ASSOCIATED COSTS.

If the System Agency terminates the Contract for Cause, the Contractor will be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Contractor. These costs include, but are not limited to, the costs of procuring a substitute vendor and the cost of any claim or litigation that is reasonably attributable to Contractor's failure to perform any Work in accordance with the terms of the Contract.

7.5 EQUITABLE SETTLEMENT

Any early termination under this Article will be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

ARTICLE VIII. MISCELLANEOUS PROVISIONS

8.1 AMENDMENT

The Contract may only be amended by an Amendment executed by both Parties.

8.2 INSURANCE

Unless otherwise specified in this Contract, Contractor will acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Contractor will provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Contractor will secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Contractor must produce renewal certificates for each type of coverage.

These and all other insurance requirements under the Contract apply to both Contractor and its Subcontractors, if any. Contractor is responsible for ensuring its Subcontractors' compliance with all requirements.

8.3 DELEGATION OF AUTHORITY

Whenever, by any provision of the Contract, any right, power or duty is imposed or conferred on HHSC, the right power or duty so imposed or conferred is possessed and exercised by the System Agencies Executive Commissioner unless such is delegated to duly appointed agents or employees. The Executive Commissioner of the System Agency will reduce any delegation of authority to writing and provide a copy to Contractor on request. The authority delegated to Contractor by the System Agency is

limited to the terms of the Contract. Contractor may not rely upon implied authority and is not delegated authority under the Contract to:

- a. Make public policy;
- b. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of System Agency program; or
- c. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding the System Agency programs or the Contract. However, upon request and reasonable notice to the Contractor, Contract will assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

8.4 LEGAL OBLIGATIONS

Contractor will comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use of information and communication technology. Contractor will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them. In addition to any other act or omission that may constitute a material breach of the Contract, failure to comply with this Section may also be a material breach of the Contract.

8.5 E-VERIFY

By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's e-Verify system to determine the eligibility of:

- a. All persons employed during the contract term to perform duties within Texas; and
- b. All persons (including subcontractors) assigned by the contractor to perform Work pursuant to the Contract.

8.6 PERMITTING AND LICENSURE

At Contractor's sole expense, Contractor will procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or Services required by this Contract. Contractor will be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor agrees to be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract.

8.7 INDEMNITY

TO THE EXTENT ALLOWED BY LAW, CONTRACTOR WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND THE SYSTEM AGENCY AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND

LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, OR CONNECTED WITH, OR RESULTING FROM:

- CONTRACTOR'S PERFORMANCE OF THE CONTRACT, INCLUDING ANY NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR
- ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, RULE, OR BREACH OF CONTRACT BY CONTRACTOR, ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; OR
- EMPLOYMENT OR ALLEGED EMPLOYMENT, INCLUDING CLAIMS OF DISCRIMINATION AGAINST CONTRACTOR, ITS OFFICERS, OR ITS AGENTS; OR
- WORK UNDER THIS CONTRACT THAT INFRINGES OR MISAPPROPRIATES ANY RIGHT OF ANY THIRD PERSON OR ENTITY BASED ON COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS.

CONTRACTOR WILL COORDINATE ITS DEFENSE WITH THE SYSTEM AGENCY AND ITS COUNSEL. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING SOLELY FROM THE GROSS NEGLIGENCE OF THE SYSTEM AGENCY OR ITS EMPLOYEES. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS CONTRACT.

8.8 ASSIGNMENTS

Contractor may not assign all or any portion of its rights under, interests in, or duties required under this Contract without prior written consent of the System Agency, which may be withheld or granted at the sole discretion of the System Agency. Except where otherwise agreed in writing by the System Agency, assignment will not release Contractor from its obligations under the Contract.

Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support.

8.9 SUBCONTRACTS

Contractor will be responsible to the System Agency for any Subcontractor's performance under this Contract. Nothing in this Contract will be construed to relieve Contractor of the responsibility for ensuring that the goods delivered or services rendered by Contractor or any of its Subcontractors comply with all the terms and provisions of this Contract. Contractor will provide written notification to the System Agency of any Subcontractor receiving compensation of One hundred thousand dollars (\$100,000.00) or more of the Work under this Contract, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to perform Services. The System Agency reserves the right to:

- a. Reject the Subcontract or require changes to any provisions that do not comply with the requirements, duties, or responsibilities of the Contract or that create significant barriers for the System Agency to monitor compliance with the Contract;
- b. Object to the selection of the Subcontractor; or
- c. Object to the subcontracting of the Work proposed to be Subcontracted.

8.10 HUB/MENTOR PROTÉGÉ

In accordance with State law, it is the System Agency's policy to assist HUBs whenever possible in providing goods and services to the System Agency. The System Agency encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting Subcontractors to assist in fulfilling their obligations with the System Agency. In addition to information required by this Contract, the contracting Party will provide the procurement department of the System Agency with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder.

The System Agency encourages the Parties it contracts with to partner with certified HUBs that participate in the Texas Comptroller of Public Accounts' Mentor Protégé Program.

8.11 RELATIONSHIP OF THE PARTIES

Contractor is, and will be, an independent contractor and, subject only to the terms of this Contract, will have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract will be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the System Agency any liability whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other Party.

Contractor will be solely responsible for, and the System Agency will have no obligation with respect to:

- a. Payment of Contractor's employees for all Services performed;
- b. Ensuring each of its employees, agents, or Subcontractors who provide Services or Deliverables under the Contract are properly licensed, certified, or have proper permits to perform any activity related to the Work;
- c. Withholding of income taxes, FICA, or any other taxes or fees;
- d. Industrial or workers' compensation insurance coverage;
- e. Participation in any group insurance plans available to employees of the State of Texas;
- f. Participation or contributions by the State to the State Employees Retirement System;
- g. Accumulation of vacation leave or sick leave; or
- h. Unemployment compensation coverage provided by the State.

8.12 TECHNICAL GUIDANCE LETTERS

In the sole discretion of the System Agency, and in conformance with federal and state law, the System Agency may issue instructions, clarifications, or interpretations as may be required during Work performance in the form of a Technical Guidance Letter. A TGL must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by the System Agency will be incorporated into the Contract by reference herein for all purposes when it is issued.

8.13 GOVERNING LAW AND VENUE

This Contract and the rights and obligations of the Parties hereto will be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract will be in a court of competent jurisdiction in Travis County, Texas unless otherwise elected by the System Agency. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto.

8.14 SEVERABILITY

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract will be construed as if such provision did not exist and the non-enforceability of such provision will not be held to render any other provision or provisions of this Contract unenforceable.

8.15 SURVIVABILITY

Termination or expiration of this Contract or a Contract for any reason will not release either party from any liabilities or obligations in this Contract that the parties have expressly agreed will survive any such termination or expiration, remain to be performed, or by their nature would be intended to be applicable following any such termination or expiration, including maintaining confidentiality of information and records retention.

8.16 FORCE MAJEURE

Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a "Force Majeure"), then, while so prevented, the affected Party's obligation to comply with such covenant will be suspended, and the affected Party will not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure will promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice will set forth the extent and duration thereof.

8.17 DISPUTE RESOLUTION

If a contract dispute arises that cannot be resolved to the satisfaction of the Parties, either Party may notify the other Party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, the Parties must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve the dispute. This provision will not apply to any matter with respect to which either Party may make a decision within its respective sole discretion.

8.18.2017 NO WAIVER OF PROVISIONS

Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.

8.19 PUBLICITY

Except as provided in the paragraph below, Contractor must not use the name of, or directly or indirectly refer to, the System Agency, the State of Texas, or any other State agency in any media release, public announcement, or public disclosure relating to the Contract or its subject matter, including in any promotional or marketing materials, customer lists, or business presentations.

Contractor may publish, at its sole expense, results of Contractor performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

8.20 PROHIBITION ON NON-COMPETE RESTRICTIONS

Contractor will not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

8.21 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in the Contract will be construed as a waiver of sovereign immunity by the System Agency.

8.22 ENTIRE CONTRACT AND MODIFICATION

The Contract constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Contract will be harmonized with this Contract to the extent possible by the System Agency.

8.23 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Contract.

8.24 PROPER AUTHORITY

Each Party hereto represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any Services or Work performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor with respect to compensation.

8.25 CIVIL RIGHTS

- a. Contractor agrees to comply with state and federal anti-discrimination laws, including:
 - (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
 - (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - (3) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
 - (4) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
 - (5) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 - (6) Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
 - (7) The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

Contractor agrees to comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.

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

the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>

- d. Contractor agrees to comply with Executive Orders 13279 and 13559, and their implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Contractor must provide written notice to beneficiaries of their rights.
- e. Upon request, Contractor will provide HHSC Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- f. Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:

HHSC Civil Rights Office
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
TTY Toll Free: (877) 432-7232
Fax: (512) 438-5885.

8.26 ENTERPRISE INFORMATION MANAGEMENT STANDARDS

Contractor agrees that it will conform to HHSC standards for data management as described by the policies of the HHSC Office of the Chief Data Officer (OCDO). These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by the HHSC for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

8.27 NOTICE OF LEGAL MATTER OR LITIGATION

Contractor shall notify the contract manager assigned to this Contract of any litigation or legal matter related to or affecting this Contract within seven calendar days of becoming aware of the litigation or legal matter.

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