



**HHS Procurement and Contracting Services  
Invitation for Bid (IFB)  
PART A**

Check one: <input checked="" type="checkbox"/> Formal <input type="checkbox"/> Informal			
<b>Solicitation No.:</b>	<b>Solicitation Post Date:</b>	<b>Response Due Date:</b>	<b>Response Due Time:</b>
HHS0005420	07/25/2019	08/20/2019	2:00 PM CDT
Response MUST be emailed or mailed to the address below. Do not "cc" Purchaser. Response may NOT be submitted by Fax.			
<b>Point of Contact:</b>  Purchaser: Joe Woolverton Phone: (512) 406-2517  E-Mail Bid Response To: Bid Coordinator: pcsbids@hhsc.state.tx.us	<b>Mail Response:</b> Health and Human Services Commission ATTN: Response Coordinator 1100 W 49 <sup>th</sup> St MC 2020 Austin, Texas 78756  <b>Email Response to:</b> pcsbids@hhsc.state.tx.us	<b>Ship to:</b>  Health and Human Services  Multiple locations – Please see Attachment 1	
<b>Source of Authority:</b>	<input type="checkbox"/> CPA/SPD	<input type="checkbox"/> DIR	<input checked="" type="checkbox"/> Other: TGC 2155.1441
<p><b>See Excel Pricing Sheet tab two (Line Details) for listed item(s).</b>  <b>Bidder must bid unit Price indicated on Pricing Sheet.</b>  <b>Sign Part A (this document) and return Excel Price Sheet in XML or xlsx format.</b>  <b>Bid may be disqualified if Price Sheet is not returned in XML or Excel xlsx format.</b>  <b>If emailing a bid, include the following information in the email:</b>  <b>Email Subject Line: Event #, Vendor Name, Buyer Name, Due Date and Time.</b></p>			
<b>Early Payment Discount</b> [redacted] % [redacted] Days		<b>Total</b>	
<b>NOTE:</b> Quote F.O.B. Destination Freight Prepaid & Included, otherwise show exact delivery cost and terms. Unless stated otherwise, delivery is considered to be 14 days after receipt of order (ARO).		<b>Estimated Delivery Date:</b> N/A	

By signing this document, respondent certifies that prices shown on this quote or Excel price sheet 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.

<p>Check below if preference claimed under Texas Administrative Code (TAC), Title 34, Part 1, Chapter 20, Subchapter D, Division 2, Rule § 20.306:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran</li> <li><input type="checkbox"/> Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran</li> <li><input type="checkbox"/> Agricultural products grown in Texas</li> <li><input type="checkbox"/> Agricultural products offered by a Texas bidder</li> <li><input type="checkbox"/> Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran</li> <li><input type="checkbox"/> Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran</li> <li><input type="checkbox"/> Texas Vegetation Native to the Region</li> <li><input type="checkbox"/> USA produced supplies, materials or equipment</li> <li><input type="checkbox"/> Products of persons with mental or physical disabilities</li> <li><input type="checkbox"/> Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel</li> <li><input type="checkbox"/> Energy Efficient Products</li> <li><input type="checkbox"/> Rubberized asphalt paving material</li> <li><input type="checkbox"/> Recycled motor oil and lubricants</li> <li><input type="checkbox"/> Products produced at facilities located on formerly contaminated property</li> <li><input type="checkbox"/> Products and services from economically depressed or blighted areas</li> <li><input type="checkbox"/> Vendors that meet or exceed air quality standards</li> <li><input type="checkbox"/> Recycled or Reused Computer Equipment of Other Manufacturers</li> <li><input type="checkbox"/> Foods of Higher Nutritional Value.</li> </ul>	<p><b>VENDOR / RESPONDENT MUST COMPLETE ALL ITEMS:</b></p> <p><input checked="" type="checkbox"/> Signature of Vendor or Authorized Representative (Must be signed; failure to sign may disqualify response.)</p> <p>Print Name: [redacted] Texas Vendor Identification No. (or Federal Employer's ID): [redacted]</p> <p>Name of Business: [redacted] Street Address: [redacted] City-State-Zip Code: [redacted] Telephone Number: [redacted] Fax Number: [redacted] E-Mail Address: [redacted]</p> <p><i>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)</i></p> <p><b>AWARD NOTICE:</b> 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.</p>
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**\*\*\* Any bids not accepting attached Terms and Conditions will be disqualified \*\*\***

## 1. INTRODUCTION AND PURPOSE OF SOLICITATION:

- 2.1. The Health and Human Services Commission (HHSC) Procurement and Contracting Services (PCS) is seeking to establish a blanket contract for Warewashing chemicals, dispensers, delivery, installation and training for various HHSC facility-leased Auto-Chlor brand warewashing machines, to meet in-place lease requirements with Auto-Chlor Services, LLC. to prevent voiding of established leases and loss of warewashing capabilities to named facilities.

The HHSC facilities listed on Attachment 1 are to be included in this contract. The HHSC has the option to add other facilities with a 30 day written notification to vendor. The contract(s) issued as a result of this solicitation may be utilized by one or all of the Texas Health and Human Services (HHS) agencies listed below:

- Health and Human Services Commission (HHSC)
- Department of Family and Protective Services (DFPS)
- Department of State Health Services (DSHS)

HHSC/PCS will issue an individual purchase order, contract, or releases for each HHS agency, region, city, or location requiring goods/services under the contract(s). Each order will include the delivery/service location and bill to address for the HHS agency requesting goods/services.

## 3. 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 (<http://www.capitol.state.tx.us/statutes/gv/toc.htm>) 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.

## 4. 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 vendors of an opportunity to provide goods or services to the state.
- Subvendor (or Subcontractor) – An entity hired by an awarded vendor to perform a portion of the scope of work by the entity contracting with HHSC as a result of this solicitation. The vendor remains entirely

responsible for performance of all requirements of the contract through monitoring the subvendor'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 vendor 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.

## 5. **INSTRUCTIONS TO RESPONDENTS:**

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 vendor of his/her contractual obligations. Any bids not accepting attached Terms and Conditions will be disqualified.

5.1. Failure to comply with this section may result in disqualification of the response.

5.2. Responses to this solicitation will be received until the date and time shown above. Incomplete or late responses will not be considered.

5.3. Responses to this solicitation may be submitted via email (preferred method) to:

pcsbids@hhsc.state.tx.us

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.

5.4. An authorized officer of the respondent must have signed the IFB response.

If submitting an original hard copy, response 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).

The physical address for hand delivery only is:

Texas Health and Human Services Commission  
Procurement and Contracting Services  
**Attn: Response Coordinator**  
1100 W 49<sup>th</sup> St MC 2020  
Austin, Texas 78756

Fax responses will NOT be accepted.

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.

Respondent must provide the following contact information for the submitted response:

\_\_\_\_\_  
Respondent Contact Person

\_\_\_\_\_  
\_\_\_\_\_  
/\_\_\_\_\_  
Respondent Contact Person's Telephone Number / Fax Number

**6. QUESTIONS:**

Except for HUB questions, the sole point of contact for inquiries concerning this solicitation is:

Purchaser's Name: Joe Woolverton, CTCD, CTCM  
HHSC/ PCS  
Tel: 512-406-2517  
Email address: joseph.woolverton@hhsc.state.tx.us

Direct all communications, except for HUB inquiries, 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.**

**7. HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REQUIREMENTS:**

In accordance with Texas Government Code [Chapter 2161, Subchapter F, §2161.252 \(b\)](#) a proposal that does not contain a HUB Subcontracting Plan (HSP) is non-responsive; and in accordance with [Texas Administrative Code §20.285 \(b\) \(3\)](#). Responses that do not include a completed HUB subcontracting plan in accordance with this subsection shall be rejected due to material failure to comply with Government Code, §2161.252(b).

**7.1 Introduction**

**The sole point of contact for HUB inquires:**

**Texas Health and Human Services Commission**  
**Cheryl Bradley, HUB Coordinator**  
**Phone: (512) 406-2529**  
**E-mail: [cheryl.bradley@hhsc.state.tx.us](mailto:cheryl.bradley@hhsc.state.tx.us)**

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.

Pursuant to Texas Government Code [§2161.181](#) and [§2161.182](#) and HHSC's HUB policy and rules, HHSC is required to make a good faith effort to increase HUB participation in its contracts. HHSC may accomplish the goal of increased HUB participation by contracting directly with HUBs or indirectly through subcontracting opportunities.

**7.2 HHSC's Administrative Rules**

HHSC has adopted the CPA's HUB rules as its own. HHSC's rules are located in the Texas Administrative Code [Title 1, Part 15, Chapter 391, Subchapter G](#) and the CPA rules are located in [Texas Administrative Code Title 34, Part 1, Chapter 20, Subchapter D, Division 1](#). If there are any discrepancies between HHSC's administrative rules and this IFB, the rules shall take priority.

### **7.3 Statewide Annual HUB Utilization Goal**

The CPA has established **statewide annual HUB utilization goals** for different categories of contracts in Texas Administrative Code [Title 34, Part 1, Chapter 20, Subchapter B, §20.284](#) of the HUB rules. In order to meet or exceed the **statewide annual HUB utilization goal**, HHSC encourages outreach to certified HUBs. Contractors shall make a good faith effort to include certified HUBs in the procurement process.

This procurement is classified as a **Commodity** procurement under the CPA rule and therefore has a **statewide annual HUB utilization goal** of **21.1%** per fiscal year.

### **7.4 Required HUB Subcontracting Plan**

In accordance with Texas Government Code [Chapter 2161, Subchapter A, §2161.252 \(a\)](#) each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest for the contract, determine whether there will be subcontracting opportunities under the contract. If the state agency determines that there is that probability, the agency shall require that each bid, proposal, offer, or other applicable expression of interest for the contract include a historically underutilized business subcontracting plan.

In accordance with Texas Administrative Code [Title 34, Part 1, Chapter 20, Subchapter D, Division 1, §20.285\(a\)\(1\)\(C\)](#) of the HUB Rule, state agencies may determine that subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under the contract. If an agency determines that subcontracting is probable on only a portion of a contract, it shall document its reasons in writing for the procurement file.

HHSC has determined that subcontracting opportunities are probable for this IFB. **As a result, the respondent must submit an HSP with its proposal. The HSP is required whether a respondent intends to subcontract or not.**

**Submit one (1) copy of the HUB Subcontracting Plan (HSP), in accordance with the IFB, in a separate sealed envelope, with the IFB submission, labeled: HUB Subcontracting Plan (HSP), and include all supporting documentation in accordance with the HSP. *Respondent must also submit one (1) electronic copy of the HSP and supporting documentation in Adobe PDF format on a USB flash drive.***

In the HSP, a respondent must indicate whether it is a Texas certified HUB. Being a certified HUB does not exempt a respondent from completing the HSP requirement.

HHSC shall review the documentation submitted by the respondent to determine if a good faith effort has been made in accordance with solicitation and HSP requirements. During the good faith effort evaluation, HHSC may, at its discretion, allow revisions necessary to clarify and enhance information submitted in the original HSP.

If HHSC determines that the respondent's HSP was not developed in good faith, the HSP will be considered non-responsive and will be rejected as a material failure to comply with advertised specifications. The reasons for rejection shall be recorded in the procurement file.

### **7.5 CPA Centralized Master Bidders List**

Respondents may search for HUB subcontractors in the CPA's Centralized Master Bidders List (CMBL) HUB Directory, which is located on the CPA's website at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/tpasscmbsearch.do>. For this procurement, HHSC has identified the following class and item codes for potential subcontracting opportunities:

**National Institute of Governmental Purchasing (NIGP) Class/Item Code(s):**

**485-38 Dishwashing Compounds, Hand and Machine Type, Including Rinse Solutions**

**486-38 Dishwashing Compounds, Hand and Machine Type, Including Rinse Solutions, Environmentally Certified Products**

Respondents are not required to use, nor limited to using, the class and item codes identified above, and may identify other areas for subcontracting.

HHSC does not endorse, recommend nor attest to the capabilities of any company or individual listed on the CPA's CMBL. The list of certified HUBs is subject to change, so respondents are encouraged to refer to the CMBL often to find the most current listing of HUBs.

## **7.6 HUB Subcontracting Procedures – If a Respondent Intends to Subcontract**

An HSP must demonstrate that the respondent made a good faith effort to comply with HHSC's HUB policies and procedures. The following subparts outline the items that HHSC will review in determining whether an HSP meets the good faith effort standard. A respondent that intends to subcontract must complete the HSP to document its good faith efforts.

### **Identify Subcontracting Areas and Divide Them into Reasonable Lots**

A respondent should first identify each area of the contract work it intends to subcontract. Then, to maximize HUB participation, it should divide the contract work into reasonable lots or portions, to the extent consistent with prudent industry practices.

### **Notify Potential HUB Subcontractors**

The HSP must demonstrate that the respondent made a good faith effort to subcontract with HUBs. The respondent's good faith efforts shall be shown through utilization of all methods in conformance with the development and submission of the HSP and by complying with the following steps:

Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices. The respondent must determine which portions of work, including goods and services, will be subcontracted.

Use the appropriate method(s) to demonstrate good faith effort. The respondent can use either method(s) 1, 2, 3, 4 or 5:

#### **7.6.1.1 Method 1: Respondent Intends to Subcontract with only HUBs:**

The respondent must identify in the HSP the HUBs that will be utilized and submit written documentation that confirms 100% of all available subcontracting opportunities will be performed by one or more HUBs; **or**,

#### **7.6.1.2 Method 2: Respondent Intends to Subcontract with HUB Protégé(s):**

The respondent must identify in the HSP the HUB Protégé(s) that will be utilized and should:

- include a fully executed copy of the Mentor Protégé Agreement, which must be registered with the CPA prior to submission to HHSC, and
- identify areas of the HSP that will be performed by the Protégé.

HHSC will accept a Mentor Protégé Agreement that has been entered into by a respondent (Mentor) and a certified HUB (Protégé) in accordance with Texas Government Code §2161.065. When a respondent proposes to subcontract with a Protégé(s), it does not need to provide notice to three (3) HUB vendors for that subcontracted area.

Participation in the Mentor Protégé Program, along with the submission of a Protégé as a subcontractor in an HSP, constitutes a good faith effort for the particular area subcontracted to the protégé; **or**,

#### **7.6.1.3 Method 3: Respondent Intends to Subcontract with HUBs and Non-HUBs (Meet or Exceed the Goal):**

The respondent must identify in the HSP and submit written documentation that one or more HUB subcontractors will be utilized and that the aggregate expected percentage of subcontracts with HUBs will meet or exceed the goal specified in

this solicitation. When utilizing this method, only HUB subcontractors that have existing contracts with the respondent for five years or less may be used to comply with the good faith effort requirements.

When the aggregate expected percentage of subcontracts with HUBs meets or exceeds the goal specified in this solicitation, respondents may also use non-HUB subcontractors; **or**,

#### **7.6.1.4 Method 4: Respondent Intends to Subcontract with HUBs and Non-HUBs (Does Not Meet or Exceed the Goal):**

The respondent must identify in the HSP and submit documentation regarding both of the following requirements:

- Written notification to trade organizations and/or development centers to assist in identifying potential HUBs of the subcontracting opportunities the respondent intends to subcontract.

Respondents must give trade organizations and/or development centers at least seven (7) working days prior to submission of the respondent's response for dissemination of the subcontracting opportunities to their members. A list of trade organizations and/or development centers is located on CPA's website under the [Small, Minority and Women Business Trade Organizations and Development Centers](#).

- Written notification to at least three (3) HUB businesses of the subcontracting opportunities that the respondent intends to subcontract. The written notice must be sent to potential HUB subcontractors prior to submitting proposals and must include:
  - a description of the scope of work to be subcontracted;
  - information regarding the location to review project plans or specifications;
  - information about bonding and insurance requirements;
  - required qualifications and other contract requirements; and
  - a description of how the subcontractor can contact the respondent.
- Respondents must give potential HUB subcontractors a reasonable amount of time to respond to the notice, at least seven (7) working days prior to submission of the respondent's response unless circumstances require a different time period, which is determined by the agency and documented in the contract file.
- Respondents must also use the CMBL, the HUB Directory, and Internet resources when searching for HUB subcontractors. Respondents may rely on the services of contractor groups, local, state and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program.

#### **Written Justification of the Selection Process**

HHSC will make a determination if a good faith effort was made by the respondent in the development of the required HSP. One or more of the methods identified in the previous sections may be applicable to the respondent's good faith efforts in developing and submission of the HSP. HHSC may require the respondent to submit additional documentation explaining how the respondent made a good faith effort in accordance with the solicitation.

A respondent must provide written justification of its selection process if it chooses a non-HUB subcontractor. The justification should demonstrate that the respondent negotiated in good faith with qualified HUB bidders and did not reject qualified HUBs who were the best value responsive bidders.

#### **7.7 Method 5: Respondent Does Not Intend to Subcontract**

When the respondent plans to complete all contract requirements with its own equipment, supplies, materials and/or employees, it is still required to complete an HSP.

The respondent must complete the "Self Performance Justification" portion of the HSP, and attest that it does not intend to subcontract for any goods or services, including the class and item codes identified in Section 7.5. In addition, the respondent must identify the sections of the proposal that describe how it will complete the Scope of Work using its own

resources or provide a statement explaining how it will complete the Scope of Work using its own resources. The respondent must agree to comply with the following if requested by HHSC:

- provide evidence of sufficient respondent staffing to meet the IFB requirements;
- provide monthly payroll records showing the respondent staff fully dedicated to the contract;
- allow HHSC to conduct an onsite review of company headquarters or work site where services are to be performed and,
- provide documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the Scope of Work.

## **7.8 Post-award HSP Requirements**

The HSP shall be reviewed and evaluated prior to contract award and, if accepted, the finalized HSP will become part of the contract with the successful respondent(s).

After contract award, HHSC will coordinate a post-award meeting with the successful respondent to discuss HSP reporting requirements. The contractor must maintain business records documenting compliance with the HSP and must submit monthly subcontract reports to HHSC by completing the HUB HSP [Prime Contractor Progress Assessment Report](#). This monthly report is required as a condition for payment to report to the agency the identity and the amount paid to all subcontractors.

As a condition of award, the Contractor is required to send notification to all selected subcontractors as identified in the accepted/approved HSP. In addition, a copy of the notification must be provided to the agency's Contract Manager and/or HUB Program Office within 10 days of the contract award.

During the term of the contract, if the parties in the contract amend the contract to include a change to the scope of work or add additional funding, HHSC will evaluate to determine the probability of additional subcontracting opportunities. When applicable, the Contractor must submit an HSP change request for HHSC review. The requirements for an HSP change request will be covered in the post-award meeting.

When making a change to an HSP, the Contractor will obtain prior written approval from HHSC before making any changes to the HSP. Proposed changes must comply with the HUB Program good faith effort requirements relating to the development and submission of a HSP.

If the Contractor decides to subcontract any part of the contract after the award, it must follow the good faith effort procedures outlined in Section 7.6 of this IFB (e.g., divide work into reasonable lots, notify at least three (3) vendors per subcontracted area, provide written justification of the selection process, and/or participate in the Mentor Protégé Program).

For this reason, HHSC encourages respondents to identify, as part of their HSP, multiple subcontractors who are able to perform the work in each area the respondent plans to subcontract. Selecting additional subcontractors may help the selected contractor make changes to its original HSP, when needed, and will allow HHSC to approve any necessary changes expeditiously.

Failure to meet the HSP and post-award requirements will constitute a breach of contract and will be subject to remedial actions. HHSC may also report noncompliance to the CPA in accordance with the provisions of the Vendor Performance and Debarment Program.

## **8. ESTIMATED QUANTITIES:**

**The quantities listed are based on estimates of prior historical data and are for evaluation purposes only and should not be construed as a minimum or maximum that the agency must order. Shipments against this contract shall be made only upon receipt of a purchase order from the ordering facility. Shipments are required within seven (7) days of vendor receipt of Purchase Order. Items will only be ordered to satisfy agency requirements. Quantities may increase from the initial estimates based on facility operational needs. Any product remaining at the end of the contract period is automatically cancelled.**

**Please note facilities may utilize other items listed in vendor catalog as well as the specific items listed in solicitation.**



- 8.1. Neither PCS nor any HHSC 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.
- 8.2. HHSC reserves the right to increase each order by 20% during the contract period.
- 8.3. The minimum quantity shall be one (1) case of any item ordered. A monthly minimum order will not be required.
- 8.4. HHSC facilities using this contract will place orders as their actual needs arise.

**9. SCOPE OF WORK (SOW) TO BE PERFORMED:**

- 9.1. Vendor shall furnish, install and maintain AASE Certified dispensers compatible with products as needed per appropriate line items, free of charge or obligation to purchase to HHSC facilities. Dispensers will automatically control and dispense directly from shipping containers to maintain concentrations at the pre-determined level. Dispensers will be equipped with visual signal when product is depleted and a visual display of operating modes.
- 9.2. Instructions for operation of dispensers and dilution of chemicals shall be understandable and clear at an eighth grade level and provided in English and Spanish if requested by HHSC facilities.
- 9.3. Design of the dispensing systems shall protect users from exposure to concentrated products.
- 9.4. Parts not specifically mentioned with care required for the system to be fully operational must be furnished.
- 9.5. For all continuous built (flight type) two tank, single tank conveyor and /or single tank door type dishwashing machines, vendor shall furnish, install, and maintain acceptable dispensing device(s) compatible with dishwashing machine specifications.
- 9.6. Prior to installation of electronic dispenser(s), vendor's representative shall obtain approval from the facility representative(s) for location of power connection to transformer from control box for each machine. The designated facility representative shall furnish suitable water outlet on flow pressure side of house temperature supply to the machine. Vendor shall connect from that point to secure all tubing in a workmanlike manner.
- 9.7. All warewashing chemical dispensers are required to be AASE certified to meet backflow prevention regulations. The vendor is responsible for remedy should the dispenser not be deemed within regulation by facility/HHSC representative.
- 9.8. The following installation practices shall also be adhered to:
  - Transformer shall be mounted as close as possible to source of power on load-side of machine motor switch as agreed to by HHSC representative.
  - Wiring on high side of transformer shall be an approved type UL with moisture resistant flame-retardant and noncorrosive covering conforming with recognized wiring methods of the national electrical code. Wiring shall be secured to control box by clamp in taut workmanlike manner.
  - All low voltage wiring from indicator unit shall be firmly secured at approximately two (2) intervals and grouped together in neat, workmanlike manner.
- 9.9. Vendor's representative shall, at the time of installation of dispenser(s), adjust electronic control to provide detergent concentration at the most economical concentration required by local water conditions such that dishwashing results are satisfactory to food service manager.
- 9.10. Vendor's representative shall also provide at time of installation, to all pertinent personnel, all necessary instruction to ensure most economical highest degree of performance is maintained.
- 9.11. Prior to the contract start date, vendor shall provide vendor representative name, address, telephone and pager numbers of not less than two (2) vendor service representatives nearest the facility.
- 9.12. Vendor shall provide a minimum of one (1) preventative maintenance service call at each location at intervals not to exceed four (4) weeks during the contract period. Consumption usage reports will be furnished to the

food service manager. The term “preventative maintenance” service: shall be interpreted to mean all adjustments, cleaning and other adjustments which do not require the purchase of materials.

- 9.13. Service calls shall be made by representative(s) of vendor who shall have been technically trained and employed by vendor for a period of not less than one (1) year, during which representative’s responsibility shall have been the servicing of institutional dishwashing machines.
- 9.14. Vendor’s representatives shall be solely responsible for coordinating service visit(s) with foodservice manager and for ensuring that any or all of the following services are provided to food service manager’s satisfaction while utilizing contractor’s product(s):
  - Inspect and properly maintain all dispensing equipment.
  - Inspect dishwashing machine(s) in operation as to functioning of mechanical parts, gauges, valves, cleanliness of wash arms and rinse nozzles.
  - Provide adjustments as necessary and clean interior of all machines, dispensers and mechanical parts, utilizing appropriate products.
  - Check solutions on each machine(s) for optimum concentration and temperature.
  - Provide, upon request, a test kit for measuring alkalinity of work solution and a separate test kit for determining water hardness.
  - Provide instruction on necessary machine maintenance procedures to be followed by HHSC personnel between regular service calls.
- 9.15. Emergency service shall be rendered within eight (8) hours of notification to repair dispenser(s) and /or dispenser installation(s) to include all replacement parts or equipment which shall be borne by the vendor at no cost to the facilities.
- 9.16. All conveyor machines that the HHSC specifies will have furnished an energy saver piece of equipment that controls machine cycling and will be installed and maintained by the vendor at no charge to the facilities.
- 9.17. Before the vendor’s representative leaves each service call and inspection, the written service inspection report will be reviewed with the food service manager and a copy of the report left with the food service manager and a copy sent to the HHSC coordinator. The HHSC copy may be mailed, faxed, or emailed.
- 9.18. Each month vendor shall de-lime dish machines according to industry standards as to the requirements of each type machine and the instructions on the de-scaler container.
- 9.19. Most machines will require that the soap be disconnected and the descaler be added, primarily to the rinse tank. Vendor shall run machines with the descaler. All arms will require that descaler is place in them directly or that they be disconnected and soaked in the descaler solution. Vendor shall run machine through rinse cycle and rinse out machine with clear water and return machine to normal operation.
- 9.20. Bid prices shall include dispensers and all technical assistance services complying with the specifications. There shall be no additional costs or obligation.
- 9.21. Installed system shall not interfere with primary water line and shall have a backflow prevention mechanism.
- 9.22. Containers shall not have defects affecting service ability, such as rust spots, dents, weak seams, etc.
- 9.23. Vendor shall inspect all dispensing equipment for defects or malfunctions and make any minor repairs and adjustments as necessary.
- 9.24. Vendor shall provide emergency service within 8 hours of notification to repair dispenser(s) and/or dispenser installations(s) to include all replacement parts for dispensing equipment which shall be borne by the vendor at no cost to the facilities.
- 9.25. Before the vendor’s representative leaves each service call and inspection, the written service inspection report will be reviewed with the laundry manager.
- 9.26. Vendor shall include disposal instructions for chemical containers in English and/or Spanish if requested.
- 9.27. Vendor shall test to insure each chemical is performing optimally when moving from the automatic dispenser to the equipment in the time needed.

- 9.28. Vendor shall replace tubing running from automatic dispensers to equipment annually, at no additional charge, to insure there are no leaks.
- 9.29. Vendor shall take and record titrations in every module each month.
- 9.30. Vendor shall replace tubes in automatic dispensers each month using appropriate size tubing, at no cost to the facilities.
- 9.31. Vendor shall make sure the Manufacturer's standard containers are sufficiently durable to insure safe delivery with the construction and labeling of each which allow ready acceptance by common carriers regularly engaged in interstate commerce and must conform to all Department of Transportation (DOT) regulations. All containers shall be designed and constructed so that product shall not affect or be affected by the containers in which it is furnished. Containers shall not have defects affecting service ability, such as rust spots, dents, weak seams, etc.
- 9.32. All containers and cases shall be labeled with the manufacturer's standard identification commercial typeset label.
- 9.33. The label shall be in compliance with the federal hazardous substance labeling act and current OSHA regulations.
- 9.34. Label shall be in acid resistant ink.
- 9.35. Label will resist deterioration and remain legible throughout using period of contents.
- 9.36. All items shall be manufactured, marketed and shipped in full accordance with federal state and local laws and specifications instructions for appropriate use of the product and safety and handling precautions.
- 9.37. Shipping: FOB destination, freight prepaid and allowed. Inside or store door delivery required.
- 9.38. Vendor shall pre-pay and include all freight charges in the unit pricing.
- 9.39. Identification of shipments: in addition to the complete destination address, each package must be clearly marked with the purchase order number. A packing slip must accompany each shipment.
- 9.40. Packaging and labeling: all items shipped must be properly labeled showing the brand name, quantity, lot number (if applicable) and any other necessary identifying information usually used by the vendor.
- 9.41. Vendor shall deliver merchandise within seven (7) working days of receipt of order.
- 9.42. Vendor shall have the ability to deliver merchandise in the event of an emergency within a 24 hour period of receiving the request.
- 9.43. On a monthly basis, the vendor shall provide a consolidated report to the HHSC program administrator.
- 9.44. Each report shall provide at least the following, when applicable:
  - Name of using facility;
  - Date of service
  - Name of vendor's representative performing service;
  - Statement of any and all needed repairs to washer and respective corrective measures taken and/or recommended.
  - Conditions found and preventative maintenance performed.
  - Training conducted.
  - Emergency responses: Describe emergency and resolution.
- 9.45. Current vendor shall keep equipment in place and provide usable products awarded under the current contract maintenance and warranty on all products and equipment, and maintain customer service and technical help at no charge until agency determines all requirements of the new contract are in place. The agency will notify the vendor in writing when to remove the equipment.

- 9.46. At completion of contract period, the vendor will remove dispenser(s) equipment no later than seven (7) working days after notification from facility. Unopened cases of products that is not expired will be collected by vendor and monetary credit given to the facility for those products at purchase price.

**10. CHEMICAL PRODUCT DESCRIPTION:**

- 10.1. The make, model, Product Code, name of manufacturer and brand/trade name, etc., as applicable of the time which the bidder proposes to furnish must be stated as part of the bid. All agents furnished shall contain the quantity level as stated in the specifications. Failure to do so shall result in disqualification of bid.
- 10.2. All chemicals must be Auto-Chlor brand or equivalent for use in Auto-Chlor warewashing machines to meet in-place lease requirements with Auto-Chlor Services, LLC. to prevent voiding of established leases and loss of warewashing capabilities to named facilities.
- 10.3. The state has the right to accept or reject different brands in the best interest of the state.
- 10.4. Testing will normally be conducted in accordance with the latest issue of standard methods recommended by the American Society for Testing and Materials (ASTM). However, HHSC reserves the right to use any test method(s) it deems fair and suitable to determine compliance with the specifications.
- 10.5. Vendor must furnish product information on each product, including material safety data sheets (MSDS) on each product with the bid. Failure to do so may result in disqualification of the bid response.
- 10.6. The Texas Health and Safety Code Chapter 502, Section 502.006 requires chemical manufacturers and distributors to provide material safety data sheets (MSDS) for hazardous materials sold. Products covered by this act must be accompanied by a material safety data sheet and such products shall be labeled in compliance with the law.
- 10.7. Vendors are cautioned to read carefully the specification(s) and must direct our attention to any exceptions to specifications; even though your catalog or spec. sheet may or may not list specifications for your product.
- 10.8. Products delivered that fail to meet specifications or are not the actual item(s) awarded on the contract shall be rejected or returned at the vendor's expense. Item(s) will be purchased on the open market, and any resulting increase in price shall be charged to awarded vendor.
- 10.9. Similar items may be added to the awarded contract upon mutual agreement.

**11. HOURS AND DAYS THAT SERVICES ARE TO BE PERFORMED:**

- 11.1. Services are to be performed between the hours 8:00 am and 4:00 pm. Any minor adjustment or call back services will be performed during regular hours. Awarded vendor is responsible for not interfering with normal flow of business.
- 11.2. Outside Regular Hours – Any services performed outside of regular work hours will need to be approved by the contract manager.
- 11.3. HOLIDAYS: The holidays observed by the state are listed the attached "Holiday Schedule". HHSC does not specifically require the Vendor to work on these holidays but does require the Vendor to fulfill the requirements of the contract. If this requires the Vendor to work on holidays observed by the state or the Vendor, then Vendor shall fulfill obligations at NO additional expense to the HHS agency. The Holiday Schedule may also be found here:
- <http://www.hr.sao.texas.gov/Holidays/>
- 11.4. The awarded vendor must provide a 24-hour contact number and name in case of any urgent issue that may arise. Awarded vendor or a representative of awarded vendor's company must be available at all times.

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

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Respondent Representative

Phone Number

Cell Number

## **12. VENDOR'S RESPONSIBILITIES:**

- 12.1. The Vendor 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.
- 12.2. The Vendor 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.
- 12.3. The Vendor shall provide all labor and equipment necessary to perform/accomplish the service. All employees of the Vendor shall be a minimum of 17 years of age and experienced in the type of work to be performed. No visitors, wives, husbands, children or other relatives of the Vendor's employees will be allowed on state property during working hours unless they are bona fide employees of the Vendor.
- 12.4. The awarded vendor will be responsible for all employment taxes and other payroll withholding for their employees.
- 12.5. The Vendor 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 Vendor 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.
- 12.6. The Vendor 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 Vendor.
- 12.7. The vendor shall have available, under its direct employment and supervision, the 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

## **13. CHEMICAL SAMPLES:**

- 13.1. No samples are required with the bid. HHSC reserves the right to request samples. Samples must be submitted within five (5) working days of request at no expense to HHSC with freight prepaid. Samples submitted to verify specifications prior to making an award may be retained for the duration of the contract for later comparison with items delivered. Each sample should be marked with bidder's name, address, bid opening date, and requisition number.
- 13.2. Vendor hereby guarantees that all chemicals and equipment proposed to be furnished by vendor are not adulterated or mislabeled. Vendor further guarantees that all chemicals and equipment proposed to be furnished will meet all requirements specified by all applicable federal, state, and local laws. All products must be biodegradable and meet all EPA and OSHA requirements.
- 13.3. The state has the right to accept or reject different brands for the best interest of the state.

## **14. VENDOR PERSONNEL QUALIFICATIONS:**

- 14.1. Vendor must have all applicable permits, licenses, and insurance coverage. Documentation of these qualifications will be provided to PCS and the HHS agency upon request.
- 14.2. Vendor will have at least 3 years of experience servicing Auto-Chlor brand warewashing machines. Documentation required, bidder may use their own format.
- 14.3. Vendor will have specific training in operations of Auto-Chlor brand warewashing machines. Documentation required, bidder may supply information using their own format.
- 14.4. Vendor will have references that may be contacted. Report results should be available for reference facilities.

14.5. Vendor will have trained personnel specific to existing HHSC leased Auto-Chlor brand warewashing machines.

**15. VENDOR PERSONNEL REQUIREMENTS/CONDUCT:**

- 15.1. Vendor's Visitors: The vendor shall provide all necessary labor and all employees of the vendor shall be no less than eighteen (18) years of age with a minimum of at least one (1) year of full time experience in the type of work to be performed. Visitors, including spouses or children, of the vendor's employees are not allowed in any of the buildings during working hours, unless they are bona fide employees of the vendor.
- 15.2. The Vendor and vendor 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.
- 15.3. The Vendor 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.
- 15.4. Intoxicants and Illegal Drugs: The use of any kind of intoxicants or illegal drugs while on duty by the Vendor's employees may result in termination of the contract by the HHS agency. Vendor's employees shall not bring intoxicants or illegal drugs onto state property.
- 15.5. Quality and Job Progress: The Vendor 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 vendor may be required to inspect the job location/building with the contract administrator or designee.
- 15.6. The Vendor shall provide trained qualified personnel to perform/accomplish the work in accordance with the contract documents.
- 15.7. Absenteeism and Vacation: The Vendor shall provide substitutes for any workers not present for work. The Vendor shall provide relief personnel as necessary and/or work overtime at no cost to HHS agency to ensure that the objectives of this contract are performed as required.
- 15.8. It is understood and agreed by the HHS agency and the Vendor that the Vendor is retained as an independent vendor and in no event shall any employee hired by the Vendor be considered an employee of the state.
- 15.9. The Vendor 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.
- 15.10. Smoking: All facilities are nonsmoking buildings. **VENDOR'S EMPLOYEES ARE PROHIBITED FROM SMOKING IN ALL NON- DESIGNATED AREAS.**
- 15.11. **BACKGROUND CHECK:** The awarded Vendor will conduct statewide DPS criminal and sex offender background checks on all the Vendor's permanent and temporary personnel and subvendors scheduled to work on services under this contract prior to beginning work. 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 Vendor. 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.

15.12. 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.

## **16. VENDOR'S PERSONAL CONDUCT:**

16.1. While performing the services, vendor's and sub-vendor'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-vendor's employee is not conducting himself or herself in accordance with this Section, the HHS agency may provide awarded vendor with notice and documentation concerning such conduct. Upon receipt of such notice, vendor 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

16.2. Nothing in the Agreement will prevent vendor, 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 vendor, are unable to work effectively with the members of the HHS agency's staff. In such event, awarded vendor 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.

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

16.4. The HHS agency may request the Vendor 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.

## **17. FORMER EMPLOYEES OF A STATE AGENCY:**

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.

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 subvendors' employees and agents.

## **18. VENDOR'S PERFORMANCE:**

18.1. 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 vendor perform all duties as stated. Failure to do so may result in cancellation of the contract.

18.2. Quality Assurance: The HHS agency shall periodically communicate with the awarded vendor via telephone, email, and on-site visits to address questions, concerns or progress.

- 18.3. All services and deliverables must meet or exceed the required levels of performance specified in this solicitation.
- 18.4. Vendor 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.
- 18.5. All work performed under this contract shall be in accordance with this solicitation, terms and conditions, local codes and ordinances and any other authority having lawful jurisdiction. It is important that vendor perform all duties as stated. Failure to do so may result in cancellation of the contract.
- 18.6. Within forty-eight (48) business hours, all performance issues reported to the awarded vendor shall be corrected. If requested by the HHS agency, the vendor 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 vendor 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).
- 18.7. The HHS agency contract administrator and/or PCS may utilize a Comptroller of Public Accounts (CPA) Vendor Performance Form to report awarded vendor's performance to HHSC Procurement and Contracting Services (PCS) staff. PCS staff may report the vendor's performance to the Texas Comptroller of Public Accounts-Vendor Performance Section.
- 18.8. 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 vendor will promptly repair or replace any such deliverables not in compliance with this warranty at no charge to the HHS agency.

## **19. REMEDIES AND DISPUTES:**

- 19.1. 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.
- 19.2. The HHS agency will notify respondent in writing of specific areas of awarded vendor 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.
- 19.3. Awarded vendor 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 vendor's plan to address or cure the deficiency, and the date and time by which the deficiency will be cured; or
  - If awarded vendor disagrees with the HHS agency's findings, its reasons for disagreeing with the findings
- 19.4. The awarded vendor's noncompliance may result in delayed payment or non-payment as determined by HHS agency.
- 19.5. At its discretion, the HHS agency may require vendor 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 vendor's assessment or diagnosis of the cause; and



- A specific proposal to cure or resolve the deficiency.

19.6. 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.

## **20. REFERENCES:**

Respondents must submit with response a list of business references (minimum 2) 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 "Respondent Reference Form"). 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.

## **21. INVOICING AND PAYMENT:**

21.1. HHSC/PCS will issue an individual purchase order for the HHS agency requiring services under the contract issued as a result of this solicitation. Each purchase order will include the appropriate bill to address for the HHS agency requesting services.

21.2. 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 directly to each facility for items ordered and received.

21.3. Payment for services will be made by the HHS ordering agency in accordance with the Pricing Schedule.

21.4. Vendor must submit Invoices on a monthly basis or as otherwise indicated on the purchase order.

21.5. Failure to submit required information may result in delay of payment or return of invoice.

21.6. No payment will be made under the contract until and unless the HHS agency approves the services performed.

21.7. Prices shown on "Pricing Schedule" form are all inclusive and no other charges are authorized without HHSC approval. It is the responsibility of the awarded vendor to pay for any additional expenses incurred that have not been authorized by the facility. 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.

21.8. If the HHS agency disputes payment of all or any portion of an invoice from the awarded vendor, the HHS agency will notify the awarded vendor 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 vendor's invoice. Notwithstanding any such dispute, the awarded vendor 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 vendor.

## **22. INSURANCE:**

22.1. Awarded vendor 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 vendor is required to carry an Excess Insurance policy for any difference in the amount specified. Awarded vendor shall be responsible for any deductible amounts stated in the policies.
- If the service specified requires the awarded vendor to use an automobile, the awarded vendor 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.

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

22.3. Indemnification: The vendor agrees to indemnify and hold harmless the HHSC facilities and employees from and against all liability for damages arising from injuries to persons or damage to property occasioned by an act or omission of the vendor, the vendor's agents or employees including any and all expenses, legal or otherwise.

### **23. MINOR INFORMALTY OR WITHDRAWAL OF RESPONSE:**

23.1. 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.

### **24. EVALUATION:**

24.1. Any negative result with regards to submission information, references or forms may cause response to be disqualified.

24.2. 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 (available at <https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>).

24.3. All responses will be evaluated in a standard manner. Preference will be to bidder(s) who bid ALL lines (except Line 12, which is a "placeholder" line for possible future items which may be added to the contract).

### **25. PRICING:**

25.1. Respondents must propose their pricing based on the specifications in this solicitation. Respondents must indicate their pricing in the format on the attached "Pricing Schedule" 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.

25.2. Vendor is required to immediately implement any industry wide price decreases that become available. Price decreases will be accepted any time after award by notifying HHSC purchaser in writing. Prices must be firm from September 1, 2019 (or date of award, whichever is later) through August 31, 2020. If renewal options are exercised, a price increase during each renewal period may be allowed with proper documentation.

25.3. The vendor must submit written requests for price increases no later than ninety (90) days prior to the contract renewal to HHSC purchaser. HHSC will respond to such requests within fifteen (15) days.

- 25.4. HHSC will allow price increases based on the manufacturer's price as of September 1, 2020, and if contract is renewed, price increase requests shall be based on the manufacturer's price as of the beginning of each subsequent renewal period. Documentation shall include the manufacturer's price list, the percentage of increase, and the new price. Failure to provide the required documentation will result in rejection of the price increase request.
- 25.5. The contract price will include all costs related to the furnishings of all products, the dispensing equipment as well as service and specified maintenance of the equipment. The training program for listed facilities staff will be provided by the vendor at no additional cost to HHSC facilities.

## **26. AWARD:**

- 26.1. 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/ECPS shall be sole judge of "the best interest of the state".
- 26.2. It is the intent of the state to award this invitation for bid to one vendor based on the low total cost of the estimated end-use solution for each line item. End-use solution is defined as the ready-to-use product after being diluted at the manufacturer's recommended dilution rate. The state, however, reserves the right to make multiple awards from this IFB.
- 26.3. The contract award shall include the dispensing equipment, service, specified maintenance of the equipment, training, required monthly reporting, vendor response time and routine visits to the facilities. Order history by facility location will be provided to HHSC staff upon request.
- 26.4. The state reserves the right to accept or reject any or all bids as deemed to be in the best interest of the state.

## **27. INSTRUCTIONS FOR SUBMITTING RESPONSES:**

- 27.1. Vendor shall submit with bid copies of catalog/specification sheets and copies of original labels substantiating compliance with detailed product specifications. Failure to do so may result in disqualification of the bid response.
- 27.2. Vendor must furnish MSDS sheets with the bid for each product being offered. Failure to do so may result in disqualification of bid response.
- 27.3. All data from the contract is owned by the state. Vendor will provide HHSC an electronic and/or paper copy of all information required in the contract.
- 27.4. Number of Copies: Submit one (1) original of the response. An authorized representative must sign the response.
- 27.5. 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 (Part A).
- All addendums (if issued)
- Price sheet

### **Section 2: Respondent's Background and Experience:**

In this section detail the respondent's corporate background and experience. If the respondent proposes to use subvendor(s), it must describe any existing or ongoing relationships with the subvendor(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 sub-vendors, include a similar description of each sub-vendor's capabilities. The respondent may add any other information that demonstrates their capability to perform under this contract.

#### **28. PROTEST PROCEDURES:**

[Texas Administrative Code, Title 1, Part 15, Chapter 392, Subchapter C](#) outlines HHSC's respondent protest procedures.

#### **29. 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 vendor, 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 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 Texas Procurement and Contract Management Guide, Version 1.1.

#### **30. TERM:**

The term of any contract(s) resulting from this IFB shall be from September 1, 2019 (or date of award, whichever is later) through August 31, 2020, with four (4) one-year renewal option periods.

#### **31. CONTRACT TERM (including Extensions/Renewals):**

- 31.1. Contract Term: September 1, 2019 (or date of award, whichever is later) through August 31, 2020, with four (4) one-year renewal option periods.
- 31.2 This contract does not constitute nor imply a commitment on the part of HHS to purchase additional services/goods from the awarded contractor in the future.
- 31.3 Options to Renew: This contract may be renewed by HHS Procurement and Contract Services (PCS) for four (4) additional one (1) year periods at the sole discretion of PCS. Any option to extend shall be at the same terms and conditions specified in this original solicitation and resultant contract including any amendments.
- 31.4 The decision to renew this contract shall be at the sole discretion of the HHS and PCS. Such renewal shall be subject to all specifications, terms, and conditions of the contract resulting from this procurement. By submitting a response to this solicitation, bidder agrees to be bound, for the initial term of the contract and for all renewal

terms that the HHS agency and PCS may elect to exercise, and to perform the services described at the rates quoted in the solicitation.

- 31.5 Emergency Option to Extend Services: The bidder, by submitting a response to this solicitation, agrees that the PCS/HHS may require continued performance beyond the initial term or renewal contract term, of any of the herein described goods/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 HHS/PCS may exercise this option upon written notice to the awarded contractor.

### **32. COST/PRICE ADJUSTMENTS:**

See Section 25, Pricing.

### **33. VENDOR CHECKS:**

HHSC is required to perform certain “vendor checks” before awarding a contract or purchase order. If a vendor does not pass one or more of these vendor checks, the award may go to the next lowest bidder whose product(s) meet specifications, and who passes all the vendor checks. Some of the vendor checks are listed below, but not all have URL links available to non-governmental entities.

- (a) Vendor Hold with the State of Texas (no URL link available to non-governmental entities).
- (b) HHSC Exclusions (no URL link available to non-governmental entities).
- (c) Franchise Tax Status (vendor must be listed as “Active” – indicating vendor has a right to transact business in the state of Texas). If exempt, the Texas Comptroller’s office should provide vendor with a “no nexus” letter:

<https://mycpa.cpa.state.tx.us/coa/search.do?userType=public>

- (d) Debarred Vendor List (vendor must not be listed on this list):

<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php>

- (e) System for Award Management (SAM):

<https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>

- (f) Office of Inspector General List of Excluded Individuals/Entities (LEIE) – Federal Exclusions:

<https://exclusions.oig.hhs.gov/>

- (g) Texas Legislative Prohibitions (Companies that boycott Israel; Designated Foreign Terrorist Organizations; Scrutinized Companies with ties to Iran; Scrutinized Companies with ties to Sudan; and Scrutinized Companies with ties to Foreign Terrorist Organizations):

Note - a vendor passes the Texas Legislative Prohibitions check by NOT being listed on any of the lists on the link below:

<https://comptroller.texas.gov/purchasing/publications/divestment.php>

**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 (Part A) with Payee ID Number, full business name and address
- "Pricing Schedule" Form(s)
- "Respondent Reference" Form
  
- "Completed HUB Subcontracting Plan"

## Respondent Reference Form

Respondents must submit with response a list of business references (minimum 2) 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).

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: \_\_\_\_\_

\_\_\_\_\_

Attachment 1

Leased Machines

Facility Delivery Addresses

Facility Delivery Address	Food Service Director	Phone	
Austin State Supported Living Center 2203 W 35 <sup>th</sup> St. Austin, TX 78703-1203	<u>Sheila Shirley</u>	512/374-6107	Leases from Auto-Chlor
Denton State Supported Living Center 3980 State School Road Denton, TX 76205	<u>Dean Brewer</u>	940/591-3675	Leases from Auto-Chlor
Mexia State Supported Living Center 700 Hwy 171 N Mexia, TX 76667	<u>Jennifer Capers</u>	254/562-1573	Leases from Auto-Chlor
Richmond State Supported Living Center 2100 Preston Street Richmond, TX 77469-1499	<u>Wayne Webb</u>	281/344-4760	Leases from Auto-Chlor
North Texas State Hospital – Vernon campus 4730 College Drive Vernon, TX 76384	<u>Deborah Bolin</u>	940/552-4084	Leases from Auto-Chlor
Rio Grande State Center 1401 Rangerville Road S Harlingen, Texas 78552-7638	<u>Andrea Zuniga</u>	956/364-8211	Leases from Auto-Chlor
Rusk State Hospital 1601 N Dickinson Rusk, TX 75738	<u>Liann Swearingen</u>	903/683-7507	Leases from Auto-Chlor



## State Holiday Schedule for Fiscal Year 2020

Holiday	Agency Status	Date	Day of Week
Labor Day	All agencies closed.	9-02-19	Monday
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	9-30-19	Monday
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	10-01-19	Tuesday
<i>Yom Kippur</i>	<i>Optional Holiday</i>	10-09-19	Wednesday
Veterans Day	All agencies closed.	11-11-19	Monday
Thanksgiving Day	All agencies closed.	11-28-19	Thursday
Day after Thanksgiving	All agencies closed.	11-29-19	Friday
Christmas Eve Day	All agencies closed.	12-24-19	Tuesday
Christmas Day	All agencies closed.	12-25-19	Wednesday
Day after Christmas	All agencies closed.	12-26-19	Thursday
New Year's Day	All agencies closed.	1-01-20	Wednesday
Confederate Heroes Day		1-19-20	Sunday
Martin Luther King, Jr. Day	All agencies closed.	1-20-20	Monday
Presidents' Day	All agencies closed.	2-17-20	Monday
Texas Independence Day	Skeleton crew required.	3-02-20	Monday
<i>Cesar Chavez Day</i>	<i>Optional Holiday</i>	3-31-20	Tuesday
<i>Good Friday</i>	<i>Optional Holiday</i>	4-10-20	Friday
San Jacinto Day	Skeleton crew required.	4-21-20	Tuesday
Memorial Day	All agencies closed.	5-25-20	Monday
Emancipation Day	Skeleton crew required.	6-19-20	Friday
Independence Day		7-04-20	Saturday
LBJ Day	Skeleton crew required.	8-27-20	Thursday

## State Holiday Schedule for Fiscal Year 2021

Holiday	Agency Status	Date	Day of Week
Labor Day	All agencies closed.	9-07-20	Monday
Rosh Hashanah		9-19-20	Saturday
Rosh Hashanah		9-20-20	Sunday
<i>Yom Kippur</i>	<i>Optional Holiday</i>	9-28-20	<i>Monday</i>
Veterans Day	All agencies closed.	11-11-20	Wednesday
Thanksgiving Day	All agencies closed.	11-26-20	Thursday
Day after Thanksgiving	All agencies closed.	11-27-20	Friday
Christmas Eve Day	All agencies closed.	12-24-20	Thursday
Christmas Day	All agencies closed.	12-25-20	Friday
Day after Christmas		12-26-20	Saturday
New Year's Day	All agencies closed.	1-01-21	Friday
Martin Luther King, Jr. Day	All agencies closed.	1-18-21	Monday
Confederate Heroes Day	Skeleton crew required.	1-19-21	Tuesday
Presidents' Day	All agencies closed.	2-15-21	Monday
Texas Independence Day	Skeleton crew required.	3-02-21	Tuesday
<i>Cesar Chavez Day</i>	<i>Optional Holiday</i>	3-31-21	<i>Wednesday</i>
<i>Good Friday</i>	<i>Optional Holiday</i>	4-02-21	<i>Friday</i>
San Jacinto Day	Skeleton crew required.	4-21-21	Wednesday
Memorial Day	All agencies closed.	5-31-21	Monday
Emancipation Day		6-19-21	Saturday
Independence Day		7-04-21	Sunday
LBJ Day	Skeleton crew required.	8-27-21	Friday

**HHS PROCUREMENT AND CONTRACTING SERVICES**  
**TERMS AND CONDITIONS BELOW APPLY TO THIS CONTRACT**

**1. RESPONSE REQUIREMENTS:**

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

**2. SPECIFICATION:**

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

**3. SAFETY STANDARDS:**

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

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

- 4.1. The respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this solicitation.
- 4.2. Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004(a), the respondent has not received compensation for participation in the preparation of specifications for this solicitation. Under Gov't Code § 2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent's Proposal. If Respondent is not eligible, then any contract resulting from this RFP shall be immediately terminated. Furthermore, under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 4.3. Antitrust - Pursuant to 15 U.S.C.A. § 1, et seq. and Tex. Bus. & Com. Code Ann. § 15.01, et seq. neither the respondent nor the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the response made to any competitor or any other person engaged in such line of business. Respondent hereby assigns to ordering agency any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States, 15 U.S.C.A. § 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code Ann. § 15.01, et seq.
- 4.4. Under Section 2155.006(b) of the Texas Government Code, "a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005." Under Section 2155.006, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 4.5. Under Section 231.006, Family Code, the respondent certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any respondent subject to Section 231.006, regarding child support, must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the response. This information must be provided prior to award.
- 4.6. That none of the funds paid under this contract will be used to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress or the state legislature for obtaining any federal or state contract, grant, loan, or cooperative agreement.

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

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

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

**7. COMPLIANCE:**

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

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

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

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

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

**9. SECURITY OF INFORMATION:**

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

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

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



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

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

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

**12. AWARD:**

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

**13. DELIVERY:**

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

**14. CANCELLATION OR EARLY TERMINATION:**

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

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

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

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

**33. COMPLIANCE WITH STATE AND FEDERAL ANTI-DISCRIMINATION LAWS**

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

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

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

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

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

**34. PROHIBITION ON CONTRACTING WITH ENTITIES THAT BOYCOTT ISRAEL:**

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

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

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

**36. DISCLOSURE OF INTERESTED PARTIES:**

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

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

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

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

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