



**SOLICITATION DOCUMENT**

Invitation for Bid (IFB) Check one: <input checked="" type="checkbox"/> Formal <input type="checkbox"/> Informal		
<b>Solicitation No.:</b>	<b>Issue Date:</b>	<b>Response Due Date:</b>
HHS0007983	05/28/2020	06/11/2020 at 2:00pm
<b>Formal responses SHALL be emailed or submitted to the online bid portal. Response may NOT be submitted by Fax, mail, or hand delivered.</b>		
<b>Contact Information:</b>  Purchaser: Katrinia Ender Phone: (512) 406-2428 Email: <a href="mailto:Katrinia.Ender@hhsc.state.tx.us">Katrinia.Ender@hhsc.state.tx.us</a>	<b>Email Response to, if applicable:</b> <a href="mailto:pcsbids@hhsc.state.tx.us">pcsbids@hhsc.state.tx.us</a>  <b>OR</b>  <b>Submit Response Online to, if applicable:</b> <a href="https://hhs.texas.gov/doing-business-hhs/contracting-hhs/hhs-online-bid-room">https://hhs.texas.gov/doing-business-hhs/contracting-hhs/hhs-online-bid-room</a> <i>(You must be registered in order to submit online.)</i>	<b>Ship to or Service Delivered to Location:</b>  Health and Human Services Commission San Angelo State Supported Living Center 11640 US Hwy 87 N Carlsbad, TX 76934
<b>Source of Authority</b>	<input checked="" type="checkbox"/> CPA/TPASS	<input type="checkbox"/> DIR
		<input type="checkbox"/> Other:

**By signing this document, respondent certifies that prices shown on this quote are true and correct. Should this bid/offer result in a Purchase Order, respondent agrees to comply with all "Terms and Conditions," which are attached and incorporated into this document.**

<p><b>Check below if preference claimed under Texas Administrative Code (TAC), Title 34, Part 1, Chapter 20, Subchapter D, Division 2, Rule § 20.306:</b></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>_____</p> <p style="text-align: center;"><b>Signature of Vendor or Authorized Representative</b></p> <p>_____</p> <p style="text-align: center;"><b>Print Name</b></p> <p style="text-align: center;">(Must be manually signed; failure to sign will disqualify response.)</p> <p style="text-align: center;"><b>Texas Vendor Identification No. (or Federal Employer's ID):</b></p> <p>_____</p> <p><b>Name of Business</b> _____</p> <p><b>Street Address</b> _____</p> <p><b>City-State-Zip Code</b> _____</p> <p><b>Telephone Number</b> _____</p> <p><b>Fax Number</b> _____</p> <p><b>E-Mail Address</b> _____</p> <p><small>*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).</small></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>
---	--

## HHS Procurement and Contracting Services

### 1. INTRODUCTION AND PURPOSE OF SOLICITATION

The Health and Human Services Commission (HHSC) Procurement and Contracting Services (PCS) on behalf of the San Angelo State Supported Living Center (SGSSLC), is seeking to establish a contract for dental equipment maintenance services.

**Class & Item:**

938-24

### 2. AGENCY OVERVIEW

The Health and Human Services Commission (HHSC) was created in 1991 to oversee and coordinate the planning and delivery of health and human services in Texas. It is established pursuant to [Chapter 531, Texas Government Code](#) and is responsible for oversight of Texas Health and Human Services agencies (HHS agencies). As a result of the consolidation due to [House Bill 2292 \(HB2292\)](#), some of the contracting and procurement activities for HHS agencies have been assigned to the PCS section of HHSC. As such, PCS will administer the initial stages of the procurement process, prior to the contract award, including solicitation announcement and publication, handling of communications from the respondent, as well as managing the receipt and evaluation of valid responses for final review and evaluation. PCS directs the execution of the award of the contract resulting from this solicitation.

### 3. DEFINITIONS

- Appendix – Additional information and/or forms that is available in the back of this solicitation document.
- Contract – A written document referring to promises or agreement for which the law establishes enforceable duties and remedies between a minimum of two parties.
- Contract Term – The period of time during which the contract will be effective from begin date to end, or renewal date. The contract term may or may not be the same as the budget period.
- Debarment – An exclusion from contracting or subcontracting with state agencies on the basis of cause set forth in Title 34, Texas Administrative Code, Chapter 20, Subchapter G, and the System of Award Management (SAM).
- Deliverables – Goods or services contracted for delivery or performance.
- Due Date – Established deadline for submission of a document or deliverable.
- Effective Date – The date the contract term begins.
- Respondent – Entity or individual that submits a response to a solicitation.
- Scope of Work – A statement that defines specific services to be performed.
- Solicitation – The process of notifying prospective contractors of an opportunity to provide goods or services to the State.
- Subcontractor – An entity hired by an awarded contractor to perform a portion of the scope of work by the entity contracting with an HHS agency as a result of this solicitation. The contractor remains entirely responsible for performance of all requirements of the contract through monitoring the subcontractor's performance.
- Unit Rate – Payment mechanism for services that are paid at a set rate per unit of service; for example, plumbing repair services at a prescribed rate per hour.
- Vendor – A contractor that provides goods and services that are typically procured through the open market.
- Vendor Identification Number (Vendor ID No.) – Fourteen-digit number needed for any entity to contract with the State of Texas and which must be set up with the State Comptroller's Office. It consists of a ten-digit Vendor ID No. (IRS number, state agency number, or social security number) +check digit + 3-digit mail code.
- Work Plan – A plan that describes how services will be delivered and includes specifics such as what types of services will be provided, who will be responsible for the work, timelines for completion of activities, and how services will be evaluated when complete. The work plan will be part of the contract.

## HHS Procurement and Contracting Services

### 4. 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 contractor of his/her contractual obligations.

- 4.1. Failure to comply with this section may result in disqualification of the response.
- 4.2. Responses to this solicitation will be received until the date and time shown above. Incomplete or late responses will not be considered.
- 4.3. The preferred methods of response are online bid portal or via email. Responses shall be emailed to [pcsbids@hhsc.state.tx.us](mailto:pcsbids@hhsc.state.tx.us) ONLY. Response send to any other email address will not be accepted.

Fax responses will NOT be accepted. Emailed responses and responses submitted electronically through the HHS Online Bid Room will be accepted. Emailed responses shall be submitted to: [pcsbids@hhsc.state.tx.us](mailto:pcsbids@hhsc.state.tx.us). ONLY. For instructions regarding registration and use of the HHS Online Bid Room, see Appendix D. Online, electronic responses must be submitted to: <https://hhs.texas.gov/doing-business-hhs/contracting-hhs/hhs-online-bid-room>.

**HHSC/PCS will not be responsible for failure of submitting to the incorrect email address, electronic equipment, or operator error. Late, illegible, incomplete or otherwise non-responsive submissions will not be considered.**

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 Phone Number:

Respondent Contact Fax Number:

### 5. QUESTIONS

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

**Purchaser's Name: Katrinia Ender, CTPM, CTCM**  
**HHSC/ PCS**  
**Telephone: (512)406-2428**  
**Email address: [Katrinia.Ender@hhsc.state.tx.us](mailto:Katrinia.Ender@hhsc.state.tx.us)**

Questions may also be submitted directly to the sole point of contact through the HHS Online Bid Room. See Appendix D.

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

### 6. PCS AMENDMENTS AND ANNOUNCEMENTS REGARDING THIS SOLICITATION

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

## HHS Procurement and Contracting Services

### 7. PROCUREMENT SCHEDULE

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

Procurement Schedule	
IFB Release Date	May 28, 2020
Vendor Question Due	June 3, 2020
HHSC Posts Responses to Vendor Question	June 5, 2020
Proposals Due	June 11, 2020

### 8. VENDOR CONFERENCE

PCS will not hold a vendor conference for this procurement. Respondents may email questions or comments to the PCS Point of Contact before the solicitation opening date. All questions should reference the appropriate solicitation page and section number. PCS reserves the right to amend answers prior to the solicitation submission deadline. All questions and comments must be submitted to PCS point-of-contact before the solicitation opening date.

### 9. HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REQUIREMENTS

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.

Because the estimated value of the solicitation or resulting contract is less than \$100,000, respondents are not required to submit a **HUB Subcontracting Plan** with their response at the time of submission. If subcontractors are used in the delivery of the goods and/or services, the awarded contractor(s) is requested to submit monthly progress reports, in the prescribed format, to HHSC's HUB Program Office. When applicable, the reports should include a narrative description of the contractor's good faith efforts and accomplishments, and financial information reflecting payments to all subcontractors, including HUBs.

### 10. ESTIMATED QUANTITIES

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

### 11. METHOD AND TERMS FOR ORDERING

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

### 12. SCOPE OF WORK (SOW) TO BE PERFORMED

Description of Services: Provide x-ray machine, developer, sterilizer, dentail chair services upon request. Contractor will provide repair parts & hourly labor for San Angelo State Supported Living Center (SGSSLCL).

- 12.1. Awarded contractor shall furnish all labor, tools, transportation, equipment, materials, and supplies, as necessary. Awarded contractor shall be responsible for supervision, clean up and disposal, and must have all applicable permits, licenses, and insurance coverage.

## HHS Procurement and Contracting Services

### 12.2. General Requirements

- 12.2.1.** Perform preventive maintenance on x-ray machine, developer, sterilizer, dentail chair. This includes any repairs that may be needed throughout the contract as well.
- 12.2.2.** Complete annual preventive maintenance and meet, exceed, or include any of the manufacturers requirements not listed.
- 12.2.3.** Coordinate with and obtain approval from the designated SGSSLC representative prior to initiating any major repairs.
- 12.2.4.** ADDITIONS, DELETIONS, OR REPLACEMENTS: SGSSLC representative may add, delete or replace any equipment listed in this contract SGSSLC representative will advise the vendor by Purchase Order Change Notice within ten business days of the addition or deletion of any location, any new or old equipment listed.

### 12.3. Inspection, Testing, Maintenance and Repairs

- 12.3.1.** Conduct annual inspection, testing, maintenance and repairs. All equipment listed in the contract designated by the SGSSLC representative shall be tested and repaired/maintained per manufacturers recommendations during the annual and scheduled maintenance and shall include all test required by government and insurance authorities.
- 12.3.2.** Provide a service ticket to the designated SGSSLC representative for signature upon completion of requested maintenance/repair.
- 12.3.3.** Recommended repairs and part replacement shall be pre-approved by the designated SGSSLC representative before work is performed.
- 12.3.4.** Checking and servicing the batteries.

### 12.4. Annual Inspections

All annual inspections and testing shall be scheduled through the designated SGSSLC representative due to possible interference with building operations. Each annual inspection, test, and if necessary subsequent repair(s) shall include, but not be limited to:

- 12.4.1.** Inspect complete system
- 12.4.2.** Vacuuming and cleaning any accumulated dust and debris, wiping down spilled fluids.
- 12.4.3.** Equipment to be inspected:
  - X-ray machine Progeny JB-70
  - X-ray machine Progeny Prevo
  - X-ray machine Planmeca Pro one
  - X-ray machine Aribex Nomad pro

### 12.5. List of Equipment:

- Dentist chair
- Air Techniques developer
- Tooth Brushing dental chair
- Dental Hygienist chair
- Ritter Autoclave
- Interzek Dental light (Dr)
- Interzek Dental light (tooth care)
- Interzek Dental light (Lisa)
- Assistina by Interzek W&H
- Quantrex Ultrasonic
- Patterson Amalgamator
- Sybron Endo unit
- Coltene/Whaldent cavitron
- X-ray machine Progeny JB-70
- X-ray machine Progeny Prevo
- X-ray machine Planmeca Pro one

### HHS Procurement and Contracting Services

- X-ray machine Aribex Nomad pro

\*\*\*Other equipment may be added as needed.

#### 13. PERSONNEL QUALIFICATIONS

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

#### 14. MATERIAL SPECIFICATIONS

The awarded contract shall provide all the supplies necessary to complete the services.

#### 15. HOURS AND DAYS SERVICES ARE TO BE PERFORMED

- 15.1. Services are to be performed between the hours of 8:00am and 5:00pm. Any minor adjustment call back services will be performed during regular hours. Awarded contractor is responsible for not interfering with normal flow of business.
- 15.2. Outside Regular Hours – Any services performed outside of regular work hours will need to be approved by the contract manager and will be paid at hourly rate stated in Price Sheet.
- 15.3. HOLIDAYS: The holidays observed by the State are listed on the Holiday Schedule located at <https://comptroller.texas.gov/about/holidays.php>, HHSC does not specifically require the Contractor to work on these holidays but does require the Contractor to fulfill the requirements of the contract. If this requires the Contractor to work on holidays observed by the state or the Contractor, then Contractor shall fulfill obligations at NO additional expense to the HHS agency.
- 15.4. The awarded contractor must provide a 24-hour contact number and name in case of any urgent issue that may arise. Awarded contractor or a representative of awarded contractor’s company must be available at all times.

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

---

Respondent Representative	Phone Number	Cell Number
---------------------------	--------------	-------------

#### 16. TERM OF CONTRACT

- 16.1. Initial Contract Term: The initial term of Contract is **09/01/2020 – 08/31/2022 with one (1) two-year renewal.**
- 16.2. Cost/Price Adjustments: Price increases are not awarded automatically at contract renewal. The awarded respondent must request a price increase in writing. The pricing adjustments for contract renewal are based on increase in the Consumer Price Index (CPI). The State of Texas shall permit "unit price" adjustments upwardly or downwardly when correlated with the Price Index specified herein. Unless otherwise indicated, the Price Index shall be the specified index as published by the Bureau of Labor Statistics, Washington, DC 20212. The baseline index shall be the Index announced for the month in which the bids opened. Unit prices may be adjusted for each renewal period in accordance with changes in the Index. The allowable percent change shall be calculated by subtracting the Baseline Index from the Index announced for the month in which the renewal option is exercised and dividing the result by the Baseline Index. The allowable percent change shall be rounded to the nearest one-hundredth of one percent and shall be the maximum unit price adjustment permitted, except that the vendor may offer price decreases in excess of the allowable percent change. Price increases for all renewal periods shall be based on the CPI-W.

The CPI-W Baseline Index month and year for the renewal period is: **September 2020**

- 16.3. If the Federal Minimum Wage Rate increases during the term of this service, the minimum wage rate paid to janitors or workers will be increased and fees to the respondent may be increased. This increase may be paid upon HHSC’s receipt of written notification from the respondent that the Federal Minimum Wage Rate has increased. No increase can be provided prior to the actual date of the Federal Minimum Wage Rate increase.
- 16.4. The decision to renew this contract shall be at the sole discretion of HHSC. Such renewal shall be subject to all specifications and terms and conditions of the contract resulting from this procurement. By submission of a response to this solicitation, respondent agrees to be bound, for the initial term of the contract and for any and all renewal terms that HHSC may elect to exercise, and to perform the services described at the rates quoted in the IFB.

## HHS Procurement and Contracting Services

- 16.5. 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 HHSC procurement goals but the total extension of performance hereunder shall not exceed one hundred twenty (120) calendar days. Such extension of services shall be subject to all specifications and terms and conditions of the contract resulting from this procurement, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. HHSC may exercise this option upon notice to the awarded respondent.
- 16.6. During the contract period, the HHS agency may add space to an office, relocate offices, close offices, consolidate multiple offices into a single location, or expand from a single location into multiple offices. The HHS agency will attempt to provide awarded Contractor(s) with at least 30 days' notice of new address in the event of office relocation. HHSC reserves the right, in its sole discretion, to add or delete space and/or service locations during the period covered by any resulting contract(s) at the same rate. Any new service locations added to this contract will be in close proximity to existing office locations (within 50 mile radius of existing location), or in the same HHSC region.
- 16.7. Emergency Option to Extend Services: The Contractor by submission of a response to this solicitation agrees that HHSC/PCS may require continued performance, beyond the initial term or renewal contract term, of any of the herein described services at the rates specified herein. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed one hundred twenty (120) calendar days. Such extension of services shall be subject to all specifications and terms and conditions of the contract resulting from this procurement, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. HHSC/PCS may exercise this option upon written notice to the awarded contractor.

### **17. CONTRACTOR'S RESPONSIBILITIES**

- 17.1. The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the purchase order including, if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations.
- 17.2. The Contractor will be responsible for verifying that all employees will be in compliance with all requirements of the Immigration Reform and Control Act of 1986, Public Law 99-603, which became effective November 6, 1986.
- 17.3. The Contractor shall provide all labor and equipment necessary to perform/accomplish the service. All employees of the Contractor shall be a minimum of 18 years of age and experienced in the type of work to be performed. No visitors, wives, husbands, children or other relatives of the Contractor's employees will be allowed on state property during working hours.
- 17.4. The Contractor will be responsible for all employment taxes and other payroll withholding for their employees.
- 17.5. The Contractor shall be responsible for damage to the HHS agency's equipment, and/or the workplace and its contents by its works, its negligence in work, its personnel, or its equipment. The Contractor shall be responsible and liable for the safety, injury, and health of its working personnel while its employees are performing work for an HHS agency.
- 17.6. The Contractor shall have local telephone service. The use of a recording/answering device, or an answering service, is not acceptable except for after normal business hours. Normal business hours are considered to be between 8:00 AM and 5:00 PM Monday through Friday, unless otherwise stated in the solicitation. An emergency 24-hour response number must be provided to allow immediate contact of the Contractor.
- 17.7. The Contractor shall have available, under its direct employment and supervision, necessary organization and facilities to properly fulfill services required under the resulting contract and only personnel trained in completing the services shall be employed under and for this contract.

### **18. PERSONNEL REQUIREMENTS/CONDUCT**

- 18.1. The Contractor and contractor employees shall not use state equipment including but not limited to (computers, telephones, facsimiles, copiers, printers, calculators, typewriters), except for phone use in cases of emergency and/or to respond to work requests from the HHS agency. Misuse of this equipment may result in termination of the contract.
- 18.2. The Contractor shall have competent supervisors at the work location at all times that services are being rendered. All supervisors must be able to communicate fluently in English. The supervisor shall be knowledgeable of the specifications of the contract, and shall personally inspect the work to ensure that uniform first class workmanship is continually maintained.

## HHS Procurement and Contracting Services

- 18.3. Intoxicants and Illegal Drugs: The use of any kind of intoxicants or illegal drugs while on duty by the Contractor's employees may result in termination of the contract by the HHS agency. Contractor's employees shall not bring intoxicants or illegal drugs onto state property.
- 18.4. Quality and Job Progress: The Contractor shall maintain continuous awareness of the quality and completeness of the work performed/accomplished by his/her employees by personal inspection of the premises. The contractor may be required to inspect the job location/building with the contract administrator or designee.
- 18.5. The Contractor shall provide trained qualified personnel to perform/accomplish the work in accordance with the contract documents.
- 18.6. Absenteeism and Vacation: The Contractor shall provide substitutes for any workers not present for work. The Contractor shall provide relief personnel as necessary and/or work overtime at no cost to HHS agency to ensure that the requirements of this contract are performed/accomplished as required.
- 18.7. It is understood and agreed by the HHS agency and the Contractor that the Contractor is retained as an independent contractor and in no event shall any employee hired by the Contractor be considered an employee of the state.
- 18.8. The Contractor shall provide each employee used in the performance of work under the contract with adequate training to perform/accomplish the work competently as defined in the specifications.
- 18.9. Smoking: All facilities are nonsmoking buildings. **CONTRACTOR'S EMPLOYEES ARE PROHIBITED FROM SMOKING IN ALL NON-DESIGNATED AREAS.**
- 18.10. **BACKGROUND CHECK:** The awarded Contractor will conduct statewide DPS criminal and sex offender background checks on all the Contractor's permanent and temporary personnel and subcontractors scheduled to work on services under this contract prior to work performed. 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 cause for cancellation of the purchase order. Any expense associated with the background checks will be borne by the Contractor. Complete background checks will be required before any contract employee begins work at a state building or on state property and may be requested any time thereafter. An independent third-party company must accomplish background checks and must include the following at a minimum. The background checks shall include, but not be limited to, the following:
- Social Security Number verification.
  - Statewide criminal and sex offender records shall include, but not be limited to, all Texas counties and out-of-state counties based on the current and previous addresses of the applicant for the last seven years.
  - Personnel with sex offender, child or adult abuse, or fraud offenses, shall not be allowed to work on this project and shall not be allowed access to the HHS agency offices, facilities, or documents. Personnel with misdemeanor offenses must receive prior approval by the HHS agency before being allowed to work under this contract.
- 18.11. When on state property, employees are required to wear uniforms and identifying badges at all times. Uniforms may be simple "company T-shirts" or smocks – or other approved apparel. All employees must wear clean/presentable pants (no shorts). Company uniform shirts/smocks must be all of one uniform/consistent color or design. Managers/Supervisors may wear a distinguishing style of uniform, but should strive to maintain a company "standard color" to aid in identification. All contract personnel must prominently display their company identification cards - at all times.

### **19. CONTRACTOR'S PERSONAL CONDUCT:**

- 19.1. While performing the services, contractor's and subcontractor'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 subcontractor's employee is not conducting himself or herself in accordance with this Section, the HHS agency may provide awarded contractor with notice and documentation concerning such conduct. Upon receipt of such notice, contractor must promptly investigate the matter and take appropriate action that may include:
- Removing the employee from the project;
  - Providing HHS agency with written notice of such removal; and
  - Replacing the employee with a similarly qualified individual in a period acceptable to HHS agency.
- 19.2. Nothing in the Agreement will prevent contractor, at the request of HHS agency, from replacing any personnel who are not adequately performing their assigned responsibilities or who, in the reasonable opinion of HHS agency staff, after consultation with contractor, are unable to work effectively with the members of the HHS agency's staff. In such event, awarded contractor will provide replacement personnel with equal or greater skills and qualifications as soon as



## HHS Procurement and Contracting Services

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.

- 19.3. The awarded contractor agrees that anyone employed by awarded contractor to fulfill the terms of the agreement is an employee of contractor and remains under contractor's sole direction and control.
- 19.4. The HHS agency may request the Contractor to remove any employee for cause, including but not limited to: poor or unacceptable performance of work, theft, abusive language or behavior, improper attire, in accordance with the terms and conditions of the contract. Occurrences of this type may be cause for termination of the contract.

### **20. 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 572.069](#) 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 subcontractors' employees and agents.

### **21. CONTRACTOR'S PERFORMANCE:**

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

### **22. REMEDIES AND DISPUTES**

- 22.1. 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.

## HHS Procurement and Contracting Services

- 22.2. The HHS agency will notify respondent in writing of specific areas of awarded contractor performance that fail to meet performance expectations, standards, or schedules, but that, in the determination of HHS agency, do not result in a material deficiency or delay in the implementation or operation of the services.
- 22.3. Awarded contractor will, within three (3) business days (or another date approved by HHS agency) of receipt of written notice of a non-material deficiency, provide the HHS agency requestor a written response that:
- Explains the reasons for the deficiency, awarded contractor's plan to address or cure the deficiency, and the date and time by which the deficiency will be cured; or
  - If awarded contractor disagrees with the HHS agency's findings, its reasons for disagreeing with the findings.
- 22.4. The awarded contractor's noncompliance may result in delayed payment or non-payment as determined by HHS agency.
- 22.5. At its discretion, the HHS agency may require contractor to submit a detailed written plan (the "Corrective Action Plan") to correct or resolve an issue, deficiency, or a breach of this Agreement.
- A detailed explanation of the reasons for the cited deficiency;
  - Awarded contractor's assessment or diagnosis of the cause; and
  - A specific proposal to cure or resolve the deficiency.
- 22.6. 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.

### 23. REFERENCES

Respondents must submit with response a list of business references (minimum 3) for which they have provided similar services for in the last two years. Respondent's references should include at a minimum the company name, company point-of-contact, phone number, address, city, state, zip code and description of services provided, including language(s) interpreted (see attachment "References"). 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.

### 24. INVOICING AND PAYMENT

- 24.1. HHSC/PCS will issue an individual purchase order for the HHS agency requiring services under the contract issued in accordance with this solicitation. Each purchase order will include the appropriate bill to address for the HHS agency requesting services.
- 24.2. Invoices submitted to the HHS agency must reflect the purchase order number as shown on the purchase order, and must specify in detail the work completed for which payment is due. Invoices are to be submitted to the address specified on the individual HHS agency purchase order.
- 24.3. Payment for services will be made by the HHS ordering agency in accordance with the Price Sheet.
- 24.4. Contractor must submit Invoices on a monthly basis or as otherwise indicated on the purchase order. Separate invoices must be submitted for each service location.
- 24.5. Failure to submit required information may result in delay of payment or return of invoice.
- 24.6. No payment will be made under the contract until and unless the HHS agency approves the services performed.
- 24.7. Prices shown on "Price Sheet" form are all inclusive and no other charges are authorized. It is the responsibility of the awarded contractor to pay for any expenses incurred. The HHS agency will not pay any per diem, travel, hotel, equipment, phone calls, paper, reproduction services, office space, or other incidental expenses related to performing the services as advertised.
- 24.8. If the HHS agency disputes payment of all or any portion of an invoice from the awarded contractor, the HHS agency will notify the awarded contractor of such dispute and both parties will attempt in good faith to resolve the dispute. The HHS agency shall not be required to pay any disputed portion of an awarded contractor's invoice. Notwithstanding any such dispute, the awarded contractor must continue to perform the services and produce deliverables in compliance with the terms of this agreement pending resolution of such dispute so long as all undisputed amounts continue to be paid to the awarded contractor.

## HHS Procurement and Contracting Services

### 25. INSURANCE

- 25.1. Awarded contractor shall carry insurance in the following types and amounts for the duration of the contract (or the minimum limit specific by State of Texas statute, whichever is highest), and shall furnish Certificates of Insurance within (10) calendar days from the receipt of notice award. State or other applicable entities, in lieu of the above, may submit a letter stating that they are self-insuring in the amounts required.
- Statutory Worker's Compensation and Employer's Liability with minimum of \$100,000.00.
  - Comprehensive General Liability Insurance with minimum Bodily Injury limits of \$ 500,000.00 for each occurrence, and Property Damage limits \$500,000.00 for each occurrence to include Premises-Operations, Broad Form Property Damage, Personal Injury and Contractual Liability Coverage.
  - If the insurance policies are not written for the amount specified above, the awarded contractor is required to carry an Excess Insurance policy for any difference in the amount specified. Awarded contractor shall be responsible for any deductible amounts stated in the policies.
  - If the service specified requires the awarded contractor to use an automobile, the awarded contractor shall carry Automobile Liability insurance for all owned, non-owned, and hired vehicles with minimum limits for bodily Injury \$250,000.00 for each person and \$500,000.00 for each occurrence, and Property Damage limits of \$250,000.00 for each occurrence.
- 25.2. Property Damage: AWARDED CONTRACTOR will protect the HHS agency's real and personal property from damage arising from awarded contractor its agent's, employees' and sub-awarded contractor's performance of the Agreement. The awarded contractor will be responsible for any loss, destruction, or damage to the HHS agency's property that results from or is caused by Awarded contractor, its agents', employees' or subcontractor's negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of the HHS agency, awarded contractor will notify the HHS agency contract manager or other designated staff. Subject to direction from PCS or the HHS agency's contractor manager or her or his designee, will take all reasonable steps to protect that property from further damage.

### 26. MINOR INFORMALITY OR WITHDRAWAL OF RESPONSE

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

### 27. EVALUATION

- 27.1. Any negative result concerning submission information, references or forms may cause response to be disqualified.
- 27.2. 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](#).
- 27.3. All responses will be evaluated in a standard manner and will be rated according to the following criteria:

#### 27.3.1. COST OF SERVICES SPECIFIED IN SOLICITATION

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

#### 27.3.2. EXPERIENCE AND PERFORMANCE RECORD

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

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

## HHS Procurement and Contracting Services

### 27.3.3. CAPABILITIES

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

### 24. PRICING

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

### 28. AWARD

- 28.1. HHSC/PCS reserves the right to make an award on the basis of a low line item, low total (group or groups) or in any other combination, to the lowest respondent meeting or exceeding all advertised specifications, performance requirements, and terms and conditions, that will best serve the interests of the State. HHSC/PCS shall be sole judge of "the best interest of the State."
- 28.2. A contract award or awards shall be made to the highest-ranked respondent(s) after PCS is satisfied that the respondent has met stipulations contained in this solicitation, and that the vendor can perform per specifications, terms and conditions. HHSC/PCS may also opt not to issue an award with regard to this solicitation. During the life of this contract PCS reserves the right to solicit for services that would normally be performed/accomplished using this contract if it deems that by doing so would be in the best interest of the state.

### 29. INSTRUCTIONS FOR SUBMITTING RESPONSES

- 29.1. Number of Copies:

Submit one (1) original of copy of the response. An authorized representative must sign the original in ink.

- 29.2. **RESPONSE SUBMISSION:**

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

#### **Section 1: Signed Solicitation form:**

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

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

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

#### **Section 3: Capabilities:**

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

#### **Section 4: Attachments:**

In this section, include all required attachments.

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

## HHS Procurement and Contracting Services

### 30. PROTEST PROCEDURES

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

### 31. CONTRACT ADMINISTRATION:

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

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

Upon issuance of purchase order, PCS will designate an individual who will serve as the Contract Manager, if necessary, and point of contact between the agency and the vendor. The Contract Manager does not have any express or implied authority to vary the terms of the purchase order, amend the purchase order in any way or waive strict performance of the terms or conditions of the purchase order. This individual's contract management and contract administration responsibilities include, but are not limited to:

- Monitoring the vendor's progress and performance and ensuring services conform to established specification requirements.
- Managing the financial aspects of the contract including approval of payments.
- Meeting with the vendor as needed to review progress, discuss problems, and consider necessary action.
- Identifying a breach of contract by assessing the difference between contract performance and non-performance.
- Other areas as identified by the Comptroller of Public Accounts' State of Texas Procurement and Contract Management Guide, latest edition.

## HHS Procurement and Contracting Services

### Appendix A – RESPONDENT CHECKLIST FOR SUBMISSION OF RESPONSE

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

- Respondent should submit response in accordance with the instructions on the cover sheet. Response must be submitted in a sealed envelope referencing the following information in the lower left corner of the envelope: opening date & time, requisition number and respondent's name and address.
- Respondent must sign and return the face (cover sheet) of the solicitation. Unsigned responses will not be considered under any circumstance.
- Respondent shall complete Payee ID Number, full business name and address of Respondent on the face of the solicitation.
- Respondent must read the solicitation thoroughly and understands that by signing the response the Respondent represents that they have read and understood the specifications as well as the Terms & Conditions.
- Respondent must submit with response a list of business references on the "References" form attached. Failure to submit required list of references may cause response to be disqualified.
- Respondent shall submit with response, the following completed forms and information. Failure to return form(s) may cause response to be disqualified.
  - Solicitation Form with signature
  - Appendix B - Respondent Reference Form
  - Price Sheet
  - Affirmations and Solicitation Acceptance
  - Copies of Certifications and License, if applicable
  - Signed Copy of Addendums, if applicable

## HHS Procurement and Contracting Services

### Appendix B – Respondent Reference Form

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

1. Business Name:

Point-of-Contact / Title:

Phone: Address/City/State:

Description of Service Provided

2. Business Name:

Point-of-Contact / Title:

Phone: Address/City/State:

Description of Service Provided

3. Business Name:

Point-of-Contact / Title:

Phone: Address/City/State:

Description of Service Provided

4. Business Name:

Point-of-Contact / Title:

Phone: Address/City/State:

Description of Service Provided:

---

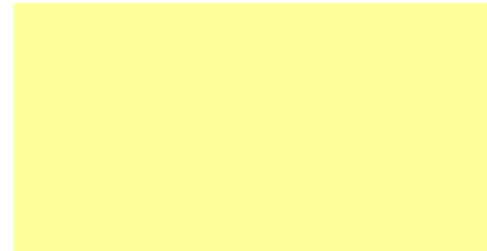
## Event Details

Event ID	Format	Type	Round	Version
HHSTX-HHS0007983	Buy	RFx	1	1
<b>Event Name</b>				
Dental Equipment Maintenance - IFB Formal				
<b>Post Date</b>		<b>Due Date</b>		
5/28/2020		6/11/2020		

**Event Currency:** US Dollar  
**Bids Allowed in Other Currency:** No

**Respondent:**

Bidder Name  
 Tin  
 Address  
 Phone  
 Fax  
 Email



**Submit To:** HHS Purchasing  
 See Part A for Submission Instructions

United States

**Contact:** Ender, Katrina

**General Comments**

- Please DO NOT alter the Price Sheet. If you have additional pricing that you'd like to include in your bid response, please add it as a separate document on your company's letterhead. Price sheet shall be complete, and Sign Solicitation part A. Return all documents back to PCS Bid Room ONLY at pcs.bids@hhsc.state.tx.us or by submitting your response to the online bid room. Instructions are provided in the bid solicitation packet. Faxes are no longer accepted and will be considered none responsive.

**Event Description**

HHSC on behalf of San Angelo State Supported Living Center is soliciting bid responses for dental equipment maintenance services. See attached solicitation for full scope of work. Your response is due no later than 06/11/2020.

**General Questions**

Question	Response:
How many years of experience does your company have with dental equipment maintenance and repair services? YR	



**What is the hourly rate for service to the equipment listed in the solicitation?**

**What is the weekend hourly rate for service to the equipment listed in the solicitation?**

**What is the holiday hourly rate for service to the equipment listed in the solicitation?**

**What is the percentage of part markup for parts?**

**What is your standard rate for service call?**

**What is your per service call travel rate?**

**What is the inspection rate for service to the x-ray equipment listed in the solicitation?**



**Invitation for Bids**  
**HHS0007983**  
**Appendix D**

Bids/responses for this Invitation for Bids may be submitted electronically using the HHS Online Bid Room or any other method identified in the solicitation. *Use of the HHS Online Bid Room is optional and is subject to all terms and conditions, affirmations, and other requirements of the solicitation as any other method of submission.*

**Read and review** the solicitation package and all associated documents carefully before completing and submitting a response in the form and manner described in the solicitation package. ***The XML Price Sheet, if required, and signed documentation must be submitted with the response.***

**Questions** regarding the solicitation must be addressed to the Point of Contact in the solicitation package. The Point of Contact is identified in the solicitation package.

**Submit** the solicitation response in the form and manner described in the solicitation package on or before the response due date and time.

**IMPORTANT:** The solicitation package will identify the specific form and method of delivery. Failure to adhere to the requirements in the solicitation package may result in disqualification.

**Access to the HHS Online Bid Room is a two-step process.**

Step 1: Register for the Enterprise Portal using the [Enterprise Portal Link](#). It can take up to five business days to receive your user name and password. If you do not receive this information within five days, email [pcsbids@hsc.state.tx.us](mailto:pcsbids@hsc.state.tx.us).

Step 2: Using the Enterprise Portal login credentials you will receive via email, you can request the necessary HHS Online Bid Room user name and password to enter the HHS Online Bid Room to submit your response to the solicitation electronically.

See our resources page for a tutorial, guidebook, and other resources to help you use the [HHS Online Bid Room](#).

**IMPORTANT:** Allow enough time for the registration process to submit your bid by the response due date. **Late solicitation responses are not accepted.**

**The optional use of the HHS Online Bid Room and any resulting technical difficulties which may prevent a successful, responsive electronic submission of a solicitation response shall not be sufficient basis for a protest of a contract award.**

## **Exhibit A. AFFIRMATIONS AND SOLICITATION ACCEPTANCE**

In this document, the terms Respondent, Contractor, Applicant, and Vendor, when referring to the following affirmations (whether framed as certifications, representations, warranties, or in other terms) refer to Respondent, and the affirmations apply to all Respondents regardless of their business form (e.g., individual, partnership, corporation).

Respondent affirms, without exception, as follows:

1. Respondent represents and warrants that all certifications, representations, warranties, and other provisions in this Affirmations and Solicitation Acceptance apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Solicitation or any contract resulting from this Solicitation.
2. Respondent represents and warrants that all statements and information provided to HHSC are current, complete, and accurate. This includes all statements and information in this Solicitation Response.
3. Respondent understands that HHSC will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas 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.
4. Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.
5. Respondent acknowledges its obligation to specifically identify information it contends to be confidential or proprietary and, if Respondent designated substantial portions of its Solicitation Response or its entire Solicitation Response as confidential or proprietary, the Solicitation Response is subject to being disqualified.
6. Respondent's Solicitation Response will remain a firm and binding offer for 240 days from the date the Solicitation Response is due.

7. Respondent shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from HHSC. Any attempted assignment in violation of this provision is void and without effect.
8. Respondent accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation. No exceptions, terms, or conditions will be considered if not advanced in the form and manner directed in the Solicitation. Respondent agrees that all exceptions to the Solicitation as well as terms and conditions advanced by Respondent that differ in any manner from HHSC's terms and conditions are rejected unless expressly accepted by HHSC in writing in a fully executed contract.
9. Respondent agrees that HHSC has the right to use, produce, and distribute copies of and to disclose to HHSC employees, agents, and contractors and other governmental entities all or part of Respondent's Solicitation Response as HHSC deems necessary to complete the procurement process or comply with state or federal laws.
10. Respondent generally releases from liability and waives all claims against any party providing information about the Respondent at the request of HHSC.
11. Respondent acknowledges all addenda and amendments to the Solicitation.
12. Respondent certifies that if a Texas address is shown as the address of Respondent on this Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.
13. Respondent represents and warrants that it qualifies for all preferences claimed under 34 Texas Administrative Code, Section 20.306 or Chapter 2155, Subchapter H of the Texas Government Code as indicated below (check applicable boxes):
  - Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
  - Agricultural products grown in Texas
  - Agricultural products offered by a Texas bidder
  - Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
  - Services offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
  - Texas Vegetation Native to the Region
  - USA-produced supplies, materials or equipment
  - Products of persons with mental or physical disabilities
  - Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
  - Energy efficient products
  - Rubberized asphalt paving material

- Recycled motor oil and lubricants
  - Products produced at facilities located on formerly contaminated property
  - Products and services from economically depressed or blighted areas
  - Vendors that meet or exceed air quality standards
  - Recycled or reused computer equipment of other manufacturers
  - Foods of higher nutritional value
  - Commercial production company or advertising agency located in Texas
14. Respondent has not given, has not offered to give, and does not intend 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 Response, this Solicitation, or any contract resulting from this Solicitation.
15. Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Respondent certifies that the individual or business entity named in this Response 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.
16. Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Respondent 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.
17. Under Section 231.006(d) of the Texas Family Code regarding child support, Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code must include in the Response the names and social security numbers (SSNs) of each person with at least 25% ownership of the business entity submitting the Response:

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

**FEDERAL PRIVACY ACT NOTICE:** This notice is given pursuant to the Federal Privacy Act. Disclosure of requested SSNs is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSNs will be used to identify persons that may owe child support. The SSNs will be kept confidential to the fullest extent permitted by law.

If submitted by email, Responses containing SSNs must be encrypted. Failure by a Respondent to provide or encrypt the SSNs as required may result in disqualification of the Respondent's Response.

18. Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Respondent's subcontracts, if any, if payment in whole or in part is from federal funds.
19. Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.
20. Respondent 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.
21. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of the contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.
22. Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response 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.
23. Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
24. Respondent agrees that any payments due under any contract resulting from this Solicitation shall be applied towards any debt or delinquency that is owed to the State of Texas.
25. Respondent represents and warrants that payments to Respondent and Respondent's receipt of appropriated or other funds under any contract resulting from this Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
26. Respondent agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
27. Respondent agrees that upon request of HHSC, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.
28. Respondent expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain

statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Respondent represents and warrants to HHSC that the technology provided to HHSC for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this Section, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

29. If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
30. If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.
31. Respondent represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
32. Respondent acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Respondent may not accept employment from Respondent before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.
33. Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to HHSC under this Solicitation and any resulting contract and that Respondent’s provision of the requested goods and/or services



under this Solicitation and any resulting contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

34. Respondent understands that HHSC does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Respondent agrees to comply with all applicable laws, rules, regulations, and HHSC policies regarding fraud including, but not limited to, HHS Circular C-027.
35. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Response, neither I nor any representative of the Respondent has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Response, neither I nor any representative of the Respondent has violated any federal antitrust law; and (c) neither I nor any representative of the Respondent has directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.
36. Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Respondent or any of the individuals or entities included in numbered paragraph 1 of this Affirmations and Solicitation Acceptance within the five (5) calendar years immediately preceding the submission of this Solicitation response that would or could impair Respondent's performance under any contract resulting from this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into a contract. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has provided to HHSC a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Respondent's performance under a contract awarded as a result of this Solicitation, relate to the contracted or similar goods or services, or otherwise be relevant to HHSC's consideration of entering into a contract. In addition, Respondent acknowledges this is a continuing disclosure requirement. Respondent represents and warrants that, if awarded a contract as a result of this Solicitation, Respondent shall notify HHSC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update HHSC shall constitute breach of contract and may result in immediate contract termination.
37. Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:
  - (a) all persons employed by Respondent to perform duties within Texas; and

(b) all persons, including subcontractors, assigned by Respondent to perform work pursuant to the contract within the United States of America.

38. If this Solicitation is for an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, Respondent represents and warrants that neither Respondent nor any of Respondent's employees including, but not limited to, those authorized to provide services under the contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the contract.

39. If this Solicitation is for consulting services,

(A). In accordance with Section 2254.033 of the Texas Government Code, a Respondent offering to provide consulting services in response to this solicitation who has been employed by, or employs an individual who has been employed by, HHSC or another State of Texas agency at any time during the two years preceding the submission of Respondent's Solicitation Response must disclose the following information in its Solicitation Response and hereby certifies that this information is true, correct, and complete:

(1) Name of individual(s) (Respondent or employee(s)): \_\_\_\_\_

(2) Status (circle one): Respondent Employee

(3) The nature of the previous employment with HHSC or the other State of Texas agency:

\_\_\_\_\_  
(4) The date the employment was terminated and the reason for the termination:

\_\_\_\_\_  
(5) The annual rate of compensation for the employment at the time of its termination: \_\_\_\_\_

If more than one individual is identified in A(1) above, Respondent must provide responses to A(2)-(5) as to each identified individual. To satisfy this requirement, Respondent must attach a separate page or pages, as necessary, and include the information required in Section A, including subsections (1)-(5). Respondent must identify here how many pages, if any, are attached: \_\_\_\_\_. Respondent acknowledges, agrees, and certifies that all information provided is true, correct, and complete on this and all attached pages.

(B). If no information is provided in response to Section A above, Respondent certifies that neither Respondent nor any individual employed by Respondent was employed by HHSC or any other State of Texas agency at any time during the two years preceding the submission of Respondent's Solicitation Response.

40. Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the boycott certification:

---

---

---

41. Respondent understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act: (i) performs an abortion procedure that is not reimbursable under the state’s Medicaid program; (ii) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state’s Medicaid program; or (iii) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state’s Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Respondent represents and warrants that it is not ineligible, nor will it be ineligible during the term of the contract resulting from this Solicitation, to receive appropriated funding pursuant to Article IX, Section 6.25.

42. Respondent understands, acknowledges, and agrees that, pursuant to Chapter 2272 of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Respondent certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 of the Texas Government Code. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the certification:

---

---

---

43. Respondent understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Respondent is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of any contract resulting from this Solicitation.

44. Respondent represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to any contract resulting from this Solicitation.

45. 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.

46. By submitting this Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of this Response.

**Authorized representative on behalf of Respondent must complete and sign the following:**

**Legal Name of Respondent:** \_\_\_\_\_

\_\_\_\_\_  
**Signature of Authorized Representative**

\_\_\_\_\_  
**Date Signed**

\_\_\_\_\_  
**Printed Name and Title of Authorized Representative**

\_\_\_\_\_  
**Phone Number**

\_\_\_\_\_  
**Federal Employer Identification Number**

\_\_\_\_\_  
**Fax Number**

\_\_\_\_\_  
**DUNS Number**

\_\_\_\_\_  
**Email Address**

\_\_\_\_\_  
**Physical Street Address**

\_\_\_\_\_  
**City, State, Zip Code**

\_\_\_\_\_  
**Mailing Address, if different**

\_\_\_\_\_  
**City, State, Zip Code**

## **HEALTH AND HUMAN SERVICES**

### **CONTRACT AFFIRMATIONS**

The term “System Agency” used in these affirmations means HHS or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under Texas law and the officers, employees, authorized representatives, and designees of those agencies. These agencies include: HHSC and the Department of State Health Services.

By entering into this Contract, Contractor affirms, without exception, understands, and agrees to comply with the following items through the life of the Contract:

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.

2. **Complete and Accurate Information**

Contractor represents and warrants that all statements and information provided to System Agency are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.

3. **Public Information Act**

Contractor understands that System Agency will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor 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.

4. **Contracting Information Requirements**

Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

**5. Assignment**

- A. Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from HHSC. Any attempted assignment in violation of this provision is void and without effect.
- B. Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. This assignment will only be made to another State agency or a non-state agency that is contracted to perform agency support. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity

**6. Terms and Conditions Attached to Response**

Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, as well as terms and conditions advanced by Contractor that differ in any manner from System Agency's terms and conditions, if any, are rejected unless expressly accepted by System Agency in writing.

**7. System Agency Right to Use**

Contractor agrees that System Agency has the right to use, produce, and distribute copies of and to disclose to System Agency employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as System Agency deems necessary to complete the procurement process or comply with state or federal laws.

**8. Release from Liability**

Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of System Agency.

**9. Dealings with Public Servants**

Contractor has not given, has not offered to give, and does not intend 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 Contract or any related Solicitation, or related Solicitation Response.

**10. Financial Participation Prohibited**

Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**11. Prior Disaster Relief Contract Violation**

Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**12. Child Support Obligation**

Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

**13. Suspension and Debarment**

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

**14. Excluded Parties**

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.'

**15. Foreign Terrorists Organizations**

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.

**16. Executive Head of a State Agency**

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

**17. Human Trafficking Prohibition**

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**18. Franchise Tax Status**

Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

**19. Debts and Delinquencies**

Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

**20. Lobbying Prohibition**

Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

**21. Buy Texas**

Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.

**22. Disaster Recovery Plan**

Contractor agrees that upon request of System Agency, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

**23. Technology Access**

- A. Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to System Agency that the technology provided to System Agency for purchase (if applicable under this Contract or any related Solicitation) is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
  - i. providing equivalent access for effective use by both visual and non-visual means;
  - ii. presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
  - iii. being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.
- B. For purposes of this Section, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as



assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

- C. In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

**24. Computer Equipment Recycling Program**

If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

**25. Television Equipment Recycling**

If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

**26. Cybersecurity Training**

- A. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

**27. Restricted Employment for Certain State Personnel**

Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

**28. Disclosure of Prior State Employment**

If this Contract is for consulting services under Chapter 2254 of the Texas Government Code, in accordance with Section 2254.033 of the Texas Government Code, Contractor certifies that it does not employ an individual who was employed by System Agency or another agency at any time during the two years preceding the submission of any related

Solicitation Response related to this Contract or, in the alternative, Contractor has disclosed in any related Solicitation Response the following:

- i. the nature of the previous employment with System Agency or the other agency;
- ii. the date the employment was terminated; and
- iii. the annual rate of compensation at the time of the employment was terminated.

**29. No Conflicts of Interest**

- A. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- B. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to HHSC. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by HHSC as a potential conflict. HHSC reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by HHSC's decision.

**30. Fraud, Waste, and Abuse**

Contractor understands that System Agency does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. All employees or contractors who suspect fraud, waste or abuse (including employee misconduct that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to both the Health and Human Services Commission's Office of the Inspector General at 1-800-436-6184 and the State Auditor's Office. Contractor agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud including, but not limited to, HHS Circular C-027.

**31. Antitrust**

The undersigned affirms under penalty of perjury of the laws of the State of Texas that:

- A. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- B. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and
- C. neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

**32. Legal and Regulatory Actions**

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

**33. No Felony Criminal Convictions**

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.

**34. Unfair Business Practices**

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

**35. Entities that Boycott Israel**

Pursuant to Section 2271.002 of the Texas Government Code, Contractor certifies that either:

- i. it meets an exemption criteria under Section 2271.002; or
- ii. it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this Solicitation. If Contractor refuses to make that certification,

Contractor shall state here any facts that make it exempt from the boycott certification:

---

---

---

**36. 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 this Contract to determine the eligibility of:

- i. all persons employed by Contractor to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.

**37. Professional or Consulting Contract**

If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor's employees including, but not limited to, those authorized to provide services under the contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the contract.

**38. Former Agency Employees**

Contractor represents and warrants, during the twelve (12) month period immediately prior to the date of the execution of this Contract, none of its employees including, but not limited to those who will provide services under the Contract, was an employee of an HHS Agency. Pursuant to Section 2252.901, Texas Government Code (relating to prohibitions regarding contracts with and involving former and retired state agency employees), Contractor will not allow any former employee of the System Agency to perform services under this Contract during the twelve (12) month period immediately following the employee's last date of employment at the System Agency.

**39. Disclosure of Prior State Employment**

If this Contract is for consulting services,

- A. In accordance with Section 2254.033 of the Texas Government Code, a Contractor providing consulting services who has been employed by, or employs an individual who has been employed by, HHSC or another State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services must disclose the following information in its offer to provide services. Contractor hereby certifies that this information was provided and remains true, correct, and complete:
  - i. Name of individual(s) (Respondent or employee(s));
  - ii. Status;
  - iii. The nature of the previous employment with HHSC or the other State of Texas agency;

- iv. The date the employment was terminated and the reason for the termination; and
  - v. The annual rate of compensation for the employment at the time of its termination.
- B. If no information was provided in response to Section A above, Contractor certifies that neither Contractor nor any individual employed by Contractor was employed by HHSC or any other State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services.

**40. Abortion Funding Limitation**

Contractor understands, acknowledges, and agrees that, pursuant to Article IX, Section 6.25 of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

- i. performs an abortion procedure that is not reimbursable under the state's Medicaid program;
- ii. is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or
- iii. is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program. The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX, Section 6.25.

**41. Funding Eligibility**

Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 of the Texas Government Code. If Contractor refuses to make that certification, Contractor shall state here any facts that make it exempt from the certification:

---



---



---

**42. False Representation**

Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

**43. False Statements**

Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material

misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

**44. Permits and License**

Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.

**45. Drug-Free Workplace**

Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §701 et seq.) and maintain a drug-free work environment.

**46. Equal Employment Opportunity**

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

**47. Federal Occupational Safety and Health Law**

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

**48. Signature Authority**

Contractor represents and warrants that the individual signing this Contract Affirmations document is authorized to sign on behalf of Contractor and to bind the Contractor.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



# TEXAS

## Health and Human Services

**Health and Human Services (HHS)**

**Uniform Terms and Conditions - Vendor**

**Version 3.0**

Published and Effective - November 7, 2019

Responsible Office: Chief Counsel

# Table of Contents

<b>ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS .....</b>	<b>5</b>
<b>1.1    DEFINITIONS .....</b>	<b>5</b>
<b>1.2    INTERPRETIVE PROVISIONS .....</b>	<b>7</b>
<b>ARTICLE II. PAYMENT PROVISIONS .....</b>	<b>8</b>
<b>2.1    PROMPT PAYMENT .....</b>	<b>8</b>
<b>2.2    ANCILLARY AND TRAVEL EXPENSES .....</b>	<b>8</b>
<b>2.3    NO QUANTITY GUARANTEES .....</b>	<b>8</b>
<b>2.4    TAXES .....</b>	<b>8</b>
<b>ARTICLE III. STATE AND FEDERAL FUNDING .....</b>	<b>8</b>
<b>3.1    EXCESS OBLIGATIONS PROHIBITED .....</b>	<b>8</b>
<b>3.2    NO DEBT AGAINST THE STATE .....</b>	<b>8</b>
<b>3.3    DEBT AND DELINQUENCIES .....</b>	<b>9</b>
<b>3.4    REFUNDS AND OVERPAYMENTS .....</b>	<b>9</b>
<b>ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS.....</b>	<b>9</b>
<b>4.1    WARRANTY .....</b>	<b>9</b>
<b>4.2    GENERAL AFFIRMATIONS .....</b>	<b>9</b>
<b>4.3    FEDERAL ASSURANCES .....</b>	<b>10</b>
<b>4.4    FEDERAL CERTIFICATIONS .....</b>	<b>10</b>
<b>ARTICLE V. INTELLECTUAL PROPERTY.....</b>	<b>10</b>
<b>5.1    OWNERSHIP OF WORK PRODUCT .....</b>	<b>10</b>
<b>5.2    CONTRACTOR’S PRE-EXISTING WORKS.....</b>	<b>10</b>
<b>5.3    THIRD PARTY IP.....</b>	<b>11</b>
<b>5.4    AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS .....</b>	<b>11</b>
<b>5.5    DELIVERY UPON TERMINATION OR EXPIRATION .....</b>	<b>11</b>
<b>5.6    SURVIVAL.....</b>	<b>11</b>
<b>5.7    SYSTEM AGENCY DATA.....</b>	<b>12</b>
<b>ARTICLE VI. PROPERTY .....</b>	<b>12</b>
<b>6.1    USE OF STATE PROPERTY .....</b>	<b>12</b>
<b>6.2    DAMAGE TO GOVERNMENT PROPERTY.....</b>	<b>13</b>
<b>6.3    PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT.....</b>	<b>13</b>
<b>ARTICLE VII. WORK ORDERS.....</b>	<b>13</b>
<b>7.1    WORK ORDERS.....</b>	<b>13</b>



7.2	PROPOSALS .....	13
7.3	RESPONSIBILITY .....	13
7.4	TERMINATION.....	13
<b>ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY .....</b>		<b>13</b>
8.1	RECORD MAINTENANCE AND RETENTION .....	13
8.2	AGENCY’S RIGHT TO AUDIT .....	14
8.3	RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS .....	14
8.4	STATE AUDITOR’S RIGHT TO AUDIT .....	15
8.5	CONFIDENTIALITY.....	15
<b>ARTICLE IX. CONTRACT REMEDIES AND EARLY TERMINATION .....</b>		<b>15</b>
9.1	CONTRACT REMEDIES.....	15
9.2	TERMINATION FOR CONVENIENCE.....	15
9.3	TERMINATION FOR CAUSE .....	16
9.4	CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY’S TERMINATION COSTS .....	16
<b>ARTICLE X. INDEMNITY.....</b>		<b>16</b>
10.1	GENERAL INDEMNITY .....	16
10.2	INTELLECTUAL PROPERTY .....	17
10.3	ADDITIONAL INDEMNITY PROVISIONS .....	17
<b>ARTICLE XI. GENERAL PROVISIONS .....</b>		<b>18</b>
11.1	AMENDMENT .....	18
11.2	INSURANCE .....	18
11.3	LIMITATION ON AUTHORITY.....	18
11.4	LEGAL OBLIGATIONS .....	18
11.5	CHANGE IN LAWS AND COMPLIANCE WITH LAWS.....	19
11.6	E-VERIFY PROGRAM.....	19
11.7	PERMITTING AND LICENSURE.....	19
11.8	SUBCONTRACTORS .....	19
11.9	INDEPENDENT CONTRACTOR.....	19
11.10	GOVERNING LAW AND VENUE .....	20
11.11	SEVERABILITY .....	20
11.12	SURVIVABILITY.....	20
11.13	FORCE MAJEURE.....	20
11.14	DISPUTE RESOLUTION.....	20
11.15	NO IMPLIED WAIVER OF PROVISIONS .....	21

<b>11.16</b>	<b>MEDIA RELEASES</b> .....	<b>21</b>
<b>11.17</b>	<b>NO MARKETING ACTIVITIES</b> .....	<b>21</b>
<b>11.18</b>	<b>PROHIBITION ON NON-COMPETE RESTRICTIONS</b> .....	<b>21</b>
<b>11.19</b>	<b>SOVEREIGN IMMUNITY</b> .....	<b>22</b>
<b>11.20</b>	<b>ENTIRE CONTRACT AND MODIFICATION</b> .....	<b>22</b>
<b>11.21</b>	<b>COUNTERPARTS</b> .....	<b>22</b>
<b>11.22</b>	<b>CIVIL RIGHTS</b> .....	<b>22</b>
<b>11.23</b>	<b>ENTERPRISE INFORMATION MANAGEMENT STANDARDS</b> .....	<b>23</b>
<b>11.24</b>	<b>DISCLOSURE OF LITIGATION</b> .....	<b>23</b>
<b>11.25</b>	<b>NO THIRD-PARTY BENEFICIARIES</b> .....	<b>24</b>
<b>11.26</b>	<b>BINDING EFFECT</b> .....	<b>24</b>

## ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

### 1.1 DEFINITIONS

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

“Amendment” means a written agreement, signed by the Parties, which documents changes to the Contract other than those permitted by Work Orders.

“Attachment” means documents, terms, conditions, or information added to this Contract following the Signature Document or included by reference and made a part of this Contract.

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

“Contractor” means the Party selected to provide the goods or Services to the State under this Contract.

“Deliverable” means a Work Product(s), including all reports and project documentation, prepared, developed, or procured by Contractor as part of the Services under the Contract for the use or benefit of the System Agency or the State of Texas.

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

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

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Goods” means supplies, materials, or equipment.

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

“Health and Human Services” or “HHS” includes the Department of State Health Services (DSHS), in addition to the Health and Human Services Commission.

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

“Intellectual Property Rights” means the worldwide proprietary rights or interests, including patent, copyright, trade secret, and trademark rights, as such rights may be evidenced by or embodied in:

- i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;

- ii. any work of authorship, including any compilation, computer code, website or web page design, literary work, pictorial work, or graphic work;
- iii. any trademark, service mark, trade dress, trade name, branding, or other indicia of source or origin;
- iv. domain name registrations; and
- v. any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide proprietary rights or interests that the Party may have acquired by assignment, by exclusive license, or by license with the right to grant sublicenses.

“[Parties](#)” means the System Agency and Contractor, collectively.

“[Party](#)” means either the System Agency or Contractor, individually.

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

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

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

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

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

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

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

“[State of Texas Textravel](#)” means the State Travel Management Program through the Texas Comptroller of Public Accounts website and Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

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

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

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

“**Third Party IP**” means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not a Subcontractor.

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

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

“**Work Product**” means any and all works, including work papers, notes, materials, approaches, designs, specifications, systems, innovations, improvements, inventions, software, programs, source code, documentation, training materials, audio or audiovisual recordings, methodologies, concepts, studies, reports, whether finished or unfinished, and whether or not included in the Deliverables, that are developed, produced, generated, or provided by Contractor in connection with Contractor’s performance of its duties under the Contract or through use of any funding provided under this Contract.

## **1.2 INTERPRETIVE PROVISIONS**

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

## **ARTICLE II. PAYMENT PROVISIONS**

### **2.1 PROMPT PAYMENT**

Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

### **2.2 ANCILLARY AND TRAVEL EXPENSES**

- A. Except as otherwise provided in the Contract, no ancillary expenses incurred by the Contractor in connection with its provision of the Services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.
- B. When the reimbursement of travel expenses is authorized by the Contract, all such expenses will be reimbursed in accordance with the rates set by the State of Texas *Travel* available at the Texas Comptroller of Public Accounts State Travel Management Program website.

### **2.3 NO QUANTITY GUARANTEES**

The System Agency makes no guarantee of volume or usage of work under this Contract. All Work requested may be on an irregular and as needed basis throughout the Contract term.

### **2.4 TAXES**

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. System Agency shall not be liable for any taxes resulting from the contract.

## **ARTICLE III. STATE AND FEDERAL FUNDING**

### **3.1 EXCESS OBLIGATIONS PROHIBITED**

The Contract is subject to termination or cancellation, without penalty to the System Agency, either in whole or in part, subject to the availability of state funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or Contractor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, System Agency will not be liable to Contractor for any damages that are caused or associated with such termination, or cancellation, and System Agency will not be required to give prior notice.

### **3.2 NO DEBT AGAINST THE STATE**

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

### **3.3 DEBT AND DELINQUENCIES**

Contractor agrees that any payments due under the Contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

### **3.4 REFUNDS AND OVERPAYMENTS**

- A. At its sole discretion, the System Agency may:
- i. withhold all or part of any payments to Contractor to offset overpayments, unallowable or ineligible costs made to the Contractor, or if any required financial status report(s) is not submitted by the due date(s); or,
  - ii. require Contractor to promptly refund or credit - within thirty (30) calendar days of written notice - any funds erroneously paid by System Agency which are not expressly authorized under the Contract.
- B. "Overpayments," as used in this Section, include payments:
- i. made by the System Agency that exceed the maximum allowable rates;
  - ii. that are not allowed under applicable laws, rules, or regulations; or,
  - iii. that are otherwise inconsistent with this Contract, including any unapproved expenditures. Contractor understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Contractor further understands and agrees that reimbursement of such disallowed costs shall be paid by Contractor from funds which were not provided or otherwise made available to Contractor under this Contract.

## **ARTICLE IV. WARRANTY, AFFIRMATIONS, ASSURANCES, AND CERTIFICATIONS**

### **4.1 WARRANTY**

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

- i. Repair or replace all defective or damaged Work;
- ii. Refund any payment Contractor received from System Agency for all defective or damaged Work and, in conjunction therewith, require Contractor to accept the return of such Work; and,
- iii. Take necessary action to ensure that Contractor's future performance and Work conform to the Contract requirements.

### **4.2 GENERAL AFFIRMATIONS**

Contractor certifies that, to the extent General Affirmations are incorporated into the Contract under the Signature Document, the Contractor has reviewed the General Affirmations and that Contractor is in compliance with all requirements.

### **4.3 FEDERAL ASSURANCES**

Contractor certifies that, to the extent federal assurances are incorporated into the Contract under the Signature Document, the Contractor has reviewed the federal assurances and that Contractor is in compliance with all requirements.

### **4.4 FEDERAL CERTIFICATIONS**

Contractor certifies that, to the extent federal certifications are incorporated into the Contract under the Signature Document, the Contractor has reviewed the federal certifications and that Contractor is in compliance with all requirements. In addition, Contractor certifies that it is and shall remain in compliance with all applicable federal laws, rules, and regulations, as they may pertain to this Contract.

## **ARTICLE V. INTELLECTUAL PROPERTY**

### **5.1 OWNERSHIP OF WORK PRODUCT**

- A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Contractor and Contractor's employees will have no rights in or ownership of the Work Product or any other property of System Agency.
- B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Contractor hereby irrevocably assigns and transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.
- C. Contractor agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.
- D. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to System Agency, Contractor hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.
- E. The foregoing does not apply to Incorporated Pre-existing Works or Third Party IP that are incorporated in the Work Product by Contractor. Contractor shall provide System Agency access during normal business hours to all Vendor materials, premises, and computer files containing the Work Product.

### **5.2 CONTRACTOR'S PRE-EXISTING WORKS**

- A. To the extent that Contractor incorporates into the Work Product any works of Contractor that were created by Contractor or that Contractor acquired rights in prior to the Effective



Date of this Contract (“**Incorporated Pre-existing Works**”), Contractor retains ownership of such Incorporated Pre-existing Works.

- B. Contractor hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product.
- C. Contractor represents, warrants, and covenants to System Agency that Contractor has all necessary right and authority to grant the foregoing license in the Incorporated Pre-existing Works to System Agency.

### **5.3 THIRD PARTY IP**

- A. To the extent that any Third Party IP is included or incorporated in the Work Product by Contractor, Contractor hereby grants to System Agency, or shall obtain from the applicable third party for System Agency’s benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency’s internal business purposes only,
  - i. to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and
  - ii. to authorize others to do any or all of the foregoing.
- B. Contractor shall obtain System Agency’s advance written approval prior to incorporating any Third Party IP into the Work Product, and Contractor shall notify System Agency on delivery of the Work Product if such materials include any Third Party IP.
- C. Contractor shall provide System Agency all supporting documentation demonstrating Contractor’s compliance with this **Section 5.3**, including without limitation documentation indicating a third party’s written approval for Contractor to use any Third Party IP that may be incorporated in the Work Product.

### **5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS**

Contractor shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Contractor’s compliance with Contractor’s obligations under this **Article V**.

### **5.5 DELIVERY UPON TERMINATION OR EXPIRATION**

No later than the first calendar day after the termination or expiration of the Contract or upon System Agency’s request, Contractor shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Contractor’s failure to timely deliver such Work Product is a material breach of the Contract. Contractor will not retain any copies of the Work Product or any documentation or other products or results of Contractor’s activities under the Contract without the prior written consent of System Agency.

### **5.6 SURVIVAL**

The provisions and obligations of this **Article V** survive any termination or expiration of the Contract.

## 5.7 SYSTEM AGENCY DATA

- A. As between the Parties, all data and information acquired, accessed, or made available to Contractor by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Contractor in the course of providing data processing services in connection with Contractor's performance hereunder (the "**System Agency Data**"), is owned solely by System Agency.
- B. Contractor has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Contractor to fulfill its obligations under the Contract or as authorized in advance in writing by System Agency.
- C. For the avoidance of doubt, Contractor is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.
- D. Contractor shall make System Agency Data available to System Agency, including to System Agency's designated vendors, as directed in writing by System Agency. The foregoing shall be at no cost to System Agency.
- E. Furthermore, the proprietary nature of Contractor's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Contractor's performance of its obligations hereunder.

## ARTICLE VI. PROPERTY

### 6.1 USE OF STATE PROPERTY

- A. Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the Contract.
- B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (*e.g.*, laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.
- C. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access System Agency's network or e-mail while outside of the continental United States.
- D. Contractor shall not perform any maintenance services on State Property unless the Contract expressly authorizes such Services.
- E. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for:
  - i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and
  - ii. all charges attributable to Contractor's use of State Property that exceeds the Contract scope. Contractor shall fully reimburse such charges to System Agency within ten (10) calendar days of Contractor's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

## **6.2 DAMAGE TO GOVERNMENT PROPERTY**

- A. In the event of loss, destruction, or damage to any System Agency or State of Texas owned, leased, or occupied property or equipment by Contractor or Contractor's employees, agents, Subcontractors, and suppliers, Contractor shall be liable to System Agency and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.
- B. Contractor shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Contractor shall reimburse System Agency and the State of Texas for such property damage within 10 calendar days after Contractor's receipt of System Agency's notice of amount due.

## **6.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT**

In the event the Contract is terminated for any reason, or upon its expiration State Property remains the property of the System Agency and must be returned to the System Agency by the end date of the Contract or upon System Agency's request.

# **ARTICLE VII. WORK ORDERS**

## **7.1 WORK ORDERS**

If the Contract is for indefinite quantities of Services, as specified in the Signature Document, all Work will be performed in accordance with properly executed Work Orders.

## **7.2 PROPOSALS**

For Work Order contracts, the Contractor shall submit to System Agency separate proposals, including pricing and a project plan, for each Project.

## **7.3 RESPONSIBILITY**

For each approved Project, the Contractor shall be responsible for all Work assigned under the Work Order. Multiple Work Orders may be issued during the term of this Contract, all of which will be in writing and signed by the Parties. Each Work Order will include a scope of Services; a list of tasks required; a time schedule; a list of Deliverables, if any; a detailed Project budget; and any other information or special conditions as may be necessary for the Work assigned.

## **7.4 TERMINATION**

If this Work Order is in effect on the day the Contract would otherwise expire, the Contract will remain in effect until this Work Order is terminated or expires; and the Contract and this Work Order may be amended after such termination or expiration to extend the performance period or add ancillary deliverables or services, only to the extent necessary.

# **ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY**

## **8.1 RECORD MAINTENANCE AND RETENTION**

- A. Contractor shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives

sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.

- B. Contractor shall maintain and retain legible copies of this Contract and all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by Contractor for a minimum of seven (7) years after the Contract expiration date or seven (7) years after the completion of all audit, claim, litigation, or dispute matters involving the Contract are resolved, whichever is later.

## **8.2 AGENCY'S RIGHT TO AUDIT**

- A. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.
- B. In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.
- C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract.
- D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.
- E. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

## **8.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS**

- A. Contractor must act to ensure its and its Subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Contract and the Services and Deliverables provided. Any such correction will be at Contractor's or its Subcontractor's sole expense. Whether Contractor's action corrects the noncompliance shall be solely the decision of the System Agency.

- B. As part of the Services, Contractor must provide to System Agency upon request a copy of those portions of Contractor's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

#### **8.4 STATE AUDITOR'S RIGHT TO AUDIT**

- A. 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 under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, 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.
- B. The Contractor shall comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

#### **8.5 CONFIDENTIALITY**

Contractor shall maintain as confidential and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency Data, System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Contract. The obligations of Contractor under this section will survive termination or expiration of this Contract. This requirement must be included in all subcontracts awarded by Contractor.

### **ARTICLE IX. CONTRACT REMEDIES AND EARLY TERMINATION**

#### **9.1 CONTRACT REMEDIES**

To ensure Contractor's full performance of the Contract and compliance with applicable law, the System Agency reserves the right to hold Contractor accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to:

- i. suspending all or part of the Contract;
- ii. requiring the Contractor to take specific actions in order to remain in compliance with the Contract;
- iii. recouping payments made by the System Agency to the Contractor found to be in error;
- iv. suspending, limiting, or placing conditions on the Contractor's continued performance of Work; or
- v. imposing any other remedies, sanctions, or penalties authorized under this Contract or permitted by federal or state law.

#### **9.2 TERMINATION FOR CONVENIENCE**

The System Agency may terminate the Contract, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of

the State of Texas. The termination will be effective on the date specified in the System Agency's notice of termination.

### **9.3 TERMINATION FOR CAUSE**

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

**i. Material Breach**

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

**ii. Failure to Maintain Financial Viability**

The System Agency may terminate the Contract if, in its sole discretion, the System Agency has a good faith belief that Contractor no longer maintains the financial viability required to complete the Work, or otherwise fully perform its responsibilities under the Contract.

### **9.4 CONTRACTOR RESPONSIBILITY FOR SYSTEM AGENCY'S TERMINATION COSTS**

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

## **ARTICLE X. INDEMNITY**

### **10.1 GENERAL INDEMNITY**

- A. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM 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 CONTRACTOR 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.**
- B. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES**

**RESULTING FROM THE NEGLIGENT ACTS OF OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.**

- C. For the avoidance of doubt, System Agency shall not indemnify Contractor or any other entity under the Contract.**

## **10.2 INTELLECTUAL PROPERTY**

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SYSTEM AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM:**

- i. THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT;**
- ii. ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR**
- iii. SYSTEM AGENCY'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO SYSTEM AGENCY BY CONTRACTOR OR OTHERWISE TO WHICH SYSTEM AGENCY HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT.**

## **10.3 ADDITIONAL INDEMNITY PROVISIONS**

- A. CONTRACTOR AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY INDEMNITY CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES.**
- B. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL.**
- C. CONTRACTOR SHALL REIMBURSE SYSTEM AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE SYSTEM AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF SYSTEM AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, SYSTEM AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF SYSTEM AGENCY'S COUNSEL.**

## **ARTICLE XI. GENERAL PROVISIONS**

### **11.1 AMENDMENT**

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

### **11.2 INSURANCE**

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

### **11.3 LIMITATION ON AUTHORITY**

- A. The authority granted to Contractor by the System Agency is limited to the terms of the Contract.
- B. Contractor shall not have any authority to act for or on behalf of the System Agency or the State of Texas except as expressly provided for in the Contract; no other authority, power, or use is granted or implied. Contractor may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.
- C. Contractor may not rely upon implied authority and is not granted authority under the Contract to:
  - i. Make public policy on behalf of the System Agency;
  - ii. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of a System Agency program; or
  - iii. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding System Agency programs or the Contract. However, upon System Agency request and with reasonable notice from System Agency to the Contractor, the Contractor shall assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

### **11.4 LEGAL OBLIGATIONS**

Contractor shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use



of information and communication technology. Contractor shall be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

#### **11.5 CHANGE IN LAWS AND COMPLIANCE WITH LAWS**

Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Contract. System Agency reserves the right, in its sole discretion, to unilaterally amend the Contract to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

#### **11.6 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:

- i. all persons employed by Contractor to perform duties within Texas; and
- ii. all persons, including subcontractors, assigned by the Contractor to perform Work pursuant to the Contract within the United States of America.

#### **11.7 PERMITTING AND LICENSURE**

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

#### **11.8 SUBCONTRACTORS**

Contractor may not subcontract any or all of the Work and/or obligations under the Contract without prior written approval of the System Agency. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of the Contract. Should Contractor subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such Subcontract(s), System Agency is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all Subcontracts are rendered in compliance with the Contract.

#### **11.9 INDEPENDENT CONTRACTOR**

Contractor and Contractor's employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Contractor nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Contractor shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee

benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and System Agency.

#### **11.10 GOVERNING LAW AND VENUE**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the System Agency.

#### **11.11 SEVERABILITY**

If any provision of the Contract is held to be illegal, invalid or unenforceable by a court of law or equity, such construction will not affect the legality, validity or enforceability of any other provision or provisions of this Contract. It is the intent and agreement of the Parties this Contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Contract will continue in full force and effect.

#### **11.12 SURVIVABILITY**

Expiration or termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

#### **11.13 FORCE MAJEURE**

Neither Contractor nor System Agency 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, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

#### **11.14 DISPUTE RESOLUTION**

A. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract. If the Contractor's claim for breach of contract cannot be resolved informally with the System Agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas

Government Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

- B. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by the System Agency if the Parties are unable to resolve their disputes as described above.
- C. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the System Agency, the Contractor shall continue performance and shall not be excused from performance during the period of any breach of contract claim or while the dispute is pending. However, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

#### **11.15 NO IMPLIED WAIVER OF PROVISIONS**

The failure of the System Agency to object to or to take affirmative action with respect to any conduct of the Contractor which is in violation or breach of the terms of the Contract shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

#### **11.16 MEDIA RELEASES**

- A. Contractor shall not use System Agency's name, logo, or other likeness in any press release, marketing material, or other announcement without System Agency's prior written approval. System Agency does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this Contract or the Services to which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency.
- B. Contractor may publish, at its sole expense, results of Contractor performance under the Contract with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

#### **11.17 NO MARKETING ACTIVITIES**

Contractor is prohibited from using the Work for any Contractor or third-party marketing, advertising, or promotional activities, without the prior written consent of System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Contractor's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Contractor as part of the Work.

#### **11.18 PROHIBITION ON NON-COMPETE RESTRICTIONS**

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

### **11.19 SOVEREIGN IMMUNITY**

Nothing in the Contract shall be construed as a waiver of the System Agency's or the State's sovereign immunity. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. System Agency does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

### **11.20 ENTIRE CONTRACT AND MODIFICATION**

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

### **11.21 COUNTERPARTS**

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

### **11.22 CIVIL RIGHTS**

- A. Contractor shall comply with all applicable state and federal anti-discrimination laws, including:
  - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, *et seq.*);
  - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
  - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101, *et seq.*);
  - iv. Age Discrimination Act of 1975 (42 U.S.C. §6101, *et seq.*);
  - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*);
  - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011, *et seq.*); and
  - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.
- B. Contractor shall comply with all amendments to these laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any service or other benefit provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Contractor shall comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor shall take reasonable steps to provide services

and information, both orally and in writing and electronically, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

Contractor shall post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>

- D. Contractor shall comply with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 28 CFR Subpart G § 42.503, and Americans with Disabilities Act of 1990 and its implementing regulations at 28 CFR Subpart B §35.130 which includes requiring contractor to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the contractor can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.
- E. Contractor shall comply with federal regulations regarding equal treatment for faith-based organizations under 45 C.F.R. Part 87 or 7 C.F.R. Part 16, as applicable. Contractor shall not discriminate against clients or prospective clients on the basis of religion or religious belief, and shall provide written notice to beneficiaries of their rights.
- F. Upon request, Contractor shall provide the HHSC Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
- G. Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. This notice must be directed to:  
HHSC Civil Rights Office  
701 W. 51<sup>st</sup> Street, Mail Code W206  
Austin, Texas 78751  
Phone Toll Free: (888) 388-6332  
Phone: (512) 438-4313  
Fax: (512) 438-5885.

### **11.23 ENTERPRISE INFORMATION MANAGEMENT STANDARDS**

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

### **11.24 DISCLOSURE OF LITIGATION**

- A. The Contractor must disclose in writing to the contract manager assigned to this Contract any material civil or criminal litigation or indictment either threatened or pending involving the Contractor. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Contractor must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, "material" refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Contract or any

development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Contractor's financial condition.

- B. This is a continuing disclosure requirement; any litigation commencing after Contract Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

#### **11.25 NO THIRD-PARTY BENEFICIARIES**

The Contract is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Contract as a third-party beneficiary or otherwise.

#### **11.26 BINDING EFFECT**

The Contract shall inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**