TEXAS
Health and Human Services

Exhibit A

Affirmations and Solicitation Acceptance for State Architectural/Engineering and Construction Projects

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In this document, when referring to the following affirmations (whether framed as certifications, representations, warranties, or in other terms), the term "**Respondent"** shall mean any or any combination of the following as may be applicable to this Solicitation: : Respondent, Contractor, Applicant, Vendor, Bidder, Architect/Engineer, General Contractor, Construction Manager-Agent, Construction Manager-at-Risk, or Design-Build Firm. Also, the following terms have the associated meanings:

1. **"Solicitation"** shall include all of the following: Invitation for Bids, Request for Proposals, Request for Offers, Request for Applications, Pricing Requests, or Request for Qualifications;
2. "**Proposal"** shall mean any proposal offer, bid or responsive documentation submitted in response to a Solicitation;
3. "**Affirmation"** or **"Affirmations"** shall mean this Affirmations and Solicitation Acceptance for State Architectural/Engineering and Construction Projects document; and
4. **"Owner"** shall mean the entity posting the Solicitation.

The Affirmations apply to all Respondents regardless of their business form (e.g., individual, partnership, limited liability company, corporation).

The headings used below are for convenience and reference only and shall not affect the interpretation or construction of this document.

Respondent affirms, without exception, as follows:

1. **Parties to the Affirmations and Acceptance.** Respondent represents and warrants to the Owner that all certifications, representations, warranties, and other provisions in these Affirmations apply to Respondent and all of Respondent's principals, officers, directors, shareholders, managers, members, partners, owners, governing person(s) or governing authority, 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. **Public Information Act.** 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.

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.

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.

3. **Confidential or Proprietary Information.** Respondent acknowledges its obligation to specifically identify information it contends to be confidential or proprietary and, if Respondent designated substantial portions of its Proposal or its entire Proposal as confidential or proprietary, the Proposal is subject to being disqualified.

4. **Binding Proposal.** Respondent's Proposal will remain a firm and binding offer for 120 days from the date the Solicitation Response is due.

5. **No Assignment without Approval.** 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.

6. **Acceptance of Solicitation Terms.** Respondent accepts the Solicitation terms and conditions unless specifically noted by exceptions 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 Owner's terms and conditions are rejected unless expressly accepted by Owner in writing in a fully executed contract.

7. **Distribution and Disclosure.** Respondent agrees that the Owner has the right to use, produce, and distribute copies of and to disclose to the Owner's employees, agents, and contractors and other governmental entities all or part of Respondent's Proposal as the Owner deems necessary to complete the procurement process or comply with state or federal laws.

8. **Third-Party Information and Release.** ***RESPONDENT GENERALLY RELEASES FROM LIABILITY AND WAIVES ALL CLAIMS AGAINST ANY PARTY PROVIDING INFORMATION ABOUT THE RESPONDENT AT THE REQUEST OF THE OWNER.***

9. **Addenda and Amendments.** Respondent acknowledges all addenda and amendments to the Solicitation.

10. **Preference for Texas and United States Products and Texas Services.** Respondent certifies that if a Texas address is shown as the address of Respondent on this Proposal, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

11. **Purchasing Preferences.** Respondent represents and warrants that it qualifies for all preferences claimed under Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D, Division 2, §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

12. **Dealings with Public Servants.** 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 Proposal, this Solicitation, or any contract resulting from this Solicitation.

13. **Financial Participation Prohibited.** 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 Proposal or contract is not ineligible to receive the specified contract and acknowledges that any contract resulting from this Solicitation may be terminated and payment withheld if this certification is inaccurate.

14. **Prior Disaster Relief.** 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.

15. **Child Support Obligation.** Under Section 231.006(d) of the Texas Family Code regarding child support, Respondent certifies that the individual or business entity named in this Proposal 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 Proposal the names and social security numbers (SSNs) of each person with at least 25% ownership of the business entity submitting the Proposal:

Name: _____ SSN: _____
Name: _____ SSN: _____
Name: _____ SSN: _____
Name: _____ SSN: _____

16. **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, Proposals 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 Proposal.

17. **Suspension and Debarment.** 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.

18. **Excluded Parties.** 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 Treasury, Office of Foreign Assets Control.

19. **Foreign Terrorist Organizations.** 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.

20. **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, Respondent certifies that he or she is not (1) the executive head of a Texas Health and Human Services agency, (2) a person who at any time during the four years before the date of the contract was the executive head of a Texas Health and Human Services agency, or (3) a person who employs a current or former executive head of a Texas Health and Human Services agency.

21. **Prohibition on Certain Bids and Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061 of the Texas Government Code, Respondent certifies that the individual or business entity named in this Proposal or any contract resulting from this Solicitation is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

22. **Franchise Tax Certification.** 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.

23. **Debts and Delinquencies.** 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.

24. **Lobbying Prohibition.** 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).

25. **Buy Texas.** In accordance with Section 2155.4441 of the Texas Government Code, Respondent agrees that during the performance of a contract for services arising out of the Proposal it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

26. **Disaster Recovery Plan.** Respondent agrees that upon request of the Owner, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.

27. **Cybersecurity Training.** 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.

28. **Former Agency Employees.** In accordance with Section 2252.901 of the Texas Government Code, Respondent represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of a Texas Health and Human Services agency during the twelve month period immediately prior to the date of execution of the contract.

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

30. **No Conflicts of Interest.** Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to the Owner 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.

31. **Fraud and Reporting.** Respondent understands that the Owner 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 Owner policies regarding fraud including, but not limited to, HHS Circular C-027.

32. **Antitrust.** The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Proposal, neither I, nor the Respondent, 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 Proposal, neither I, nor the Respondent, nor any representative of the Respondent has violated any federal antitrust law; and (c) neither I, nor the Respondent, nor any representative of the Respondent has directly or indirectly communicated any of the contents of this Proposal 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.

33. **Legal and Regulatory Actions.** 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 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 the Owner'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 the Owner 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 the Owner'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 the Owner in writing within five business days of any changes to the representations or warranties in this clause and understands that failure to so timely update the Owner shall constitute breach of contract and may result in immediate contract termination.

34. **Certification Regarding Boycotting Israel.** If the Respondent has ten or more full-time employees and the contract arising out of the Solicitation has a value of $100,000.00 or more, then Respondent represents and warrants that, pursuant to Section 2271.002 of the Texas Government Code, Respondent does not boycott Israel and will not boycott Israel during the term of any contract arising out of the Proposal.

35. **Consulting Services representations and warranties.** 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.

36. 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.

37. **E-Verify.** 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. **Abortion Funding Limitation.** 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.

39. **Funding Eligibility.** 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:

_____

_____

_____

40. **False Representations.** 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. Respondent understands, acknowledges, and agrees that Owner is relying upon all representations, warranties, certifications, and affirmations made by Respondent.

41. **All Applicable Laws.** 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.

42. **False Statements.** Respondent represents and warrants that all statements and information prepared and submitted in its Proposal are current, complete, true, and accurate. Submitting a Proposal 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 Proposal and any resulting contract. Respondent understands, acknowledges, and agrees that Owner is relying upon all statements and information prepared and submitted by Respondent in the Proposal.

43. **Signature Authority.** Respondent represents and warrants that the individual submitting these Affirmations and the other documents made a part of this Proposal 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 Proposal. The person signing these Affirmations must sign any contract resulting from the Proposal. If someone signs these Affirmations other than (i) the president or a vice-president of a corporation, (ii) a general partner of a general partnership or limited partnership or limited liability partnership; or (iii) a member or manager of a limited liability company, if requested by Owner, Respondent shall be required

to provide documentation (bylaws, company agreement, or resolution, etc.) that evidences the signatory below has authority to contractually bind the Respondent. Failure of a Respondent to sign and return these Affirmations may result in disqualification of its Proposal.

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**